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5-1534B
Bannister
4/8/88

Original sponsor: Duncan

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 344 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to general contractors and to cer-
7 tain contracts of state agencies."

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

9 * Section 1. AS 08.18.011(b) is amended to read:

10 (b) A general contractor may not use a bid or proposal from,
11 award a bid or proposal to, contract with, or allow a person required
12 to be registered under this chapter to work for the general contractor
13 as a specialty contractor unless the person is registered under this
14 chapter.

15 * Sec. 2. AS 36.30.115(a) is amended to read:

16 (a) Within five working days after the identification of the
17 apparent low bidder, the apparent low bidder shall submit a list of
18 the subcontractors the bidder proposes to use in the performance of
19 the contract. The list must include the name and location of the place
20 of business for each subcontractor and evidence of the subcontractor's
21 valid Alaska business license. A bidder for a construction contract
22 shall also submit evidence of each subcontractor's registration under
23 AS 08.18. If a subcontractor on the list does not have a valid Alaska
24 business license and a valid certificate of registration under
25 AS 08.18, the purchasing officer shall reject the bid and proceed to
26 the next lowest bidder.

*Original Passed out
of State Affairs 1:05 p.m. 4/1/88*

1 IN THE SENATE

BY DUNCAN

2

SENATE BILL NO. 344

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to general contractors, and to
7 certain contracts of state agencies and political
8 subdivisions."

7

8

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

10

* Section 1. AS 08.18.011(b) is amended to read:

11

(b) A general contractor may not solicit a bid or proposal from,
12 award a bid or proposal to, contract with, or allow a person required
13 to be registered under this chapter to work for the general contractor
14 as a specialty contractor unless the person is registered under this
15 chapter.

16

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18 apparent low bidder, the apparent low bidder shall submit a list of
19 subcontractors the bidder proposes to use in the performance of the contract.
20 The list must include the name and location of the place of business for
21 each subcontractor and evidence of the subcontractor's valid Alaska business
22 license. A bidder for a construction contract shall also submit evidence
23 of each subcontractor's registration under AS 08.18. If a subcontractor on the
24 list does not have a valid Alaska business license and registered under AS 08.18
25 the bid is to be rejected and the contracting agency shall proceed to the next
26 lowest bidder.

28

29

*4:10 p.m. 3/31/88 Signed off
Pres. of Execut. Dir.*

Alaska State Legislature

SENATOR JIM DUNCAN

P. O. Box V JUNEAU, ALASKA 99811

(907) 465-4766

COMMITTEES:
FINANCE
RESOURCES
BUDGET AND AUDIT

M E M O R A N D U M

February 17, 1988

To: Senator Mitchell Abood
 Chairman Senate State Affairs

From: Senator Jim Duncan

Subject: SB 344 Relating to general contractors

I would appreciate your scheduling SB 344, a bill concerning contracting procedures, for a hearing before the Senate State Affairs Committee at your earliest convenience.

Current statutes have not prevented the loss of business and jobs to contractors from outside Alaska. It is my hope that with some minor changes in the contracting law we will save some Alaskan businesses and many Alaskan jobs.

I have attached some supporting material that could be used in the Committee's bill files.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : SB 344
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: " An Act relating to general
contractors and...contracts of state agencies..." BRU: Labor Standards & Safety
 Sponsor: Duncan Components: Wage & Hour
 Requestor: Senate State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director Phone: 264-2452
 Division: Labor Standards & Safety Date: 3/22/88

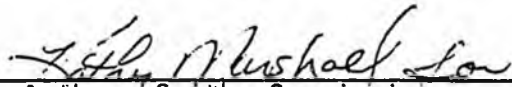
Approved by Commissioner: Jim Sampson Date: 3/22/88
 Agency: Department of Labor

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

SB 344: An Act relating to general contractors, and to certain contracts of state agencies and political subdivisions.

Section 1 of the bill amends AS 08.18.011(b) to prohibit a general contractor from contracting with, soliciting a bid or proposal from, or awarding a bid or proposal to an unlicensed individual. Current statute prohibits a general contractor from allowing a person to work without proper licensure. The amendment to this section goes one step further by disallowing solicitation of a bid or proposal from an unlicensed individual, and prohibits an award, bid or proposal to be made to an unlicensed individual. This will ensure that only properly licensed contractors will be eligible to perform the construction work for which licensure is required under AS 08.18 and help to assist in the enforcement of unlicensed activity in the State.

