
S B

170

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
CSSB 170 (Fin)

Procurement Code Amendments

Received April 26, 1989
by The Finance Committee

Heard May 2, 1989
Heard May 3, 1989
Heard May 4, 1989

Committee Substitute adopted May 4, 1989

Passed Out of Committee May 4, 1989
4 Do Pass
3 Amend

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HOUSE COMMITTEE REPORT

(7)

Date Referred: April 26, 1989

FURTHER REFERRALS:

Date of Committee Action: _____

The STATE AFFAIRS Committee considered: CSSB 170 (FINANCE) am

CS FOR SENATE BILL NO. 170 (Finance) am
[PROCUREMENT CODE AMENDMENTS]

"An Act relating to state procurement."

RECOMMENDATIONS:

- be replaced with HCS CSSB 170 (SA) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

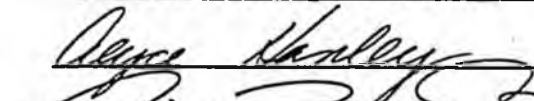

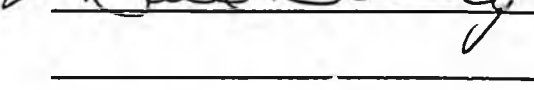
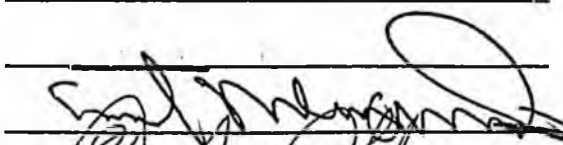
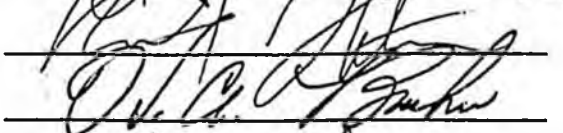
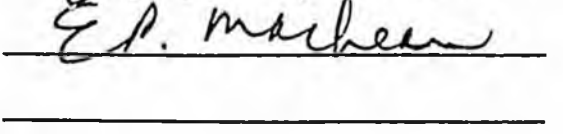
ADCPTS: Senate letter of intent

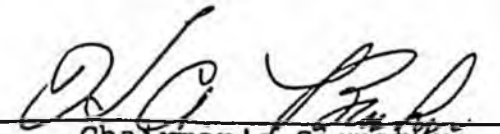
ATTACHES NEW FISCAL NOTE(s): (Dept) APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____
- zero fiscal note _____
- zero with analysis _____
- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis 4/19/89 DDA

SIGNING DO PASS:

SIGNING: (Check approp. column)

			X	
			X	
			X	
				
				
				


Chairman's Signature

*John H. Hema, Sr.
Vice
Stenzel
Rady*

4/25/89

LETTER OF INTENT
FOR
CS FOR SENATE BILL NO. 170 (Fin)

IT IS THE INTENT OF THE LEGISLATURE THAT THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES EVALUATE THE STAFFING LEVEL AND FUNCTIONS PERFORMED BY THE HEADQUARTERS STATE EQUIPMENT FLEET OFFICE FOR FLEET EQUIPMENT PROCUREMENT. THIS EVALUATION SHOULD DETERMINE THE MOST APPROPRIATE MEANS OF PROVIDING IMPROVED SERVICE FOR FLEET EQUIPMENT PROCUREMENT TO ALL AREAS OF ALASKA. THE DEPARTMENT SHALL REPORT ITS FINDINGS TO THE LEGISLATURE BY JANUARY 15, 1990.

Senate adopted 4/25

FISCAL NOTE

REQUEST:

Revision Date: April 14, 1989 Agency Affected: Department of Administration
 Title: An Act Relating to State BRU: General Services
 Procurement
 Sponsor: Rules Components: Purchasing
 Requestor: Senate, Finance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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 (PHONE)	0	0	0	0	0	0
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	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)

Implementation costs will be minimal. Efficiencies gained will be reflected in improved service delivery.

Prepared By: Robert J. Link, Director *Robert J. Link* Phone: 465-2250
 Division: General Services & Supply Date: 4/18/89

Approved by Commissioner: John M. Andrews *John M. Andrews* Date: 4/18/89
 Agency: Department of Administration

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

(b)

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CS SB 170 (Finance)
PUBLISH DATE: 4/18/89

REQUEST: FISCAL NOTE

Revision Date: 3/16/89
Title: An Act Relating to State Procurement

Agency Affected: DOT&PF
BRU: Design & Construction
Maintenance & Operations
State Equipment Fleet

Sponsor: Governor

Requestor:

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
CONTRACTURAL	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)

Although the fiscal note and impact of this bill is shown as zero there will be some positive effects. The cost savings will be in the form of increased efficiencies in the procurement process.

Prepared by: Loren Rasmussen *Loren Rasmussen*
Division: Engineering & Operations Standards

Phone: 465-2960
Date: 03/20/89

Approved by Commissioner: Mark S. Hickey *MSH*
Agency: Department of Transportation and Public Facilities

Date: 03/20/89

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

RECEIVED
MAR 21 1989

Changes in the
CS (Fin) have no
fiscal effect.
SFC: 4/18/89 *new*

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act Relating to State
Procurement."
Sponsor: Rules
Requestor: Governor

Agency Affected: University of Alaska
BRU: All
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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)

Although the fiscal note and impact of this bill is shown as zero there will be some positive effects. The cost savings will be in the form of increased efficiencies in the procurement process.

Prepared by: Marsha Hubbard, Director Phone: 474-7593
Division: Statewide Budget Office Date: 3/8/89

Approved by Commissioner: Brian Peters, Director Finance Date: 3/8/89
Agency: University of Alaska

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

RECEIVED
MAR 10 1989

Changes in the CS (Fin)
have no fiscal effect.
This fiscal note is
appropriate. SFC: 4/18/89
Page 1 of 1

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

Item 4
178

February 13, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to state procurement.

After working with the new state procurement code for the past year, state agencies have identified a number of provisions that need clarification or change to address the practical realities of administering the code.

Sections 1, 6, and 7 of the bill clarify and make consistent the requirements that a bidder or proposer have, and provide evidence of having, a valid Alaska business license. Under these sections, bidders and proposers must possess the license at the time of bid or proposal opening, and must provide proof of the license in accordance with regulations adopted by the commissioner of administration.

Section 2 of the bill permits the commissioner of transportation and public facilities to make the state's estimate of the costs of construction confidential until after bid opening, upon a written finding that confidentiality is in the state's best interest.

Section 3 of the bill clarifies that a listed subcontractor may be replaced if the subcontractor, rather than the bidder, is determined by the procurement officer not to be responsible.

Section 4 of the bill establishes a uniform requirement that the bid security that is required for competitive sealed bids for certain construction contracts and that may be required for competitive sealed bids for other construction contracts and for contracts for supplies, services, or professional services, must be equal to at least five percent of the amount of the bid. This replaces more complicated security requirements, which the

Department of Transportation and Public Facilities found resulted in rejection of several major bids.

Section 5, besides making some technical corrections in AS 36.30.170(b)(4), recognizes the need in some situations to provide the Alaska Bidder preference to partnerships in which not all partners are Alaska residents.

Section 6 of the bill also requires the list of subcontractors provided by the offeror of the proposal determined to be most advantageous to the state to include a list of the work to be performed by each subcontractor.

Sections 8 and 9 of the bill provide more specific requirements for consideration of proposers' Alaska bidder status in evaluating competitive sealed proposals. In evaluating the cost factors of a proposal, an agency must consider the proposed costs of an offeror who qualifies as an Alaska bidder to be reduced by five percent. In establishing evaluation factors, an agency must allocate at least 10 percent of the value of the rating system to the proposers' Alaska bidder status. These provisions place in statute the requirements of interpretive regulations adopted by the commissioner of administration.

Section 10 of the bill adds a new provision that permits multi-step sealed proposals, similar to AS 36.30.190 which provides for multi-step competitive sealed bidding.

Sections 11 and 12 of the bill permit delegation of the authority to make written determinations necessary for a sole source or limited competition procurement of supplies, services, or construction if the amount of the procurement does not exceed the amount for small procurements under AS 36.30.320(a). That amount is currently \$5,000.

Section 13 of the bill amends the provisions for determination of responsibility of a bidder or offeror, to require the procurement officer to make a written determination only if the bidder or offeror is found to be not responsible, rather than if he or she is found to be responsible.

Section 14 of the bill amends the requirement that the procurement officer issue a written explanation of award of a contract to an out-of-state bidder, to provide that such an explanation is not required if the award is made under competitive sealed bidding. The reason for this change is that awards under competitive sealed bidding involve no exercise of discretion.

Section 15 of the bill removes the prohibition against use of cost-plus-a-percentage-of-cost contracts, and allows use of that type of contract under regulations to be adopted by

the commissioner of administration and commissioner of transportation and public facilities in their respective areas of responsibility.

Section 16 of the bill repeals and reenacts the provision for stay of award of a contract when an appeal is filed. Currently, even if an appeal is filed, the contracting agency may proceed with the award unless the agency determines that the protest will probably be sustained or that a stay of the award is not contrary to the best interests of the state. As reenacted, AS 36.30.575 requires a stay of the award unless there is a written finding that there is a reasonable probability that the protest will be denied or that the delay is found to be contrary to the state's best interests. In other words, essentially, the provision is reversed.

Section 17 of the bill amends AS 36.30.850(b) to provide for additional exemptions from the procurement code, including exemptions of

- contracts for day care assistance (AS 44.47.250);
- contracts for purchase of standardized licensure examinations;
- disposals of supplies acquired in agricultural loan foreclosures;
- purchases of certain services connected to art and historical objects;
- acquisition of confidential seismic information for pre-sale oil and gas lease analyses;
- contracts for village public safety officers;
- expenditures for expenses for travel to meetings by persons who provide personal care and sign language interpretation for members of the Governor's Council for the Handicapped and Gifted;
- contracts for home health care services and adult residential and foster care services; and
- contracts for services and supplies for research projects that are funded with federal or private grant money.

