

HB


45

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

TO: Senator Tim Kelly, Chair
Members of the Senate Labor and Commerce Committee

FROM: Scott A. Burgess, Executive Director 

DATE: April 29, 1988

SUBJECT: HB 45 - Alaska Bidder and Product Preferences

The AML opposes CS for HB 45 (Finance) and any proposed CS which includes municipalities in the requirements to give preferences. While the AML supports local hire and Alaska products, it cannot support a state mandate that potentially increases the cost of doing business. The AML requests that the bill not pass or that the language including municipalities be deleted. As introduced, HB 45 did not apply to municipalities.

Municipalities have suffered significant reductions in federal and state financial assistance while at the same time they have experienced population growth and increased responsibilities i.e. costs. Federal and state governments have told municipalities to do more with less and yet this proposed legislation could potentially increase the cost of products and services from one percent to seventeen percent or higher, not including the cost of administration and potential liability.

Alaska municipalities support local hire, local businesses and local products. To that end, several municipalities have local preferences for purchases and hiring within the municipality. These true "local" hire ordinances have more successfully withstood court challenges nationwide than state preferences. In addition, they benefit the specific municipality more than general Alaska preferences. A product purchased or contractor hired from one municipality does not do another Alaskan community as much good as when that product or contractor is purchased or hired locally. The proposed legislation provides for no exclusion or credit for local preferences.

Another major problem is the cumulative nature of the preferences. The existing preferences and the ones added and extended by HB 45 would be cumulative! It is unclear but, presumably, these preferences would also be added to local preferences. These provisions could result in significantly higher costs. At some point, the benefits of Alaska hire or preferences exceed the benefits of providing services and products at the lowest cost to the taxpayer, and competition in the free marketplace.

Senate Labor and Commerce Committee re HB 45

April 29, 1988

Page 2

The legislation also extends preferences to municipal entitlement monies and capital funds which have traditionally been disbursed to municipalities without "strings" to be spent by communities on locally-determined priorities. The legislation also will result in more complicated purchasing procedures and adds liability language for not granting the preferences.

Again, under the provisions for maximum local control in the Alaska Constitution and the potential for increased costs for municipalities in the face of declining federal and state assistance, the AML opposes CSHB 45 (Finance) and, specifically, its expansion of preferences and their application to municipalities. Thank you.

5-0307P
Bannister
4/29/88

Original sponsors: Donley, Grussendorf,
Gruenberg, et al.

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 45 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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8 ment involving state money; and providing for an
9 effective date."

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24 provided by law for the violation of this section, except that the
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1 products manufactured in the state from timber and lumber that has
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4 699;

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7 the state or performs more than 50 percent of the person's annual
8 business in the state, whichever is less;

9 (3) has maintained a permanent place of business in the
10 state staffed by the bidder or an employee of the bidder for a period
11 of six months immediately preceding the date of the bid;

12 (4) submits a bid for goods or services under the name that
13 appears on the person's current Alaska business license;

14 (5) is incorporated or qualified to do business under the
15 laws of the state, is a sole proprietorship and the proprietor is a
16 resident of the state, or is a partnership and all partners are resi-
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18 (6) if a joint venture, is composed entirely of persons who
19 qualify under (1) - (5) of this subsection; and

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25 with regulations of the commissioner, whether the offeror qualifies as
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10 preference under AS 36.30.170(b) or (c) and is also entitled to an
11 Alaska products preference under AS 36.30.328 for a contract, the
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13 bid or proposal price by the total of the two applicable percentage
14 preferences.

15 * Sec. 10. AS 36.30.900 is amended to read:

16 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter
17 does not modify AS 36.15.010 and 36.15.020 regarding preference for
18 Alaska forest products, or AS 36.15.050 and 36.15.060, regarding
19 preference for Alaska agricultural and fisheries products [, EXCEPT AS
20 PROVIDED IN AS 36.30.170(b) AND (c)].

21 * Sec. 11. AS 36.30.170(d) is repealed.

22 * Sec. 12. This Act takes effect January 1, 1989.
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29

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 27, 1988

SUBJECT: Constitutional ramifications of draft
SCS CSHB 45(L&C)

TO: Senator Tim Kelly, Chair
Senate Labor & Commerce Committee

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies the draft that you requested for
SCS CSHB 45(L&C).