The department supports passage of this legislation which clarifies the need to have properly licensed contractors working in Alaska and encourages the Legislature's support in passing the bill.



J. Anthony Smith, Commissioner
Department of Commerce and Economic
Development

3/10/88

Date

JS/dg10051o
031188a

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 344
PUBLISH DATE: 1/14/88

Dee

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to general contractors...
Sponsor: Senator Duncan
Requestor: _____

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jennifer Strickler, Management Analyst Phone: 465-2144
Division: Occupational Licensing Date: March 10, 1988

Approved by Commissioner: J. Anthony Smith Date: 3/10/88
Agency: Commerce and Economic Development

Distribution (by preparer) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA THE LEGISLATURE

FOUCHY STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3801

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 8, 1988

SUBJECT: Coverage of bill on the use and registration
of subcontractors (Work Order No. 5-1534)

TO: Senator Jim Duncan

FROM: Theresa L. Bannister ⁷⁰
Legislative Counsel

This memo accompanies the draft of the bill that you requested to require contractors to use registered subcontractors.

The business license requirement in the draft is carried over from the present language of AS 36.30 (state procurement code). To obtain an Alaska business license, a contractor must also have satisfied the registration requirements of AS 08.18 (AS 43.70.020(d)). That is why there is no specific registration requirement in section 2, 5 and 6 of the draft.

This draft applies subcontractor registration requirements to the sections of the procurement code (AS 36.30) that deal with procurement by sealed bids and sealed proposals. You may wish to consider whether you want to apply the new provisions to the other types of procurement, which are sole source procurements (AS 36.30.300), limited competition procurements (AS 36.30.310), emergency procurements (AS 36.30.320), and small procurements (AS 36.30.320). All of these could be used for contracts with construction contractors, but there may be policy reasons against imposing the same requirements on them.

If I can be of further assistance, please advise.

Attachment

TLB:bb
E010/WKE1

BY SENATOR DUNCAN

Senate Bill 344

"An Act relating to general contractor, and to certain contracts of state agencies and political subdivisions."

Section 1.

Strengthens current language under AS 08.18 (Construction Contractors) by requiring that a general contractor may NOT:

1. Solicit a bid or proposal from,
2. Award a bid or proposal to,
3. Contract with,

a person required to be registered under AS 08.18 unless the person is registered.

Current law only requires that the general contractor may not allow a person to work for the general as a speciality contractor unless the person is registered under AS 08.18.

Section 2.

Requires that a state agency soliciting bids for work SHALL require that a bid include a list of the subcontractors that the bidder will be using and include:

1. The name and location of the place of business of each subcontractor; and
2. Evidence of each subcontractor's valid Alaska business license.

In addition, A per on soliciting subcontractor bids in response to a state agency's invitation SHALL serve notice that a bid will not be considered unless it includes evidence of the bidders contractor registration.

Section 3.

AS 36.30.115 (Subcontractors) is amended to exempt construction contractors from the requirement to submit "the name, location and place of business, and evidence of valid Alaska business license five working days after identification of the apparent low bidder", because they are required to report that information at the time they submit their bid.

Section 4.

AS 36.30.210 (Request for Proposals) is also amended to exempt construction contractors from the requirement to submit "the name, location and place of business, and evidence of valid Alaska business license five working days after identification of the apparent low proposer", because they are required to report that information at the time they submit their proposal.

Section 5.

Requires that a state agency requesting proposals for work SHALL require that the proposal include a list of the subcontractors that the offeror will be using and include:

1. The name and location of the place of business of each subcontractor; and
2. Evidence of each subcontractor's valid Alaska business license.

In addition, A person soliciting subcontractor proposals in response to a state agency's request for proposals SHALL insert in the solicitation that a proposal will not be considered unless it includes evidence of the offeror's registration.

Section 6.

Requires that a political subdivision of the state that solicits bids or proposals for public construction or public works SHALL require that the bid or proposal include a list of the subcontractors that the bidder or offeror will be using and include:

1. The name and location of the place of business of each subcontractor; and
2. Evidence of each subcontractor's valid Alaska business license.

In addition, A person soliciting subcontractor bids or proposals in response to a political subdivision's invitation or request SHALL serve notice that a bid or proposal will not be considered unless it includes evidence of bidder or offeror registration.

Also, in this section definitions for "public construction" and "public works" as well as "political subdivision of the state" are provided.