Language is also deleted from AS 36.30.850(b)'s lead-in, and the same language is instead included in a new definition of "state money" (sec. 19 of the bill).

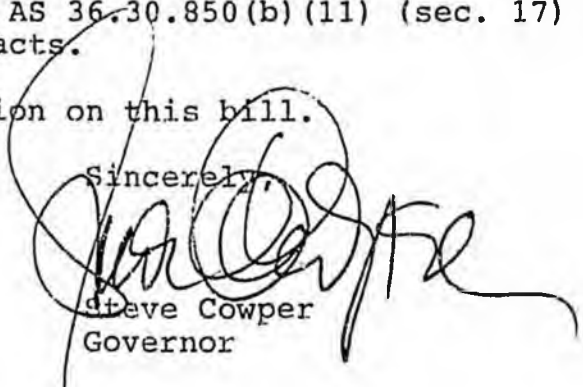
Section 18 adds a new section that allows for use of alternate procurement methods, rather than those provided in the procurement code, in specified situations in which agencies have found application of the procurement code to be impractical or disadvantageous to the state.

Section 19 adds a new definition of "state money," to clarify that only expenditure of money appropriated to an agency or spent under an appropriation (including money spent under AS 37.07.080(h)) is subject to the procurement code. Not subject to the procurement code under this definition is expenditure of money such as that of companies for which, or of individuals for whom, the state acts as the trustee, receiver, or conservator (for example, money of a bank that the state has taken possession of under AS 06.05.470, or a client's money held in trust by the Office of Public Advocacy).

Section 20 repeals AS 36.30.100(b)(1) -- (4), which are currently exemptions from competitive bidding requirements and which are relocated by the bill to proposed AS 36.30.855 (sec. 18); AS 36.30.540(4) -- (5), to delete the reporting requirements for out-of-state and state source procurements; AS 36.30.605, to delete the protest report requirement; and AS 44.47.250(c), to conform AS 44.47.250 to the exemption added to AS 36.30.850(b)(11) (sec. 17) for day care assistance contracts.

I urge your favorable action on this bill.

Sincerely,



Steve Cowper
Governor



ASSOCIATED GENERAL CONTRACTORS of ALASKA

404 B STREET • ANCHORAGE, ALASKA 99503
 PO. BOX 240609 • ANCHORAGE, ALASKA 99524-0609
 TELEPHONE (907) 561-5354 • FAX (907) 562-6118

TO: House State Affairs Committee

FROM: Resa Jerrel, Director *R.J.*
 Governmental Relations

DATE: 5/4/89

RE: Proposed Amendment to CSSB 170 (Finance) am

The following are a few comments on a proposed amendment to CSSB 170 (Finance) am, by Representative Donley dated 5/3/89, number go0509sJb.

AS 30.36.115(a) states:

"Within five working days after the identification of the apparent low bidder, the apparent low bidder shall submit a list of the subcontractors the bidder proposed to use in the performance of the contract. The list must include the name and location of the place of business for each subcontractor and evidence of the subcontractor's valid Alaska business license. A bidder for a construction contract shall also submit evidence of each subcontractor's registration under AS 08.18."

The proposed amendment would eliminate the language that the apparent low bidder has five working days to submit a list of subcontractors and replaces it with language that all bidder at the time of bid would have to submit a list of subcontractors the bidder proposes to use in the performance of the contract.

A.G.C. of Alaska totally opposes this proposed amendment. We believe that the inclusion of such a provision will lead to a dramatic increase in bid protests, increased costs, and increased litigation

The proposed amendment would seriously interfere with a prime contractor's ability to:

- * submit timely bids.
- * comply with contractually imposed MBE/DBE requirements.

- * determine a subcontractors bonding capabilities,
- * compare the scope of work bid by one subcontractor to other subcontractors bid.

Naming subcontractors at bid sounds simple; however anyone familiar with the bidding process can attest to the difficulty in listing all successful subcontractors at bid submittal time. Bid day, particularly the final few hours prior to submittal, is a very busy time for a prime contractor. In the "final hour" the prime contractor literally receives hundreds of telephone calls from subcontractors submitting bids on many different phases of work. Often times a prime contractor is not familiar with the subcontractors submitting bids. Prior to the selection of any subcontractor the prime contractor must evaluate the bid and the scope of the work quoted by the subcontractor. The prime contractor must then check on the subcontractor's insurance, bonding capability and qualifications. Finally the prime contractor must insure that the labor policy of the subcontractor is compatible with any labor agreements to which the prime contractor may be signator. All of this takes time. All this cannot be accomplished in the few hours between receiving a subcontractors quote and the time for submitting a bid.

When the existing language was introduced by the Governor his April 15, 1987 letter of transmittal stated in part:

"AS 36.30.115(a) is amended. . . . These amendments are necessary to provide appropriate flexibility in the handling of bids and subcontractor lists. . . . These amendments will be more cost-effective for both the state and the contractors."

In conclusion, A.G.C. of Alaska believes the proposed amendment will severely interfere with a prime contractors ability to submit responsive bids, dramatically increase bid protests, increase litigation and increase costs. Further, requiring the information at bid time is an unnecessary and cumbersome task for the unsuccessful bidder; and contracting agency personnel will be inundated with information which is irrelevant to the determination of the lowest responsive and responsible bidder.

The existing statute was carefully scrutinized through numerous hearings in the previous legislature. A.G.C. of Alaska believes that it adequately addresses the concerns of those that have supported the naming of subcontractors while preserving a functional bidding process.

A M E N D M E N T

OFFERED IN THE HOUSE

BY DONLEY

TO: CSSB 170 (Finance) am

Page 3, line 16, through page 4, line 5:

Delete all material.

Insert new bill sections to read:

"* Sec. 7. AS 36.30.115(a) is repealed and reenacted to read:

(a) A bidder shall submit as part of the bid a list of the subcontractors the bidder proposes to use in the performance of the contract. The list must include the name and location of the place of business for each subcontractor, evidence of the subcontractor's current Alaska business license, and, for a construction contract, evidence of each subcontractor's current registration under AS 08.18. If a bid does not comply with this subsection, the purchasing officer shall reject the bid as not responsive.

* Sec. 8. AS 36.30.115(b) is amended to read:

(b) A bidder may not replace a listed subcontractor, unless after the bidder is awarded the contract [IF] the subcontractor

(1) fails to comply with AS 08.18;

(2) files for bankruptcy or becomes insolvent;

(3) fails to execute a contract with the bidder involving performance of the work for which the subcontractor was listed and the bidder acted in good faith;

(4) fails to maintain [OBTAIN] bonding;

(5) fails to maintain [OBTAIN] insurance acceptable to the state;

(6) fails to perform the contract with the bidder involving work for which the subcontractor was listed;

(7) must be substituted in order for the prime contractor to satisfy required state and federal affirmative action requirements;

(8) fails [REFUSES] to [AGREE OR] abide by [WITH] the bidder's labor agreement; or

(9) is determined by the procurement officer not to be a responsible subcontractor [BIDDER]."

Renumber the following bill sections accordingly.

Sec. 36.30.100. General policy. (a) Except as otherwise provided in this chapter, or unless specifically exempted by law, an agency contract shall be awarded by competitive sealed bidding.

(b) Competitive sealed bidding is not required

(1) when the commissioner determines in writing that food, clothing, or medical supplies, or materials for use in laboratory or medical studies may be purchased otherwise to the best advantage of the state;

(2) when rates are fixed by law or ordinance;

(3) for the purchase of products or services manufactured or provided by an employment program;

(4) for the purchase of products or services provided by the correctional industries program established under AS 33.32;

(5) for professional services; or

(6) for concessions operated on state property.

(c) In this section "employment program" means a nonprofit program to increase employment opportunities for individuals with physical or mental disabilities that constitute substantial handicaps to employment. (§ 2 ch 106 SLA 1986)

Collateral references. — Requirement of competitive bidding as applicable to contract that public contract be awarded on competitive bidding for public utility. 81 ALR3d 979.

Sec. 36.30.110. Invitation to bid. (a) When competitive sealed bidding is used, the procurement officer shall issue an invitation to bid. It must include a time, place and date by which the bid must be received, purchase description, and a description of all contractual terms and conditions applicable to the procurement.

(b) When responding to the invitation to bid, the bidder shall supply evidence of the bidder's valid Alaska business license. A bidder for a construction contract shall also submit evidence of the bidder's registration under AS 08.18. (§ 2 ch 106 SLA 1986)

Sec. 36.30.115. Subcontractors. (a) Within five working days after the identification of the apparent low bidder, the apparent low bidder shall submit a list of the subcontractors the bidder proposes to use in the performance of the contract. The list must include the name and location of the place of business for each subcontractor and evidence of the subcontractor's valid Alaska business license. A bidder for a construction contract shall also submit evidence of each subcontractor's registration under AS 08.18.

(b) A bidder may replace a listed subcontractor if the subcontractor

(1) fails to comply with AS 08.18;

(2) files for bankruptcy or becomes insolvent;

(3) fails to execute a contract with the bidder involving performance of the work for which the subcontractor was listed and the bidder acted in good faith;

(4) fails to obtain bonding;

(5) fails to obtain insurance acceptable to the state;

(6) fails to perform the contract with the bidder involving work for which the subcontractor was listed;

(7) must be substituted in order for the prime contractor to satisfy required state and federal affirmative action requirements;

(8) refuses to agree or abide with the bidder's labor agreement; or

(9) is determined by the procurement officer not to be a responsible bidder.

(c) If a bidder fails to list a subcontractor or lists more than one subcontractor for the same portion of work and the value of that work is in excess of half of one percent of the total bid, the bidder shall be considered to have agreed to perform that portion of work without the use of a subcontractor and to have represented the bidder to be qualified to perform that work.

(d) A bidder who attempts to circumvent the requirements of this section by listing as a subcontractor another contractor who, in turn, sublets the majority of the work required under the contract violates this section.

