

SB

212

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 23, 1994

FURTHER REFERRALS:

Date of Committee Action: 4/22/94

The FINANCE Committee considered:

CSSB 212(FIN) am

CS FOR SENATE BILL NO. 212(FIN) am

STATE PROCUREMENTS AND PUBLICATIONS

"An Act relating to the giving of procurement notices; changing the content of the required procurement reports to the legislature by the commissioner of administration; relating to publications produced by state agencies; establishing an innovative construction procurement methods pilot program; and establishing legislative findings, a legislative purpose, and legislative intent for state procurement; and providing for an effective date."

RECOMMENDATIONS:

be replaced with HCS CSSB 212 LLC the same title a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact Admin.

fiscal note(s) DOTPF 2/9/94 Admin

zero fiscal note Admin.

zero fiscal note(s) Admin

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Ronald J. Larson</u> Larson	X				
<u>Mark Hanley</u> Hanley	Y				
<u>Terry Martin</u> Martin	V				
<u>Paul R. Parnell</u> Parnell	X				
<u>Ben Grussendorf</u> Grussendorf	X				
<u>Erin Hoffman</u> Hoffman	Y				
<u>Mike Navarre</u> Navarre	✓				
<u>Tay Brown</u> Brown	✓				
<u>Richard Foster</u> Foster	X				
<u>[Signature]</u>					


 CO-CHAIRMAN'S SIGNATURE Larson

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HCS CSSB 212(L&C)

Revision Date: _____ Dept. Affected: Statewide*
 Title: An Act relating to the giving of procurement notices; changing the content of the required procurement... BRU: _____
 Sponsor: Senate Labor & Commerce Component: _____
 Requestor: (H) Labor & Commerce COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	256.1*	256.1*	256.1*	256.1*	256.1*	256.1*
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	256.1*	256.1*	256.1*	256.1*	256.1*	256.1*

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	*	*	*	*	*	*
1003 GF Match		*	*	*	*	*
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts	*	*	*	*	*	*
1006 GF/MHTIA	*	*	*	*	*	*
Other	*	*	*	*	*	*
TOTAL	256.1*	256.1*	256.1*	256.1*	256.1*	256.1*

POSITIONS

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

Estimate of current year (FY94) impact: \$ -0-

ANALYSIS: (attach a separate page if necessary.)

See attached.

*Bids are awarded by the Division on behalf of customer agencies that have a variety of funding sources. This analysis reflects potential cost impacts to all agencies as a result of potentially higher bid awards. These are not cost impacts to the Division of General Services.

Prepared By: Dugan Petty, Director *[Signature]*
 Division: General Services

Phone: 465-2250
 Date: _____

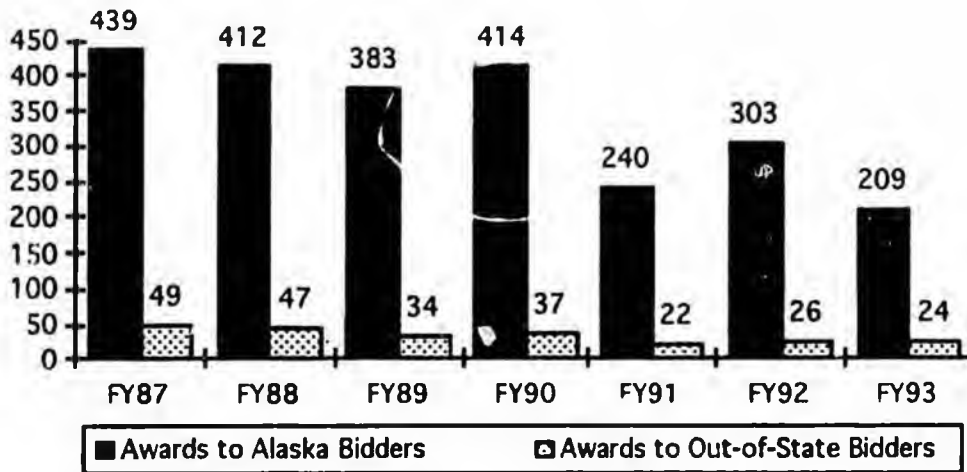
Approved by Commissioner: Nancy Bear Usura *[Signature]*
 Agency: Department of Administration