MEMORANDUM

State of Alaska

TO: Tom Stuart
Director

DATE: December 4, 1987

THRU: Randy Carr
Statewide Supervisor

FILE NO:

TELEPHONE NO: 465-4842

FROM: James A. Sanwick
Regional Supervising Investigator

SUBJECT: Unlicensed Contractors
on Southeast Public
Construction

This memo is to inform you of the final resolution of the complaints originally raised by Senator Duncan's office concerning unlicensed out of State contractors bidding on construction projects at the Sitka Elementary School project and the University of Alaska Southeast.

On November 17, 1987 (after researching the companies in question and coordinating with Commerce) I traveled to Sitka and met with Harry Chartier, job superintendent, about problems with National Glass Company having been unlicensed when it submitted its bid. We met with Dawson's superintendent and explained the problem and that my office had discussed the problem and Dawson's current probation for violation in May with Lonny in Seattle. He said that the company had recently pulled National Glass off the subcontractor list (only preliminary excavation has been done at this point on the project) and he didn't know when or how the company would replace them. Harry said he understood the provision of the law and would call us if he had questions about any subs appearing on the lists.

On November 24, 1987 I met with Jim Kytola of Dawson on the UAS Library project. I explained to him that we had a report about Sound Glass company having been awarded the bid and the ramifications of having an unlicensed contractor awarded the bid. He said that his most recent subcontractor list had removed that name and his list showed no contract award for glazing.

I explained Dawson's current probation status and suspended fine. He said he was well aware (Jim was the site superintendent when I cited Glazzco and Dawson for violation last May which resulted in Dawson's probation) of Dawson situation and believed Lonny (in Seattle office) now understood Dawson's responsibility and liability.

It is important to note that if not for the probation stipulated in the May judgement Dawson would not have been in violation of the current Statutes. Under normal conditions a General can only be cited if he allows an unlicensed sub to work on the project. In both of these cases the sub was unlicensed when they bid but became licensed after the bid was awarded but before work began. In the judgement's stipulation Dawson was prohibited from doing business with unlicensed sub. In discussion with Dawson I maintained that to award the contract was indeed to do business with the firm and thus would violate the stipulation.

Tom Stuart
December 4, 1987
Page 2

This loophole could be fixed, I believe, by changing the language in 8.18.011(b) to read:

"A general contractor may not consider or award a bid to a person required to be registered under this chapter to work for the general contractor as a specialty contractor unless the person is registered under this chapter at the time the bid is submitted."

We might also tighten up this problem by placing a requirement in AS 36.05.035 that would read:

36.05.035

(b) the state, political subdivision of the State or General Contractor awarded a contract by either the State or Political subdivision of State, shall place in all of its request for bids a clause stating that no bid will be considered unless proof of proper registration with Commerce and Economic Development, Division of Occupational Licensing is submitted with the bid.

I believe the real key to making this law work is making the entity responsible for awarding the bids accountable. Otherwise we continue to have the problem of out of State contracts outbidding local firms because of they don't bear the cost of bonding and licensing until the bid is awarded to them.