(e) If a contract is awarded to a bidder who violates this section, the purchasing officer may

(1) cancel the contract; or

(2) after notice and a hearing, assess a penalty on the bidder in an amount that does not exceed 10 percent of the value of the subcontract at issue. (§ 2 ch 106 SLA 1986; am §§ 4, 5 ch 65 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, in subsection (a) in the first sentence substituted "five working days" for "24 hours," "the identification of the apparent low bidder" for "opening of bids," "apparent low bidder" for "two apparent low bid-

ders," and "bidder proposes" for "bidders propose," and in the second sentence substituted "must" for "shall"; and in subsection (b) added "and the bidder acted in good faith" at the end of paragraph (3) and inserted "state and" in paragraph (7).

Sec. 36.30.120. Bid security. (a) Bid security shall be required for all competitive sealed bidding for construction contracts when the price is estimated by the procurement officer to exceed an amount established by regulation of the commissioner. Bid security on construction contracts under the amount set by the commissioner may be required when the circumstances warrant. Bid security may be required for competitive sealed bidding for contracts for supplies, services, or professional services in accordance with regulations of the commissioner when need for the protection of the state.

(b) Bid security must be a bond provided by a surety company authorized to do business in the state or otherwise supplied in a form



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: House State Affairs Committee

FROM: Representative H.A. "Red" Boucher, Chair
House State Affairs

DATE: May 3, 1989

RE: Proposed changes to CSSB 170 (Finance) am

The attached shows the changes to CSSB 170 (Finance) am as recommended by committee members during today's hearing. I cannot provide a "draft" of the proposed changes at this time - Legal Services indicated they were extremely busy and could not provide a draft until late this evening.

Please also note the attached amendments by Representative Dave Donley (dated 5/3/89). I have not included these amendments in this discussion since they were not part of the deliberations today. However, they will be brought before the committee tomorrow.

The proposed HCS for CSSB 170 (SA) would accomplish the following:

1. Sections 1, 26 and 27(17) were deleted: Representative Donley raised the question of whether amending the computation of time in the General Provisions was necessary or logical simply to increase the number of days a vendor had to respond. He suggested amending the procurement statutes to remedy the problem.
2. The draft will add a new section which amends AS 36.30.590. This section will address the issue raised

3CC.20

PAGE 9

above (1.). Vendors appealing a protest now have 10 days [5] to file an appeal after a decision is received. You should note that increasing the number of days to 10 also makes this section consistent with AS 36.30.565 which allows 10 days for filing a protest (attached).

3. Sections 2 and 3 were deleted: Sections 2 and 3 were added by the senate. The Alaska Railroad Corporation felt the provisions of the procurement impinged on their ability to act as a semi-private operation.

As noted by Bob Link the procurement code requirements apply to all general government. The "competitive principals" provision, however, applies only to the legislature and the court system. The railroad would like be treated under the "competitive principals" provision.

As Representative Donley pointed out, allowing the Alaska Railroad Corporation the latitude to operate outside of the procurement code would result in considerable controversy - note the problem encountered with the purchase of railroad ties in the lower 48. [There are also questions as to how local hire and bidder preference would apply if these sections remained in the bill.]

PAGE 4
LINES
10-12

4. Section 9, page 5, lines 1 through 3: Representative Finkelstein offered language which would require that 50 percent of the partners of a partnership be residents of the state.

UNDELETED / TUNNEL

Sec. 36.30.590. Appeal on a protest. (a) An appeal from a decision of a procurement officer on a protest may be filed by the protester with the commissioner of administration, or for protests involving construction or procurements for the state equipment fleet, the commissioner of transportation and public facilities. An appeal shall be filed within five days after the decision is received by the protester. The protester shall file a copy of the appeal with the procurement officer.

(b) An appeal must contain the information required under AS 36.30.560. In addition, the appeal must include

- (1) a copy of the decision being appealed; and
- (2) identification of the factual or legal errors in the decision that form the basis for the appeal. (§ 2 ch 106 SLA 1986)

Sec. 36.30.595. Notice of a protest appeal. (a) The procurement officer shall immediately give notice of an appeal filed under AS 36.30.590 to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

(b) The commissioner of administration or the commissioner of transportation and public facilities, as appropriate, shall, on request, furnish a copy of the appeal to a person notified under (a) of this section, except that confidential material shall be deleted from the copy. (§ 2 ch 106 SLA 1986)

Sec. 36.30.600. Stay of award during protest appeal. If a protest appeal is filed before a contract is awarded and the award was stayed under AS 36.30.575, the filing of the appeal automatically continues the stay until the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, makes a written determination that the award of the contract without further delay is necessary to protect substantial interests of the state. (§ 2 ch 106 SLA 1986)

Sec. 36.30.605. Protest report. (a) The procurement officer of the contracting agency shall file a complete report on the protest and decision with the commissioner of administration or the commissioner of transportation and public facilities, as appropriate, within seven days after a protest appeal is filed. The procurement officer shall furnish a copy of the report to the protester and to interested parties that have requested a copy of the appeal under AS 36.30.595(b).

(b) The procurement officer may request an extension of time to prepare the protest report. The request must be in writing listing the reasons for the request. The commissioner of administration or the commissioner of transportation and public facilities, as appropriate, shall respond to the request in writing. If an extension is granted, the commissioner shall list the reasons for granting the extension and

Title 36
Public Contracts

Title 35
Public Buildings, Work
and Improvements

§ 36
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does not apply to procurements made under AS 36.30.320. (§ 2 ch 106 SLA 1986)

Article 8. Legal and Contractual Remedies.

Section

- 560. Filing of a protest
- 565. Time for filing a protest
- 570. Notice of a protest
- 575. Stay of award
- 580. Decision by the procurement officer
- 585. Protest remedies
- 590. Appeal on a protest
- 595. Notice of a protest appeal
- 600. Stay of award during protest appeal
- 605. Protest report
- 610. Decision without hearing
- 615. Hearing on protest appeal
- 620. Contract controversies
- 625. Appeal on a contract controversy
- 630. Hearing on a contract controversy
- 632. Delegation
- 635. Authority to debar or suspend

Section

- 640. Causes for debarment or suspension
- 645. Written determinations
- 650. Hearing on a suspension
- 655. List of persons debarred or suspended
- 660. Reinstatement
- 665. Limited participation
- 670. Hearing procedures
- 675. Recommendation by the hearing officer
- 680. Final decision by the commissioner
- 685. Judicial appeal
- 687. Misrepresentations and fraudulent claims
- 690. Exclusive remedy
- 695. Other rules of procedure
- 699. Definition

Effective date of article. — Section § 27, ch. 65, SLA 1987, provides that this article takes effect January 1, 1988.

Sec. 36.30.560. Filing of a protest. An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for supplies, services, professional services, or construction by an agency. The protest shall be filed with the procurement officer of the contracting agency in writing and include the following information:

- (1) the name, address, and telephone number of the protester;
- (2) the signature of the protester or the protester's representative;
- (3) identification of the contracting agency and the solicitation or contract at issue;
- (4) a detailed statement of the legal and factual grounds of the protest, including copies of relevant documents; and
- (5) the form of relief requested. (§ 2 ch 106 SLA 1986)

Sec. 36.30.565. Time for filing a protest. (a) A protest based upon alleged improprieties in an award of a contract or a proposed award of a contract must be filed within 10 days after a notice of intent to award the contract is issued by the procurement officer.

(b) If the protester shows good cause, the procurement officer of the contracting agency may consider a filed protest that is not timely. (§ 2 ch 106 SLA 1986; am § 19 ch 65 SLA 1987)

Title 36
Public Contracts

Title 33
Public Buildings, Work
and Improvements

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 170 (Finance) am

*Bid stopping Act
if done - delay
1981 for other
jurisdiction* BY DONLEY

Page 3, line 16, through page 4, line 5:

Delete all material.

Insert new bill sections to read:

"* Sec. 7. AS 36.30.115(a) is repealed and reenacted to read:

(a) A bidder shall submit as part of the bid a list of the subcontractors the bidder proposes to use in the performance of the contract. The list must include the name and location of the place of business for each subcontractor, evidence of the subcontractor's current Alaska business license, and, for a construction contract, evidence of each subcontractor's current registration under AS 08.18. If a bid does not comply with this subsection, the purchasing officer shall reject the bid as not responsive.

* Sec. 8. AS 36.30.115(b) is amended to read:

(b) A bidder may not replace a listed subcontractor, unless after the bidder is awarded the contract [IF] the subcontractor

- (1) fails to comply with AS 08.18;
- (2) files for bankruptcy or becomes insolvent;
- (3) fails to execute a contract with the bidder involving performance of the work for which the subcontractor was listed and the bidder acted in good faith;
- (4) fails to maintain [OBTAIN] bonding;

(5) fails to maintain [OBTAIN] insurance acceptable to the state;

(6) fails to perform the contract with the bidder involving work for which the subcontractor was listed;

(7) must be substituted in order for the prime contractor to satisfy required state and federal affirmative action requirements;

(8) fails [REFUSES] to [AGREE OR] abide by [WITH] the bidder's labor agreement; or

(9) is determined by the procurement officer not to be a responsible subcontractor [BIDDER]."

§ 170

Renumber the following bill sections accordingly.

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE FINANCE COMMITTEE
2 CS FOR SENATE BILL NO. 170 (Finance) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to state procurement."

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

8 * Section 1. AS 01.10.080 is amended to read:

9 Sec. 01.10.080. COMPUTATION OF TIME. The time in which an act
10 provided by law is required to be done is computed by excluding the
11 first day and including the last, unless the last day is a holiday,
12 and then it is also excluded. This section does not apply to AS 36.-

13 30.

14 * Sec. 2. AS 36.30.015(e) is amended to read:

15 (e) The board [BOARDS] of directors of the [ALASKA RAILROAD
16 CORPORATION AND THE] Alaska State Building Authority shall adopt
17 procedures to govern the procurement of supplies, services, profes-
18 sional services, and construction by the authority [CORPORATION]. The
19 procedures must be substantially equivalent to the procedures pre-
20 scribed in this chapter and in regulations adopted under this chapter.