Date: 3/31/94

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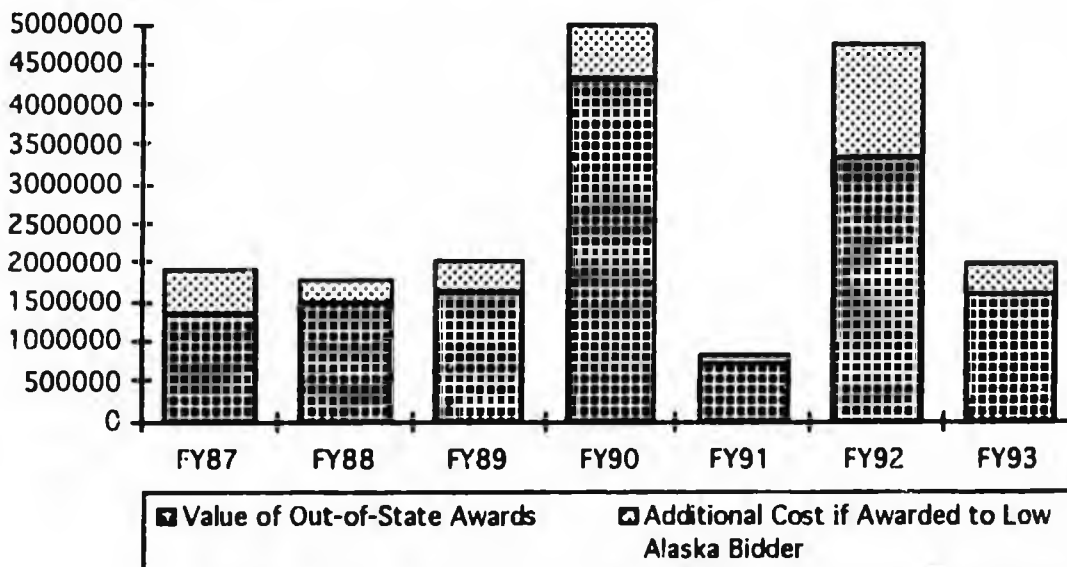
Section 2 of the bill requires notices of bids and proposals to be mailed only to in-state bidders on the contractors list when practicable. We estimate this bill will result in Alaska bidders receiving 66% more of the awards that currently go out-of-state. On average, over the past seven years 34 bids a year are awarded to out-of-state bidders. The graph below demonstrates the number of out-of-state awards in relationship to in-state bid awards over the past seven years.

Invitations to Bid Issued by Department of Administration



An analysis of out-of-state bids issued from FY87 through FY93 indicate that prior implementation of this bill, if 66% effective, would have kept an average of \$1.3 million per year worth of contracts issued by the Department of Administration in-state. The average annual addition costs to State agencies of not purchasing from the otherwise low bidder would be approximately \$356.0. (See graph and table below.)

Difference in Cost Between Alaska Bidders and Low Bidder When Award was Made to Out-of-State Bidder



FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HCS CSSB 212(L&C)
Page 3 of 3

	FY87	FY88	FY89	FY90	FY91	FY92	FY93
Value Out-of-State Awards	\$1,335.1	\$1,499.5	\$1,618.7	\$4,324.0	\$730.0	\$3,340.0	\$1,605.0
Value of Low AK Bidders	\$1,922.0	\$1,754.0	\$2,010.1	\$4,992.1	\$835.1	\$4,730.1	\$1,993.0
Cost if Awarded to Low AK Bidders	\$586.8	\$254.5	\$391.4	\$668.1	\$105.2	\$1,390.0	\$388.0

The bill permits bids to be issued to out-of-state bidders when specifically requested or when the notice limitation to only in-state bidders is not practicable. We estimate the number of bids that will go to out-of-state vendors and the number of out-of-state bid awards to be reduced by 66%. Therefore we project, based on the most recent FY93 data, the potential fiscal impacts associated with 66% of the out-of-state awards going to the low Alaska bidder to be:

- Projected Awards Captured for In-State Business 24 x 66% = 16 awards
- Projected Value of Low Alaska Bidder Captured for In-State Business \$1,993.0 x 66%= \$1,315.40
- Projected Value of Out-of-State Awards \$1,605.0 x 66% = \$1,059.30
- Projected Fiscal Impact (Difference) \$256.1

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HCS CSSB 212(L&C)

Revision Date: _____ Dept. Affected: Administration
 Title: An Act relating to the giving of procurement BRU: General Services
notices: changing the content of the requirement procurement. Component: Purchasing
 Sponsor: Senate Labor & Commerce
 Requestor: House Labor & Commerce Committee COMPONENT SERIAL NO. 60

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
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 FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	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

Estimate of current year (FY94) impact: \$ -0-

ANALYSIS: (attach a separate page if necessary.)

This bill will require one-time notices of the revised statute to all bidders on the contractors list maintained under AS 36.30.050. Thereafter notices will be mailed only to bidders with Alaska zip codes unless a bidder specifically requests a bid solicitation for a specific Invitation to Bid.

Fiscal impact to the Division will be minimal.