Please be aware that the Alaska bidder preference provisions
of the draft raise federal and state constitutional
questions. These questions are not raised initially by any
change that you have requested in this draft. The problems
are based on the federal privileges and immunities clause of
the federal constitution and on the equal protection clauses
of the state and federal constitutions. Since you are
probably very much aware of the nature of these problems, I
will not discuss them further in this memo. However, if you
wish additional information, please advise.

In sec. 8 on page 3 at line 10, you may wish to consider
replacing the word "involving" with "financed entirely or
partially by". The purpose of this change would be to elim-
inate the interpretive problems that could arise with "in-
volving". The AG's office noticed the problem and suggested
"financed". If you wish to make the change, please advise.

If I may be of further assistance, please advise.

Enclosure

TLB:gc
WKG3:042

5-0307P

Bannister
4/28/83

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STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX C
JUNEAU, ALASKA 99811-0200
PHONE: (907) 465-2200

April 25, 1988

Honorable Tim Kelly
Chairman of the Senate
Labor and Commerce Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Kelly:

After review of CS HB45 (Finance) I wish to suggest certain changes which I believe will make the Alaskan bidders preference evaluation process easier to apply. I would also like to bring your attention to a concern I have regarding the inclusion of language relating to recoverable damages.

Our suggested changes to AS 36.30.170(b) (Section 4 of the bill) will clarify the application of the preferences, and insure that it does not result in the award of a bid to a higher Alaskan bid over a lower Alaskan bid.

The proposed change to AS 36.30.170(c) (Section 5 of the bill) clarifies that the 10% preference for qualifying employment programs is a 10% deduction percentage preference.

The change proposed to AS 36.30.895 (Section 9 of the bill) is to add the phrase, "for the purpose of evaluation" which makes it clear that the evaluation of bids is based on the preference, but the actual contract price is based on the bid.

Finally, I believe that Section 2 of the bill which adds the phrase, "and may recover damages and such other remedies provided by law for violation of this section" will contribute to claims against the State beyond bid preparation costs. In King v. Alaska State Housing Authority, 633 P.2d 256 (Alaska 1981), the courts have held that a bidder would only be entitled to bid preparation costs if a contract were wrongfully awarded. This language could be interpreted by the courts to mean that a bidder would also be entitled to lost profits. The States potential liability could increase substantially if Section 2 is retained in the bill.

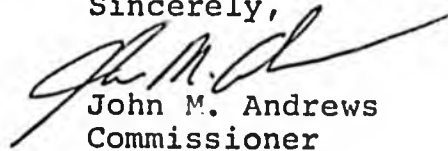
Senator Tim Kelly

-2-

April 25, 1988

Should you have any further questions, please contact me or Bob Link, Director of General Services and Supply.

Sincerely,

A handwritten signature in cursive script, appearing to read "John M. Andrews".

John M. Andrews
Commissioner

JMA:DP:gh
Attachment

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Notwithstanding the above, the preferences may not be applied to reduce the evaluation price of one Alaskan bidder below that of another Alaskan bidder whose bid before application of the preferences would be lower than the first bidder's.

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19 to strengthen and stabilize the state's economy.

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

21 (e) An interested party [, AS DEFINED IN AS 36.30.699,] may seek
22 administrative or judicial review of the award of a contract in viola-
23 tion of this section and may recover damages and seek other remedies
24 provided by law for the violation of this section.

25 * Sec. 3. AS 36.15.050(g) is amended to read:

26 (g) In this section,

27 (1) "agricultural products" includes, but is not limited
28 to, dairy products, timber and lumber harvested in the state and
29 products manufactured in the state from timber and lumber that has

1 been harvested in the state;

2 (2) "interested party" has the meaning given in AS 36.30.-
3 699;

4 (3) "state money" includes state grants and reimbursement
5 to municipalities, [AND] school districts, and other entities for
6 school or related construction, foundation funding for education,
7 municipal assistance, revenue sharing, and state funds for capital
8 projects.