21 * Sec. 3. AS 36.30.015 is amended by adding a new subsection to read:

22 (f) The board of directors of the Alaska Railroad Corporation
23 shall adopt and publish procedures to govern the procurement of sup-
24 plies, services, professional services, and construction by the corpo-
25 ration. The procedures must be based on the competitive principles
26 consistent with this chapter and must be adapted to the special needs
27 of the corporation as determined by the board of directors.

28 * Sec. 4. AS 36.30.040(b) is amended to read:

29 (b) The commissioner shall adopt regulations pertaining to the

1 following:

2 (1) suspension, debarment, and reinstatement of prospective
3 bidders and contractors;

4 (2) bid protests;

5 (3) conditions and procedures for the procurement of per-
6 ishables and items for resale;

7 (4) conditions and procedures for the use of source selec-
8 tion methods authorized by this chapter, including sole source pro-
9 curements, emergency procurements, and small procurements;

10 (5) the opening or rejection of bids and offers, and waiver
11 of informalities in bids and offers;

12 (6) confidentiality of technical data and trade secrets
13 submitted by actual or prospective bidders or offerors;

14 (7) partial, progressive, and multiple awards;

15 (8) storerooms and inventories, including determination of
16 appropriate stock levels and the management of agency supplies;

17 (9) transfer, sale or other disposal of supplies;

18 (10) definitions and classes of contractual services and
19 procedures for acquiring them;

20 (11) providing for conducting price analysis;

21 (12) use of payment and performance bonds in connection with
22 contracts for supplies, services, and construction;

23 (13) guidelines for use of cost principles in negotiations,
24 adjustments, and settlements;

25 (14) conditions under which an agency may use the services
26 of an employment program [AS DEFINED UNDER AS 36.30.100(c)];

27 (15) a bidder's or offeror's duties under AS 36.30.115 and
28 36.30.210; and

29 (16) the elimination and prevention of discrimination in

1 state contracting because of race, religion, color, national origin,
2 sex, age, marital status, pregnancy, parenthood, handicap, or politi-
3 cal affiliation.

4 * Sec. 5. AS 36.30.110(b) is amended to read:

5 (b) The bidder must have a valid Alaska business license at the
6 time designated in the invitation to bid for bid opening. [WHEN
7 RESPONDING TO THE INVITATION TO BID, THE BIDDER SHALL SUPPLY EVIDENCE
8 OF THE BIDDER'S VALID ALASKA BUSINESS LICENSE.] A bidder for a con-
9 struction contract shall also submit evidence of the bidder's regis-
10 tration under AS 08.18.

11 * Sec. 6. AS 36.30.110 is amended by adding a new subsection to read:

12 (c) If the commissioner of transportation and public facilities
13 makes a written finding that confidentiality is in the state's best
14 interest, the estimated cost of a construction contract is confiden-
15 tial information and may not be released to the public before bid
16 opening.

17 * Sec. 7. AS 36.30.115(b) is amended to read:

18 (b) A bidder may replace a listed subcontractor if the subcon-
19 tractor

20 (1) fails to comply with AS 08.18;

21 (2) files for bankruptcy or becomes insolvent;

22 (3) fails to execute a contract with the bidder involving
23 performance of the work for which the subcontractor was listed and the
24 bidder acted in good faith;

25 (4) fails to obtain bonding;

26 (5) fails to obtain insurance acceptable to the state;

27 (6) fails to perform the contract with the bidder involving
28 work for which the subcontractor was listed;

29 (7) must be substituted in order for the prime contractor

1 to satisfy required state and federal affirmative action requirements;
2 (8) refuses to agree or abide with the bidder's labor
3 agreement; or

4 (9) is determined by the procurement officer not to be a
5 responsible subcontractor [BIDDER].

6 * Sec. 8. AS 36.30.120(b) is amended to read:

7 (b) Bid security must be a bond provided by a surety company
8 authorized to do business in the state or otherwise supplied in a form
9 satisfactory to the commissioner. Bid security must be in an amount
10 equal to at least five percent of the amount of the bid

11 [(1) 10 PERCENT OF THE AMOUNT OF THE BID IF THE BID DOES NOT
12 EXCEED \$100,000; OR

13 (2) 10 PERCENT OF THE FIRST \$100,000 AND FIVE PERCENT OF
14 THE AMOUNT OF THE BID OVER \$100,000 IF THE BID EXCEEDS \$100,000 UP TO
15 A MAXIMUM OF \$200,000 IN SECURITY].

16 * Sec. 9. AS 36.30.170(b) is amended to read:

17 (b) The procurement officer shall award a contract based on
18 solicited bids to the lowest responsive and responsible bidder after
19 an Alaska bidder preference of five percent and an Alaska products
20 preference as described in AS 36.30.322 - 36.30.338 have been applied.
21 In this subsection, "Alaska bidder" means a person who

22 (1) holds a current Alaska business license;

23 (2) submits a bid for goods, services, or construction
24 under the name as appearing on the person's current Alaska business
25 license;

26 (3) has maintained a place of business within the state
27 staffed by the bidder or an employee of the bidder for a period of six
28 months immediately preceding the date of the bid;

29 (4) is incorporated or qualified to do business under the

1 laws of the state, is a sole proprietorship [,] and the proprietor is
2 a resident of the state, or is a partnership [,] and one or more of ^{AT LEAST 50 PERCENT}
3 the general [ALL] partners ~~is a~~ ^{ARE} residents [ARE RESIDENTS] of the state;
4 and

5 (5) if a joint venture, is composed entirely of venturers
6 [VENTURES] that qualify under (1) - (4) of this subsection.

7 * Sec. 10. AS 36.30.170(c) is amended to read:

8 (c) If a bidder qualifies under (b) of this section as an Alaska
9 bidder, is offering services through an employment program [AS DEFINED
10 UNDER AS 36.30.100(c)], and is the lowest responsible and responsive
11 bidder with a bid that is not more than 10 percent higher than the
12 lowest bid of a nonresident, the procurement officer shall award the
13 contract to that bidder.

14 * Sec. 11. AS 36.30.210(a) is amended to read:

15 (a) A request for competitive sealed proposals must contain the
16 date, time, and place for delivering proposals, a specific description
17 of the supplies, construction, services, or professional services to
18 be provided under the contract, and the terms under which the sup-
19 plies, construction, services, or professional services are to be
20 provided. The request must [SHALL] require the offeror [TO SUBMIT
21 EVIDENCE OF THE OFFEROR'S VALID ALASKA BUSINESS LICENSE AND], no later
22 than five working days after the [IDENTIFYING WHICH] proposal that is
23 the most advantageous to the state is identified, to list subcontractors
24 the offeror proposes to use in the performance of the contract.
25 The list must [SHALL] include the name and location of the place of
26 business for each subcontractor, the work to be subcontracted to each
27 subcontractor, and evidence of the subcontractor's valid Alaska busi-
28 ness license. An offeror for a construction contract shall also
29 submit evidence of the offeror's registration under AS 08.18 and

1 evidence of registration for each listed subcontractor.

2 * Sec. 12. 36.30.210 is amended by adding a new subsection to read:

3 (e) The offeror must have a valid Alaska business license at the
4 time designated, in the request for proposals, for opening of the pro-
5 posals.

6 * Sec. 13. AS 36.30.250(b) is amended to read:

7 (b) In determining whether a proposal is advantageous to the
8 state, the procurement officer shall take into account, in accordance
9 with regulations of the commissioner, whether the offeror [QUALIFIES
10 AS AN ALASKA BIDDER UNDER AS 36.30.170(b) OR] is offering the services
11 of an employment program [AS DEFINED IN AS 36.30.100(c)].

12 * Sec. 14. AS 36.30.250 is amended by adding new subsections to read:

13 (c) For the purpose of evaluating cost factors, the proposed
14 costs of an offeror who qualifies as an Alaska bidder under AS 36.30.-
15 170(b) shall be reduced by five percent.

16 (d) The request for proposals must include an Alaska bidder
17 evaluation factor that takes into consideration whether an offeror
18 qualifies as an Alaska bidder under AS 36.30.170(b). At least 10
19 percent of the value of the rating system or weighting value used
20 shall be assigned to the Alaska bidder evaluation factor.

21 * Sec. 15. AS 36.30 is amended by adding a new section to read:

22 Sec. 36.30.265. MULTI-STEP SEALED PROPOSALS. When it is con-
23 sidered impractical to initially prepare a definitive purchase de-
24 scription to support an award based on listed selection criteria, the
25 procurement officer may issue an expression of interest requesting the
26 submission of unpriced technical offers, and then later issue a re-
27 quest for proposals limited to the offerors whose offers are deter-
28 mined to be technically qualified under the criteria set out in the
29 expression of interest.

1 * Sec. 16. AS 36.30.300(a) is amended to read:

2 (a) A contract may be awarded for supplies, services, profes-
3 sional services, or construction without competitive sealed bidding,
4 competitive sealed proposals, or other competition in accordance with
5 regulations adopted by the commissioner [OF ADMINISTRATION]. A con-
6 tract may be awarded under this section only when the chief procure-
7 ment officer or, for construction contracts or procurements for the
8 state equipment fleet, the commissioner of transportation and public
9 facilities determines in writing that there is only one source for the
10 required procurement or construction. A sole source procurement may
11 not be awarded if a reasonable alternative source exists. The written
12 determination must include findings of fact that support by clear and
13 convincing evidence the determination that only one source exists.
14 Except for procurements of supplies, services, or construction that do
15 not exceed the amount for small procurements under AS 36.30.320(a),
16 the [THE] authority to make the determination required by this subsec-
17 tion may not be delegated.