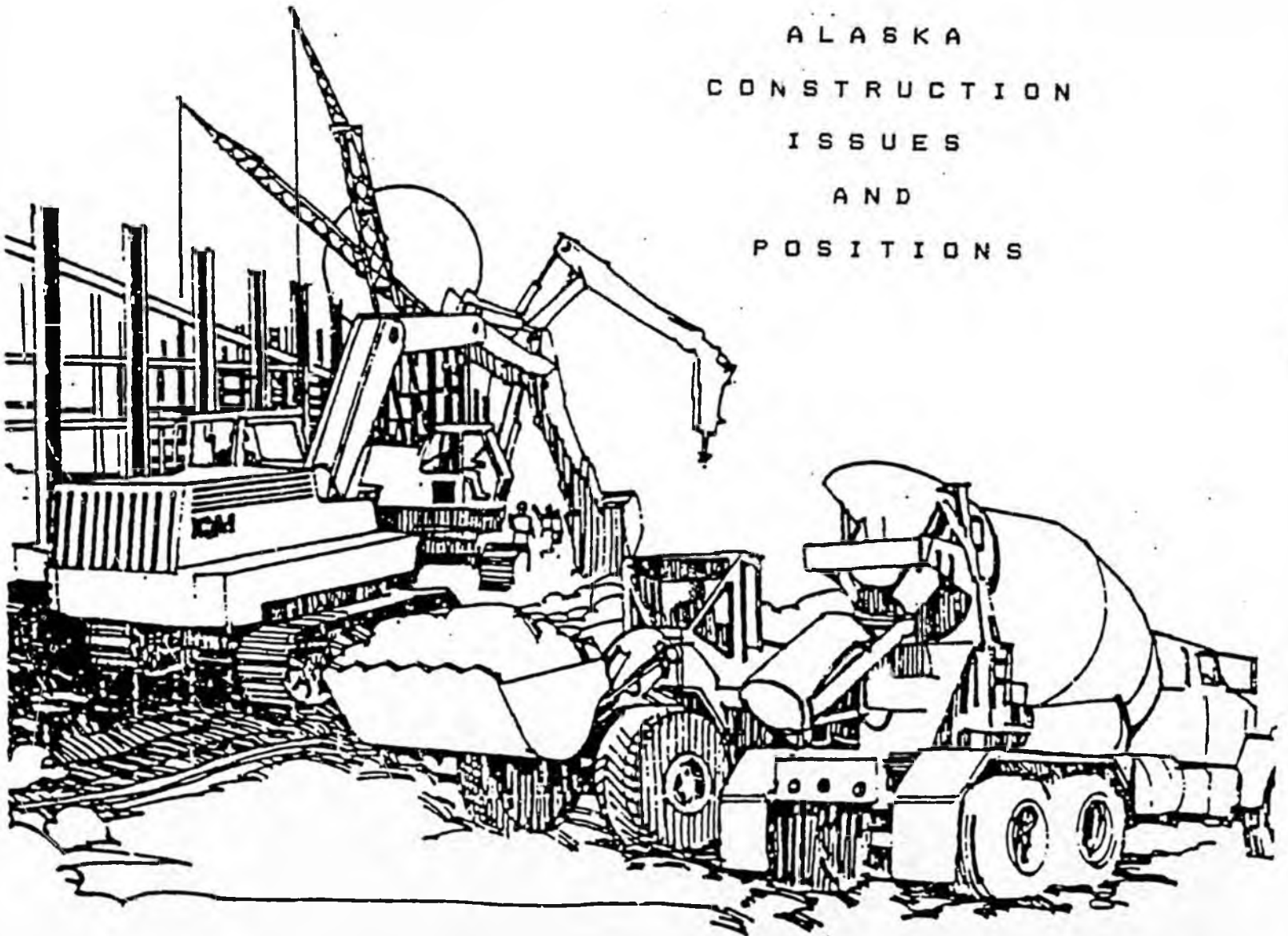
cc: Jim Sampson, Commissioner
Senator Jim Duncan

Rec. 100

ASSOCIATED GENERAL
CONTRACTORS
ALASKA CHAPTER



ALASKA
CONSTRUCTION
ISSUES
AND
POSITIONS



J., concurring), Quoting Lynden Transport, Inc. v. State, 532 P.2d 700, 710 (Alaska 1975)".

From a philosophical perspective, A.G.C. opposes government regulations of the construction industry. A.G.C. supports the free market, competitive bidding system for awarding construction contracts. This system has stood the test of time as the most economical system for the owner and a fair system for the contractors. Consistency dictates that A.G.C. not seek special regulatory favor for Alaska contractors. Further, a local preference is not consistent with the competitive free market system.

NAMING SUBCONTRACTORS AT BID

Requiring subcontractors to be named in the bid and requiring inclusion of evidence of each subcontractor's valid Alaska business license demonstrates a clear lack of understanding of the construction bid process. The inclusion of such a provision will lead to increased costs and increased litigation. A.G.C.-Alaska has and will continue to oppose any legislation requiring the naming of subcontractors at bid.

Prior to selection of a subcontractor a primary contra-

ctor must evaluate a bid and the scope of work quoted in the sub-bid. The prime must then check on insurance; bonding capability and qualifications of the subcontractor; and finally the prime must insure that the labor policy is compatible with any labor agreements to which the prime contractor may be signatory. Additionally, on most publicly funded projects there are requirements for subcontracting a certain percentage of work to certified Disadvantaged Business Enterprises (DBE) and Women Business Enterprises (WBE). The prime must be assured that the lowest DBE and WBE bids are from firms that have current certifications from the awarding agency. It is very common that a DBE or a WBE firm may be certified by one branch of the government, but not another. This certification information must be obtained and verified by the prime, otherwise the prime may be held in noncompliance with the contract DBE/WBE requirements.

Requiring the prime contractor to list subs prior to investigation and evaluation of the sub could create contractual obligations between a prime and a sub where later investigation or evaluation by the prime contractor would result in selection of a different subcontractor.

LITTLE MILLER ACT

Under existing law on public construction contracts, a