9 * Sec. 4. AS 36.30.170(b) is repealed and reenacted to read:

10 (b) The procurement officer shall award a contract based on
11 solicited bids to the lowest responsible and responsive Alaska bidder
12 if the bid, after receiving a preference applicable to the bid under
13 AS 36.30.322 - 36.30.338, ~~is~~ not more than

14 (1) one percent higher ~~than~~ the lowest nonresident bidder's
15 and the contract is \$10,000,000 or more;

16 (2) two percent higher than the lowest nonresident bidder's
17 and the contract is more than \$500,000 and less than \$10,000,000;

18 (3) five percent higher than the lowest nonresident bid-
19 der's and the contract is more than \$100,000 and \$500,000 or less; or

20 (4) 10 percent higher than the lowest nonresident bidder's
21 and the contract is \$100,000 or less.

22 * Sec. 5. AS 36.30.170(c) is amended to read:

23 (c) Notwithstanding (b) of this section, if [IF] a bidder qual-
24 ifies under (e) [(b)] of this section as an Alaska bidder, is offering
25 services through an employment program as defined under AS 36.30.-
26 100(c), and is the lowest responsible and responsive bidder with a bid
27 that is not more than 10 percent higher than the lowest bid of a
28 nonresident, the procurement officer shall award the contract to that
29 bidder.

1 * Sec. 6. AS 36.30.170 is amended by adding a new subsection to read:

2 (e) In this section, "Alaska bidder" means a person who

3 (1) holds a current Alaska business license;

4 (2) does more than \$1,000,000 worth of annual business in
5 the state or performs more than 50 percent of the person's annual
6 business in the state, whichever is less;

7 (3) has maintained a permanent place of business in the
8 state staffed by the bidder or an employee of the bidder for a period
9 of six months immediately preceding the date of the bid;

10 (4) submits a bid for goods or services under the name that
11 appears on the person's current Alaska business license;

12 (5) is incorporated or qualified to do business under the
13 laws of the state, is a sole proprietorship and the proprietor is a
14 resident of the state, or is a partnership and all partners are resi-
15 dents of the state;

16 (6) if a joint venture, is composed entirely of persons who
17 qualify under (1) - (5) of this subsection; and

18 (7) is an Alaska domestic insurer, if the contract is
19 insurance-related and the procurement is based on solicited bids.

20 * Sec. 7. AS 36.30.250(b) is amended to read:

21 (b) In determining whether a proposal is advantageous to the
22 state, the procurement officer shall take into account, in accordance
23 with regulations of the commissioner, whether the offeror qualifies as
24 an Alaska bidder under AS 36.30.170(e) [AS 36.30.170(b)] or is offer-
25 ing the services of an employment program as defined in AS 36.30.-
26 100(c).

27 * Sec. 8. AS 36.30.850(e) is amended to read:

28 (e) AS 36.30.170 and 36.30.322 - 36.30.338 apply [APPLIES] to
29 all [INSURANCE] contracts involving state money, including state

1 grants and reimbursement to municipalities, school districts, and
2 other entities for school or related construction, foundation funding
3 for education, municipal assistance, revenue sharing, and state funds
4 for capital projects.

5 * Sec. 9. AS 36.30 is amended by adding a new section to read:

6 Sec. 36.30.895. COMBINATION OF PREFERENCES. In the evaluation
7 of a bid or proposal, if a contractor qualifies as an Alaska bidder
8 under AS 36.30.170(e) and is also entitled to an Alaska products
9 preference under AS 36.30.328 for a contract, the procurement officer
10 shall decrease the bid or proposal price by the total of the two
11 applicable percentages.

12 ~~SECTION~~
13 * Sec. 10. AS 36.30.900 is amended to read:

14 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter
15 does not modify AS 36.15.010 and 36.15.020 regarding preference for
16 Alaska forest products, or AS 36.15.050 and 36.15.060, regarding
17 preference for Alaska agricultural and fisheries products [, EXCEPT AS
18 PROVIDED IN AS 36.30.170(b) AND (c)].

19 * Sec. 11. AS 36.30.170(d) is repealed.

20 * Sec. 12. Sections 1 - 3 of this Act take effect January 1 of the
21 calendar year that follows the calendar year in which the voters of the
22 state ratify the state constitutional amendment contained in the version of
23 HJR 18 that is passed by the Fifteenth Alaska State Legislature.

24 * Sec. 13. Sections 4 - 11 of this Act take effect upon the ratifica-
25 tion by the voters of the state of the state constitutional amendment
26 contained in the version of HJR 18 that is passed by the Fifteenth Alaska
State Legislature.