18 * Sec. 17. AS 36.30.305(a) is amended to read:

19 (a) A contract for supplies, services, professional services, or
20 a construction contract under \$100,000, may be awarded without compet-
21 itive sealed bidding or competitive sealed proposals, in accordance
22 with regulations adopted by the commissioner [OF ADMINISTRATION]. A
23 contract may be awarded under this section only when the commissioner
24 [OF ADMINISTRATION], or, for construction contracts under \$100,000 or
25 procurements for the state equipment fleet, the commissioner of trans-
26 portation and public facilities, determines in writing that a situa-
27 tion exists that makes competitive sealed bidding or competitive
28 sealed proposals impractical or contrary to the public interest.
29 Procurements under this section shall be made with competition that is

1 practicable under the circumstance. Except for procurements of sup-
2 plies, services, or construction that do not exceed the amount for
3 small procurements under AS 36.30.320(a), the [THE] authority to make
4 a determination required by this section may not be delegated.

5 * Sec. 18. AS 36.30.320(a) is amended to read:

6 (a) A procurement for supplies, services, or construction that
7 does not exceed an aggregate dollar amount of \$10,000 [\$5,000] may be
8 made in accordance with regulations adopted by the commissioner for
9 small procurements.

10 * Sec. 19. AS 36.30.360(a) is amended to read:

11 (a) A written determination of nonresponsibility [RESPONSIBIL-
12 ITY] of a bidder or offeror shall be made by the procurement officer
13 in accordance with regulations adopted by the commissioner. The
14 unreasonable failure of a bidder or offeror to promptly supply infor-
15 mation in connection with an inquiry with respect to responsibility is
16 grounds for a determination of nonresponsibility with respect to the
17 bidder or offeror.

18 * Sec. 20. AS 36.30.362 is amended to read:

19 Sec. 36.30.362. DETERMINATION TO AWARD A CONTRACT TO A NONRESI-
20 DENT. Except for awards made under AS 36.30.170, if [IF] the procure-
21 ment officer awards a contract to a person who does not reside or
22 maintain a place of business in the state and if the supplies, ser-
23 vices, professional services, or construction that is the subject of
24 the contract could have been obtained from sources in the state, the
25 procurement officer shall issue a written statement explaining the
26 basis of the award. The statement required under this section shall
27 be kept in the contract file.

28 * Sec. 21. AS 36.30.370 is amended to read:

29 Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of

1 this section, any type of contract that will promote the best inter-
2 ests of the state may be used, except that the use of a cost-plus-a-
3 percentage-of-cost contract may only be used when permitted by regula-
4 tions adopted by the commissioner, or, for construction contracts, by
5 the commissioner of transportation and public facilities [IS PROHIB-
6 ITED]. A cost-reimbursement contract may be used only when a deter-
7 mination is made in writing by the procurement officer that a cost-
8 reimbursement contract is likely to be less costly to the state than
9 any other type or that it is impracticable to obtain the supplies,
10 services, professional services, or construction required except under
11 a cost-reimbursement contract.

12 * Sec. 22. AS 36.30.575 is repealed and reenacted to read:

13 Sec. 36.30.575. STAY OF AWARD. If a protest is filed within the
14 time set out in AS 36.30.565 and before an award is made, award of the
15 contract shall be stayed until a decision is made on the protest,
16 unless the chief procurement officer, the commissioner, or, for con-
17 struction contracts or procurements for the state equipment fleet, the
18 commissioner of transportation and public facilities, makes a written
19 determination that

20 (1) a reasonable probability exists that the protest will
21 be denied; or

22 (2) delay of award of the contract is contrary to the
23 state's best interests.

24 * Sec. 23. AS 36.30.850(b) is amended to read:

25 (b) This chapter applies to every expenditure of state money
26 [FUNDS, IRRESPECTIVE OF THEIR SOURCES, INCLUDING FEDERAL ASSISTANCE
27 EXCEPT AS OTHERWISE SPECIFIED IN AS 36.30.890,] by the state, acting
28 through an agency, under a contract, except that this chapter does not
29 apply to

- 1 (1) grants;
- 2 (2) contracts for professional witnesses to provide for
3 professional services or testimony relating to existing or probable
4 lawsuits in which the state is or may become a party;
- 5 (3) contracts of the University of Alaska where the work is
6 to be performed substantially by students enrolled in the university;
- 7 (4) contracts for medical doctors and dentists;
- 8 (5) acquisitions or disposals of real property or interest
9 in real property, except as provided in AS 36.30.080;
- 10 (6) disposals under AS 38.05;
- 11 (7) contracts for the preparation of ballots under AS 15.-
12 15.030;
- 13 (8) acquisitions or disposals of property and other con-
14 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-
15 091;
- 16 (9) disposals of obsolete property under AS 19.05.060;
- 17 (10) disposals of obsolete material or equipment under
18 AS 35.20.060;
- 19 (11) agreements with providers of services under AS 44.47.-
20 250; AS 47.07; AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195,
21 and 47.25.310;
- 22 (12) contracts of the Department of Fish and Game for
23 flights that involve specialized flying and piloting skills and are
24 not point-to-point;
- 25 (13) purchases of income-producing assets for the state
26 treasury or a public corporation of the state; [.]
- 27 (14) operation of the state boarding school established
28 under AS 14.16, if the State Board of Education or the commissioner of
29 education adopts regulations for use by the state boarding school in

1 procurement and contracting;

2 (15) a contract that is a delegation, in whole or in part,
3 of investment powers held by the commissioner of revenue under AS 14.-
4 25.180, AS 14.40.400, AS 14.42.200, 14.42.210, AS 18.56.095, AS 22.-
5 25.048, AS 26.05.228, AS 37.10.070, 37.10.071, AS 37.14, or AS 39.35.-
6 080;

7 (16) a contract that is a delegation, in whole or in part,
8 of investment powers of the Board of Trustees of the Alaska Permanent
9 Fund Corporation under AS 37.13; [OR]

10 (17) the purchase of books, book binding services, newspa-
11 pers, periodicals, audio-visual materials, network information ser-
12 vices access, approval plans, professional memberships, archival
13 materials, objects of art, and items for museum or archival acquisi-
14 tion having cultural, historical, or archaeological significance; in
15 this paragraph

16 (A) "approval plans" means book selection services in
17 which current book titles meeting an agency's customized specifi-
18 cations are provided to the agency subject to the right of the
19 agency to return those books that do not meet with the agency's
20 approval;

21 (B) "audio-visual materials" means nonbook prerecorded
22 materials, including records, tapes, slides, transparencies,
23 films, filmstrips, cassettes, videos, compact discs, laser discs,
24 and items that require the use of equipment to render them us-
25 able;

26 (C) "archival materials" means the noncurrent records
27 of an agency that are preserved after appraisal because of their
28 value;

29 (D) "network information services" means a group of

1 resources from which cataloging information, holdings records,
2 inter-library loans, acquisitions information, and other refer-
3 ence resources can be obtained;

4 (18) contracts for the purchase of standardized examinations
5 for licensure under AS 08;

6 (19) disposals of supplies acquired through foreclosure of
7 loans issued under AS 03.10;

8 (20) purchases of curatorial and conservation services to
9 maintain, preserve, and interpret

10 (A) objects of art; and

11 (B) items having cultural, historical, or archaeologi-
12 cal significance to the state;

13 (21) acquisition of confidential seismic survey data neces-
14 sary for pre-sale oil and gas lease analyses under AS 38.05.180;

15 (22) contracts for village public safety officers;

16 (23) expenditures to pay travel expenses of personal care
17 attendants and sign language interpreters needed to accompany develop-
18 mentally disabled members of the Governor's Council for the Handi-
19 capped and Gifted to meetings for which reimbursement of members'
20 expenses is authorized under AS 47.80.060;

21 (24) contracts for home health care and adult residential
22 and foster care services provided under regulations adopted by the
23 Department of Health and Social Services;

24 (25) contracts for supplies or services for research pro-
25 jects funded by money received from the federal government or private
26 grants; or

27 (26) guest speakers or performers for an educational or
28 cultural activity.

29 * Sec. 24. AS 36.30.850(e) is amended to read:

1 (e) AS 36.30.170 applies to all insurance contracts involving
2 state money. In this subsection, "state money" includes [, INCLUDING]
3 state grants and reimbursement to municipalities, school districts,
4 and other entities.

5 * Sec. 25. AS 36.30 is amended by adding a new section to read:

6 Sec. 36.30.855. ALTERNATE PROCUREMENT METHODS. (a) In place of
7 the methods provided by AS 36.30.100 - 36.30.320, an alternate pro-
8 curement method may be used in the following situations, in accordance
9 with regulations adopted by the commissioner:

10 (1) if the commissioner determines in writing that food,
11 clothing, medical supplies, or materials for use in laboratory or
12 medical studies can be purchased otherwise to the best advantage of
13 the state;

14 (2) if rates are fixed by law or ordinance;

15 (3) to purchase products or services manufactured or pro-
16 vided by an employment program;

17 (4) to purchase products or services provided by the cor-
18 rectional industries program established under AS 33.32.

19 (b) An alternate procurement method to the methods provided by
20 AS 36.30.100 - 36.30.320 may be used for purchases of supplies and
21 services to support operations of the division of Alaska state troop-
22 ers or the division of fish and wildlife protection if the procurement
23 officer for the Department of Public Safety makes a written determina-
24 tion that publicity of the purchases would jeopardize the safety of
25 personnel or the success of the operation.

26 * Sec. 26. AS 36.30 is amended by adding a new section to read:

27 Sec. 36.30.960. COMPUTATION OF TIME. The time in which an act
28 under this chapter is required to be done is computed by excluding the
29 first day and including the last.

1 * Sec. 27. AS 36.30.990 is amended by adding new paragraphs to read:

2 (17) "day" or "working day" means a state working day;

3 (18) "employment program" means a nonprofit program to
4 increase employment opportunities for individuals with physical or
5 mental disabilities that constitute substantial handicaps to employ-
6 ment;

7 (19) "state money" means any money appropriated to an agency
8 or spent by an agency irrespective of its source, including federal
9 assistance except as otherwise specified in AS 36.30.890, but does not
10 include money held in trust by an agency for a person.

11 * Sec. 28. AS 36.30.100(b)(1), 36.30.100(b)(2), 36.30.100(b)(3), 36.-
12 30.100(b)(4), 36.30.100(c), 36.30.540(4), 36.30.540(5), 36.30.605, and
13 AS 44.47.250(c) are repealed.

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITAL
JURRAN ALASKA 99501
907 465 8000

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 3, 1989

SUBJECT: Constitutionality of offeror preference
 (draft HCS CSSB 170(SA))

TO: Representative H.A. "Red" Boucher
 Chair, House State Affairs Committee

FROM: Theresa L. Bannister *TB*
 Legislative Counsel

This memo accompanies the committee substitute that you requested for the above-referenced bill. Although your changes addressed different issues, please be aware that the bill contains new bidder preference provisions that could be challenged under the commerce clause and the privileges and immunities clause of the federal constitution. Section 11 gives offerors who are Alaska bidders two preferences in the evaluation of offers. I have not examined the issues sufficiently yet to express an opinion on whether the challenge would be successful. If you wish a fuller examination of this issue, please advise.

TLB:kb
wkk4/079

Enclosure

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

May 4, 1989

SUBJECT: Equal protection consideration
for HCS CSSB 170 (State Affairs)

TO: Representative H.A. "Red" Boucher
Chair, House State Affairs Committee

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies the above-referenced bill that you requested. Please be aware that the \$500,000 amount of work that is used as a criterion in the description of an Alaska bidder may violate the federal or state equal protection provision, unless sufficient rationale exists for establishing that specific figure to keep the figure from being arbitrary. The basic question is why a business with more than \$500,000 worth of work in the state qualifies when a person with \$499,000 worth of work does not? How is the figure set? In light of the recent constitutional amendment relating to resident preference, the fact of the preference would not fall under the state's more stringent equal protection criteria, but the discrimination between persons vying for that preference may. In addition, the new provisions added to the bill may create a problem under the privilege and immunities clause of the U.S. Constitution because they discriminate against nonresidents.

If I may be of further assistance, please advise.

TLB:gc
WkG10/054

Enclosure



WILDER CONSTRUCTION CO., INC.

May 4, 1989

Representative Dave Donley
Alaska House of Representatives
Juneau, Alaska

Re: CSSB 170 (Finance)

Dear Dave,

I was surprised at the amendment you have offered to this legislation relating to naming subcontractors at bid.

It is my suggestion that more information should be gathered before such a bill should be considered.

In the past, not to you, I have suggested that legislators should visit a major Building Contractor's office during a bid preparation so they could appreciate what takes place in the hour prior to the bid time. Quotes and scope letters pour in, and are taken by phone and FAX, from subcontractors and suppliers. Many of whom the prime contractor has never heard of.

I personally would like to help you gather this information.

With reference to your proposed amendment, I offer the following comments.

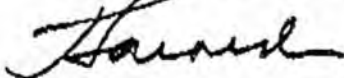
- 1) More bid protests will occur since it does not allow for minor irregularities.
- 2) The Prime contractor provides a bid bond to the State but a subcontractor can change his mind with impunity.
- 3) Subcontractors may say they are bondable but are unable to obtain a performance and payment bond
- 4) The decision to require a subcontractor to furnish a performance and payment bond is in the prime contractor's discretion not the State's.
- 5) The State's insurance requirements are a minimum and may not be as required by the prime contractor.
- 6) It will encourage prime contractors not to have labor agreements.

May 4, 1989
Donley Letter re CSSB 170
Page 2

7) It places a very heavy administrative burden on the State to determine responsiveness.

I ask you to reconsider offering the proposed amendment until you obtain additional input and evaluation of the true impact of this provision.

Sincerely,
WILDER CONSTRUCTION CO., INC.



Harold Kerslake
Alaska Division Manager

go0509sD
Bannister
5/3/89

CORV
Bid No. 10
81 August 10 AK
20 of 170 10 AK

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 170 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state procurement."

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

8 * Section 1. AS 36.30.040(b) is amended to read:

9 (b) The commissioner shall adopt regulations pertaining to the
10 following:

11 (1) suspension, debarment, and reinstatement of prospective
12 bidders and contractors;

13 (2) bid protests;

14 (3) conditions and procedures for the procurement of per-
15 ishables and items for resale;

16 (4) conditions and procedures for the use of source selec-
17 tion methods authorized by this chapter, including sole source pro-
18 curements, emergency procurements, and small procurements;

19 (5) the opening or rejection of bids and offers, and waiver
20 of informalities in bids and offers;

21 (6) confidentiality of technical data and trade secrets
22 submitted by actual or prospective bidders or offerors;

23 (7) partial, progressive, and multiple awards;

24 (8) storerooms and inventories, including determination of
25 appropriate stock levels and the management of agency supplies;

26 (9) transfer, sale or other disposal of supplies;

27 (10) definitions and classes of contractual services and
28 procedures for acquiring them;

29 (11) providing for conducting price analysis;

1 (12) use of payment and performance bonds in connection with
2 contracts for supplies, services, and construction;

3 (13) guidelines for use of cost principles in negotiations,
4 adjustments, and settlements;

5 (14) conditions under which an agency may use the services
6 of an employment program [AS DEFINED UNDER AS 36.30.100(c)];

7 (15) a bidder's or offeror's duties under AS 36.30.115 and
8 36.30.210; and

9 (16) the elimination and prevention of discrimination in
10 state contracting because of race, religion, color, national origin,
11 sex, age, marital status, pregnancy, parenthood, handicap, or politi-
12 cal affiliation.

13 * Sec. 2. AS 36.30.110(b) is amended to read:

14 (b) The bidder must have a valid Alaska business license at the
15 time designated in the invitation to bid for bid opening. [WHEN
16 RESPONDING TO THE INVITATION TO BID, THE BIDDER SHALL SUPPLY EVIDENCE
17 OF THE BIDDER'S VALID ALASKA BUSINESS LICENSE.] A bidder for a con-
18 struction contract shall also submit evidence of the bidder's regis-
19 tration under AS 08.18.

20 * Sec. 3. AS 36.30.110 is amended by adding a new subsection to read:

21 (c) If the commissioner of transportation and public facilities
22 makes a written finding that confidentiality is in the state's best
23 interest, the estimated cost of a construction contract is confiden-
24 tial information and may not be released to the public before bid
25 opening.

26 * Sec. 4. AS 36.30.115(b) is amended to read:

27 (b) A bidder may replace a listed subcontractor if the subcon-
28 tractor

29 (1) fails to comply with AS 08.18;

1 (2) files for bankruptcy or becomes insolvent;

2 (3) fails to execute a contract with the bidder involving
3 performance of the work for which the subcontractor was listed and the
4 bidder acted in good faith;

5 (4) fails to obtain bonding;

6 (5) fails to obtain insurance acceptable to the state;

7 (6) fails to perform the contract with the bidder involving
8 work for which the subcontractor was listed;

9 (7) must be substituted in order for the prime contractor
10 to satisfy required state and federal affirmative action requirements;

11 (8) refuses to agree or abide with the bidder's labor
12 agreement; or

13 (9) is determined by the procurement officer not to be a
14 responsible subcontractor [BIDDER].

15 * Sec. 5. AS 36.30.120(b) is amended to read:

16 (b) Bid security must be a bond provided by a surety company
17 authorized to do business in the state or otherwise supplied in a form
18 satisfactory to the commissioner. Bid security must be in an amount
19 equal to at least five percent of the amount of the bid

20 [(1) 10 PERCENT OF THE AMOUNT OF THE BID IF THE BID DOES NOT
21 EXCEED \$100,000; OR

22 (2) 10 PERCENT OF THE FIRST \$100,000 AND FIVE PERCENT OF
23 THE AMOUNT OF THE BID OVER \$100,000 IF THE BID EXCEEDS \$100,000 UP TO
24 A MAXIMUM OF \$200,000 IN SECURITY].

25 * Sec. 6. AS 36.30.170(b) is amended to read:

26 (b) The procurement officer shall award a contract based on
27 solicited bids to the lowest responsive and responsible bidder after
28 an Alaska bidder preference of five percent and an Alaska products
29 preference as described in AS 36.30.322 - 36.30.338 have been applied.

Propose Add Part 170 other Act 9970

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In this subsection, "Alaska bidder" means a person who *FOR WORK ON ALASKA*

(1) holds a current Alaska business license;

(2) submits a bid for goods, services, or construction

under the name as appearing on the person's current Alaska business license; *→ (wholly owned AK 70)*

(3) has maintained a place of business within the state

staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the date of the bid;

Dont get bidder preference preference to this
* (4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship [,] and the proprietor is a resident of the state, or is a partnership [,] and at least 50 percent of the [ALL] partners are residents of the state; and *ship interest in a firm is held by*

(5) if a joint venture, is composed entirely of venturers [VENTURES] that qualify under (1) - (4) of this subsection.

* Sec. 7. AS 36.30.170(c) is amended to read:

(c) If a bidder qualifies under (b) of this section as an Alaska bidder, is offering services through an employment program [AS DEFINED UNDER AS 36.30.100(c)], and is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid of a nonresident, the procurement officer shall award the contract to that bidder.

* Sec. 8. AS 36.30.210(a) is amended to read:

(a) A request for competitive sealed proposals must contain the date, time, and place for delivering proposals, a specific description of the supplies, construction, services, or professional services to be provided under the contract, and the terms under which the supplies, construction, services, or professional services are to be provided. The request must [SHALL] require the offeror [TO SUBMIT EVIDENCE OF THE OFFEROR'S VALID ALASKA BUSINESS LICENSE AND], no later

1 than five working days after the [IDENTIFYING WHICH] proposal that is
2 the most advantageous to the state is identified, to list subcontractors
3 the offeror proposes to use in the performance of the contract.
4 The list must [SHALL] include the name and location of the place of
5 business for each subcontractor, the work to be subcontracted to each
6 subcontractor, and evidence of the subcontractor's valid Alaska business
7 license. An offeror for a construction contract shall also
8 submit evidence of the offeror's registration under AS 08.18 and
9 evidence of registration for each listed subcontractor.

10 * Sec. 9. AS 36.30.210 is amended by adding a new subsection to read:

11 (e) The offeror must have a valid Alaska business license at the
12 time designated, in the request for proposals, for opening of the pro-
13 posals.

14 * Sec. 10. AS 36.30.250(b) is amended to read:

15 (b) In determining whether a proposal is advantageous to the
16 state, the procurement officer shall take into account, in accordance
17 with regulations of the commissioner, whether the offeror [QUALIFIES
18 AS AN ALASKA BIDDER UNDER AS 36.30.170(b) OR] is offering the services
19 of an employment program [AS DEFINED IN AS 36.30.100(c)].

20 * Sec. 11. AS 36.30.250 is amended by adding new subsections to read:

21 (c) For the purpose of evaluating cost factors, the proposed
22 costs of an offeror who qualifies as an Alaska bidder under AS 36.30.-
23 170(b) shall be reduced by five percent.

24 (d) The request for proposals must include an Alaska bidder
25 evaluation factor that takes into consideration whether an offeror
26 qualifies as an Alaska bidder under AS 36.30.170(b). At least 10
27 percent of the value of the rating system or weighting value used
28 shall be assigned to the Alaska bidder evaluation factor.

29 * Sec. 12. AS 36.30 is amended by adding a new section to read:

1 Sec. 36.30.265. MULTI-STEP SEALED PROPOSALS. When it is con-
2 sidered impractical to initially prepare a definitive purchase de-
3 scription to support an award based on listed selection criteria, the
4 procurement officer may issue an expression of interest requesting the
5 submission of unpriced technical offers, and then later issue a re-
6 quest for proposals limited to the offerors whose offers are deter-
7 mined to be technically qualified under the criteria set out in the
8 expression of interest.

9 * Sec. 13. AS 36.30.300(a) is amended to read:

10 (a) A contract may be awarded for supplies, services, profes-
11 sional services, or construction without competitive sealed bidding,
12 competitive sealed proposals, or other competition in accordance with
13 regulations adopted by the commissioner [OF ADMINISTRATION]. A con-
14 tract may be awarded under this section only when the chief procure-
15 ment officer or, for construction contracts or procurements for the
16 state equipment fleet, the commissioner of transportation and public
17 facilities determines in writing that there is only one source for the
18 required procurement or construction. A sole source procurement may
19 not be awarded if a reasonable alternative source exists. The written
20 determination must include findings of fact that support by clear and
21 convincing evidence the determination that only one source exists.
22 Except for procurements of supplies, services, or construction that do
23 not exceed the amount for small procurements under AS 36.30.320(a),
24 the [THE] authority to make the determination required by this subsec-
25 tion may not be delegated.

26 * Sec. 14. AS 36.30.305(a) is amended to read:

27 (a) A contract for supplies, services, professional services, or
28 a construction contract under \$100,000, may be awarded without compet-
29 itive sealed bidding or competitive sealed proposals, in accordance

1 with regulations adopted by the commissioner [OF ADMINISTRATION]. A
2 contract may be awarded under this section only when the commissioner
3 [OF ADMINISTRATION], or, for construction contracts under \$100,000 or
4 procurements for the state equipment fleet, the commissioner of trans-
5 portation and public facilities, determines in writing that a situa-
6 tion exists that makes competitive sealed bidding or competitive
7 sealed proposals impractical or contrary to the public interest.
8 Procurements under this section shall be made with competition that is
9 practicable under the circumstance. Except for procurements of sup-
10 plies, services, or construction that do not exceed the amount for
11 small procurements under AS 36.30.320(a), the [THE] authority to make
12 a determination required by this section may not be delegated.

13 * Sec. 15. AS 36.30.320(a) is amended to read:

14 (a) A procurement for supplies, services, or construction that
15 does not exceed an aggregate dollar amount of \$10,000 [\$5,000] may be
16 made in accordance with regulations adopted by the commissioner for
17 small procurements.

18 * Sec. 16. AS 36.30.360(a) is amended to read:

19 (a) A written determination of nonresponsibility [RESPONSIBIL-
20 ITY] of a bidder or offeror shall be made by the procurement officer
21 in accordance with regulations adopted by the commissioner. The
22 unreasonable failure of a bidder or offeror to promptly supply infor-
23 mation in connection with an inquiry with respect to responsibility is
24 grounds for a determination of nonresponsibility with respect to the
25 bidder or offeror.

26 * Sec. 17. AS 36.30.362 is amended to read:

27 Sec. 36.30.362. DETERMINATION TO AWARD A CONTRACT TO A NONRESIDE
28 Except for awards made under AS 36.30.170, if [IF] the procurement
29 officer awards a contract to a person who does not reside or maintain

1 a place of business in the state and if the supplies, services, pro-
2 fessional services, or construction that is the subject of the con-
3 tract could have been obtained from sources in the state, the procure-
4 ment officer shall issue a written statement explaining the basis of
5 the award. The statement required under this section shall be kept in
6 the contract file.

7 * Sec. 18. AS 36.30.370 is amended to read:

8 Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of
9 this section, any type of contract that will promote the best inter-
10 ests of the state may be used, except that the use of a cost-plus-a-
11 percentage-of-cost contract may only be used when permitted by regula-
12 tions adopted by the commissioner, or, for construction contracts, by
13 the commissioner of transportation and public facilities [IS PROHIB-
14 ITED]. A cost-reimbursement contract may be used only when a deter-
15 mination is made in writing by the procurement officer that a cost-
16 reimbursement contract is likely to be less costly to the state than
17 any other type or that it is impracticable to obtain the supplies,
18 services, professional services, or construction required except under
19 a cost-reimbursement contract.

20 * Sec. 19. AS 36.30.575 is repealed and reenacted to read:

21 Sec. 36.30.575. STAY OF AWARD. If a protest is filed within the
22 time set out in AS 36.30.565 and before an award is made, award of the
23 contract shall be stayed until a decision is made on the protest,
24 unless the chief procurement officer, the commissioner, or, for con-
25 struction contracts or procurements for the state equipment fleet, the
26 commissioner of transportation and public facilities, makes a written
27 determination that

28 (1) a reasonable probability exists that the protest will
29 be denied; or

1 (2) delay of award of the contract is contrary to the
2 state's best interests.

3 * * Sec. 20. AS 36.30.590(a) is amended to read:

4 (a) An appeal from a decision of a procurement officer on a
5 protest may be filed by the protester with the commissioner of admin-
6 istration, or for protests involving construction or procurements for
7 the state equipment fleet, the commissioner of transportation and
8 public facilities. An appeal shall be filed within 10 [FIVE] days
9 after the decision is received by the protester. The protester shall
10 file a copy of the appeal with the procurement officer.

11 * Sec. 21. AS 36.30.850(b) is amended to read:

12 (b) This chapter applies to every expenditure of state money
13 [FUNDS, IRRESPECTIVE OF THEIR SOURCES, INCLUDING FEDERAL ASSISTANCE
14 EXCEPT AS OTHERWISE SPECIFIED IN AS 36.30.890,] by the state, acting
15 through an agency, under a contract, except that this chapter does not
16 apply to

17 (1) grants;

18 (2) contracts for professional witnesses to provide for
19 professional services or testimony relating to existing or probable
20 lawsuits in which the state is or may become a party;

21 (3) contracts of the University of Alaska where the work is
22 to be performed substantially by students enrolled in the university;

23 (4) contracts for medical doctors and dentists;

24 (5) acquisitions or disposals of real property or interest
25 in real property, except as provided in AS 36.30.080;

26 (6) disposals under AS 38.05;

27 (7) contracts for the preparation of ballots under AS 15.-
28 15.030;

29 (8) acquisitions or disposals of property and other

1 contracts relating to airports under AS 02.15.070, 02.15.090, and
2 02.15.091;

3 (9) disposals of obsolete property under AS 19.05.060;

4 (10) disposals of obsolete material or equipment under
5 AS 35.20.060;

6 (11) agreements with providers of services under AS 44.47.-
7 250; AS 47.07; AS 47.08; AS 47.10; AS 47.17; AS 47.24; AS 47.25.195,
8 and 47.25.310;

9 (12) contracts of the Department of Fish and Game for
10 flights that involve specialized flying and piloting skills and are
11 not point-to-point;

12 (13) purchases of income-producing assets for the state
13 treasury or a public corporation of the state; [.]

14 (14) operation of the state boarding school established
15 under AS 14.16, if the State Board of Education or the commissioner of
16 education adopts regulations for use by the state boarding school in
17 procurement and contracting;

18 (15) a contract that is a delegation, in whole or in part,
19 of investment powers held by the commissioner of revenue under AS 14.-
20 25.180, AS 14.40.400, AS 14.42.200, 14.42.210, AS 18.56.095, AS 22.-
21 25.048, AS 26.05.228, AS 37.10.070, 37.10.071, AS 37.14, or AS 39.35.-
22 080;

23 (16) a contract that is a delegation, in whole or in part,
24 of investment powers of the Board of Trustees of the Alaska Permanent
25 Fund Corporation under AS 37.13; [OR]

26 (17) the purchase of books, book binding services, newspa-
27 pers, periodicals, audio-visual materials, network information ser-
28 vices access, approval plans, professional memberships, archival
29 materials, objects of art, and items for museum or archival

1 acquisition having cultural, historical, or archaeological signifi-
2 cance; in this paragraph

3 (A) "approval plans" means book selection services in
4 which current book titles meeting an agency's customized specifi-
5 cations are provided to the agency subject to the right of the
6 agency to return those books that do not meet with the agency's
7 approval;

8 (B) "audio-visual materials" means nonbook prerecorded
9 materials, including records, tapes, slides, transparencies,
10 films, filmstrips, cassettes, videos, compact discs, laser discs,
11 and items that require the use of equipment to render them us-
12 able;

13 (C) "archival materials" means the noncurrent records
14 of an agency that are preserved after appraisal because of their
15 value;

16 (D) "network information services" means a group of
17 resources from which cataloging information, holdings records,
18 inter-library loans, acquisitions information, and other refer-
19 ence resources can be obtained;

20 (18) contracts for the purchase of standardized examinations
21 for licensure under AS 08;

22 (19) disposals of supplies acquired through foreclosure of
23 loans issued under AS 03.10;

24 (20) purchases of curatorial and conservation services to
25 maintain, preserve, and interpret

26 (A) objects of art; and

27 (B) items having cultural, historical, or archaeologi-
28 cal significance to the state;

29 (21) acquisition of confidential seismic survey data

1 necessary for pre-sale oil and gas lease analyses under AS 38.05.180;

2 (22) contracts for village public safety officers;

3 (23) expenditures to pay travel expenses of personal care
4 attendants and sign language interpreters needed to accompany develop-
5 mentally disabled members of the Governor's Council for the Handi-
6 capped and Gifted to meetings for which reimbursement of members'
7 expenses is authorized under AS 47.80.060;

8 (24) contracts for home health care and adult residential
9 and foster care services provided under regulations adopted by the
10 Department of Health and Social Services;

11 (25) contracts for supplies or services for research pro-
12 jects funded by money received from the federal government or private
13 grants; or

14 (26) guest speakers or performers for an educational or
15 cultural activity.

16 * Sec. 22. AS 36.30.850(e) is amended to read:

17 (e) AS 36.30.170 applies to all insurance contracts involving
18 state money. In this subsection, "state money" includes [, INCLUDING]
19 state grants and reimbursement to municipalities, school districts,
20 and other entities.

21 * Sec. 23. AS 36.30 is amended by adding a new section to read:

22 Sec. 36.30.855. ALTERNATE PROCUREMENT METHODS. (a) In place of
23 the methods provided by AS 36.30.100 - 36.30.320, an alternate pro-
24 curement method may be used in the following situations, in accordance
25 with regulations adopted by the commissioner:

26 (1) if the commissioner determines in writing that food,
27 clothing, medical supplies, or materials for use in laboratory or
28 medical studies can be purchased otherwise to the best advantage of
29 the state;

1 (2) if rates are fixed by law or ordinance;

2 (3) to purchase products or services manufactured or pro-
3 vided by an employment program;

4 (4) to purchase products or services provided by the cor-
5 rectional industries program established under AS 33.32.

6 (b) An alternate procurement method to the methods provided by
7 AS 36.30.100 - 36.30.320 may be used for purchases of supplies and
8 services to support operations of the division of Alaska state troop-
9 ers or the division of fish and wildlife protection if the procurement
10 officer for the Department of Public Safety makes a written determina-
11 tion that publicity of the purchases would jeopardize the safety of
12 personnel or the success of the operation.

13 * Sec. 24. AS 36.30.990 is amended by adding new paragraphs to read:

14 (17) "employment program" means a nonprofit program to
15 increase employment opportunities for individuals with physical or
16 mental disabilities that constitute substantial handicaps to employ-
17 ment;

18 (18) "state money" means any money appropriated to an agency
19 or spent by an agency irrespective of its source, including federal
20 assistance except as otherwise specified in AS 36.30.890, but does not
21 include money held in trust by an agency for a person.

22 * Sec. 25. AS 36.30.100(b)(1), 36.30.100(b)(2), 36.30.100(b)(3), 36.-
23 30.100(b)(4), 36.30.100(c), 36.30.540(4), 36.30.540(5), 36.30.605, and
24 AS 44.47.250(c) are repealed.

COVA 2A RECI ALL

controlling 50
IN AK

11-12

AKA

AUGUST 1

& AT LEAST 51% OF A ^{RESIDENT} INTEREST
OF THE ~~AK~~ FIRM IS HELD BY

RES. OF THE STATE

- > AT LEAST 50%
- > 51%
- > OR CONTROLLED BY

RES. OF THE STATE
MCD. 102.1

#1 AND AT LEAST 51% OF A PARTICULAR
INTEREST OF THE FIRM IS HELD BY
FOLI RESIDENTS OF THE STATE

AK CORP - ^{131.02.01} QUALIFY FOR PVT -

- Control Non Lic
- NO 50% OF BUS IN AK
- \$ 500,000 BUS IN AK
- 1) BUS LIC.
 - 2) OFFICER
 - 3) STATE
 - 4) 50% OF BUS / \$ AMOUNT

bidder's and the contract is \$500,000 or more;

(2) 10 percent higher than the lowest nonresident bidder's and the contract is more than \$100,000 and less than \$500,000;

(3) 15 percent higher than the lowest nonresident bidder's and the contract is more than \$25,000 and \$100,000 or less; or

(4) 20 percent higher than the lowest nonresident bidder's and the contract is \$25,000 or less.

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

(c) Notwithstanding (b)(1) of this section, if [IF] a bidder qualifies under (d) [(b)] of this section as an Alaska bidder, is offering services through an employment program as defined under AS 36.30.100(c), [AND] is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid of a nonresident, and the contract is \$500,000 or more, the procurement officer shall award the contract to that bidder. If the contract is less than \$500,000, the provisions of (b)(2) - (4) of this section apply to the contract.

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

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

(1) holds a current Alaska business license;

(2) does more than ^{500,000}~~\$1,000,000~~ worth of annual business in the state or performs more than 50 percent of the person's annual business in the state, whichever is less;

(3) has maintained a permanent place of business in the state for a period of six months immediately preceding the date of the bid; and

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

* Sec. 4. This Act takes effect July 1, 1987.

Vendor is bidder who is appealing. The present law allows them 5 days to appeal and the original change to computation change was in response to complaints that there was not sufficient time on appeal particularly when the 5 days included calendaring over holidays. To change this, we simply changed the 5 to 10 rather than change the entire General Provisions statute. This change makes the appeal process consistent with the protest period which is presently 10 days.

1) Problem 1

Donely wants to see a majority interest if at all possible. For example 51 percent being Alaskan control. As it now stands, you don't get any preference if you have outside partners. This is for bidder preference. The question is where do you draw the line? You have one partner up here who is a member of 3 partner, they bid and they get AK preference - he disagrees with that. He also wants to deal with the corporation issue too. A corp. has a business license in AK qualifies for bidder preference. They have to have some tie to AK.

In the bidder pref code, its at least done so much business.

Have to dichotomize between partners. Not all partners are equal partners. One may hold 1% and the rest outside 99%. He wants a majority interest in the firm to be Alaskans. He wanted 51% of the control of the firm.

Proposes adopt same language as in bidder pref law for corps.

If you get bidder pref as a corp, you had to do certain things and this relates to the language added.

2) Problem 2

Subcontractors

3) At least 51 percent of the partnership interest in a firm is held by residents in the state of AK.

Addresses these concerns:

- couldn't have token partners
- controlling interest was held by Alaskans located here and easier to work with

Essentially Donely thinks it should be based on the controlling interest and not on 1 partner because..... The controlling interest is in AK hands for bidder preference.

They talked about three different possibilities:

1. Liberal approach - to receive bidder preference see senate language.
2. CS draft - middle ground 50%
3. Donely - tightest 51%

Tightest however is current which requires all partners to be AK. All steps down

Donely Point: The language in the draft, would exclude those times where had an Alaskan who held 60 percent interest but had two other partners outside. They would be no longer qualified because because 50 percent of the partners weren't AK. Under his proposal that co. would qualify even though they had two outside partners because they only held 40% of the business.

Next: offers language for corp. as amended

Wholly owned AK business would no longer have to prove itself-wouldnt have to go through problem of building up past history

Amendment requires the bidders be listed in the bid document as well a sub-contractors. Current law says they have to be listed within 5 days after it is open. Goal is to prevent bid shopping - after bids submitted, contractors will go shop around. Failure to specify in the bid while it is open difficult for the state to assess the accuracy of the bid. Difficult to enforce wage and hour laws.

What the state does is try to keep the process as clean - to look at those contract documents and require only the specific things so we can get a response price from the contractors - e.g. require the contractors and subcontractors licenses be given at time of award. Have to have in possession. At the bid opening we want to have those there to determine price - met all of the qualifications there:

- 1) bid bond
- 2) sign proposal
- 3) bid schedule
- 4)

bid opening and bid award: that is variable , bid opening, letter of intent, receive documents then award. 40 days

Language now in corp. gives an AK the opportunity to be the controlling interest, be 50% within Ak and have multiple partners outside

Sec. 36.30.015. Executive branch agencies. (a) The commissioner of transportation and public facilities may delegate to another agency the authority to contract for construction. Before delegating authority to an agency under this subsection, the commissioner of transportation and public facilities shall make a written determination that the agency is capable of implementing the delegated authority. Notwithstanding delegation of authority under this subsection, contracts for construction are governed by this chapter and regulations adopted by the commissioner of administration under this chapter.

(b) The commissioner of administration may delegate to an agency the authority to contract for and manage services, professional services, and supplies. Notwithstanding delegation of authority under this subsection, an agency's exercise of the authority is governed by this chapter and regulations adopted by the commissioner under this chapter. Before delegating authority to an agency under this subsection, the commissioner shall make a written determination that the agency is capable of implementing the delegated authority.

(c) The commissioner of administration may not delegate the authority to dispose of supplies or the authority to adopt regulations under this chapter.

(d) An agency may not contract for the services of legal counsel without the approval of the attorney general.

(e) The boards of directors of the Alaska Railroad Corporation and the Alaska State Building Authority shall adopt procedures to govern the procurement of supplies, services, professional services, and construction by the corporation. The procedures must be substantially equivalent to the procedures prescribed in this chapter and in regulations adopted under this chapter. (§ 2 ch 106 SLA 1986)

Sec. 36.30.020. Legislature. The Legislative Council shall adopt and publish procedures to govern the procurement of supplies, services, professional services, and construction by the legislative branch. The procedures must be based on the competitive principles consistent with this chapter and must be adapted to the special needs of the legislative branch as determined by the Legislative Council. (§ 2 ch 106 SLA 1986)

Sec. 36.30.030. Court system. The administrative director of courts shall adopt and publish procedures to govern the procurement of supplies, services, professional services, and construction by the judicial branch. The procedures must be based on the competitive principles consistent with this chapter and must be adapted to the special needs of the judicial branch as determined by the administrator of courts. (§ 2 ch 106 SLA 1986)