Prepared By: Dugan Petty, Director 
 Division: General Services

Phone: 465-2250
 Date: _____

Approved by Commissioner: Nancy Bear Usura 
 Agency: Department of Administration

Date: 3/31/94

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STATE OF ALA A
1994 LEGISLATIVE SESSION

FISCAL NOTE

3
Bill Version: SB 212
(S) Publish Date: 2-9-94

Revision Date: 1/27/94 Department Affected: DOT&PF
Title: State Procurements and Publications BRU: E&OS
Sponsor: Senate L&C Committee Component Serial Number: D&C 547

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	5.0	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:	5.0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE	0	0	0	0	0	0
---------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	5.0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	5.0	0	0	0	0	0

POSITIONS

FULL-TIME
PART-TIME
TEMPORARY

Changes in CS5B 212 (Fin)
reflect NO FISCAL CHANGE from the original
fiscal note. This fiscal note is appropriate.
2-15-94 date Comte Aide (initial) sh

Changes in CS5B 212 (L&C)
reflect NO FISCAL CHANGE from the original
fiscal note. This fiscal note is appropriate.
2/8/94 date Comte Aide (initial) ADT

Estimate of current year (FY94) impact: \$ 0

ANALYSIS: (Attach a separate page if necessary) The \$5,000 will be used to develop regulations for the pilot program. Since this is a pilot program, it will not be applied to all state funded projects but on selected ones with the most opportunity for success. In FY94 about \$30 million in state funded projects were awarded. We anticipate it being used on approximately 10% of the projects. Although any bonuses should be off set by lower bids, it may be necessary to set aside project specific funds to pay for the bonuses.

Prepared by: Mal Linthwaite, Director

Phone: 465-2951

Division: E&OS

Date: February 1, 1994

Approved by Commissioner: B.A. Campbell

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: February 2, 1994

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Alaska State Legislature

Senator Tim Kelly, Chair
Senator Steve Rieger, Vice Chair
Senator Bert Sharp
Senator Judy Salo
Senator Georrianna Lincoln



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PHONE: (907) 465-3822
FAX: (907) 465-3756

SENATE LABOR AND COMMERCE COMMITTEE

716 W 4TH, SUITE 400
ANCHORAGE, AK 99501-2133
PHONE: (907) 258-8100
FAX: (907) 258-4524

SECTIONAL ANALYSIS FOR CS SB 212 (FIN): THE "BUY ALASKA" BILL

Section 1: Findings, Purpose, and Intent.

Section 2: Amends AS 36.30.130, Public Notice of Invitation to Bid, to encourage procurement officers to restrict notice of contract solicitation when practicable to Alaskan suppliers when and providers of services desiring to compete for state contract work, unless specifically requested by an out-of-state contractor. (This practice already in DOT/PF.)

Section 3 & 10: Provide a 4 year sunset to Section 2 so that its effectiveness may be evaluated. This sunset was put in at the request of the Department of Administration.

Section 4: Amends AS 36.30.540, Procurements Report to the Legislature, to require that the commissioner's report on procurement to the legislature include the number of bidders located in the State and out-of-state that bid or made proposals on procurements. This will allow the legislature to track the success of the procurement reforms.

Section 5: Repeals and re-enacts AS 44.99.200, Production of Publications, to replace the requirement that State publications be produced at State-operated facilities with a requirement that State publications be produced at a private sector facility located in the State when practicable. In addition, it mandates that standards for the production of publications be established by the Department of Administration.

Section 6: Amends AS 44.99.210, Disclosures on Publication, to conform to Section 5.

Section 7: Repeals AS 44.99.230, Standards for State Publications. This provision was amended into 44.99.200 (Section 5).

Sectional

Sectional Analysis - SB 212

"Buy Alaska" Bill

Page 2

Section 8: Establishes an Innovative Construction Procurement Methods Pilot Program within the DOT/PF for a period of two years. This program will allow the department, through regulation, to use bonuses to replace the current preferences required under AS 36.30.

The commissioner must first determine in writing that using the innovative methods is in the best interests of the state, not contrary to the intent and purposes of the current preference system, and describe how the innovative methods modify the procurement procedures of 36.30. The commissioner shall make two reports to the legislature on the construction contracts awarded under the pilot program 15 and 27 months after it begins.

Section 9: Establishes that report requirements under Section 4 of this act apply to reports due after the effective date of this act.

Section 10: With Section 3, provides a 4 year sunset to Section 2 so that the effectiveness of limiting contract solicitation to Alaskan businesses and publications may be evaluated. This sunset was put in at the request of the Department of Administration. Establishes that the first report under Section 4 of this act is due January 15, 1995.

Alaska State Legislature

Senator Tim Kelly, Chair
Senator Steve Rieger, Vice Chair
Senator Bert Sharp
Senator Judy Salo
Senator Georgianna Lincoln



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SENATE LABOR AND COMMERCE
COMMITTEE

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SPONSOR STATEMENT

CS SB 212(FIN): "BUY ALASKA" LEGISLATION

State government is one of the largest purchasers of goods and services in the Alaskan economy, purchasing everything from road design and construction services to copy machines and paper and pencils. The use of services and products provided by Alaskan businesses stabilizes and diversifies Alaska's economy.

SB 212 aims to help strengthen Alaska's economy by increasing the share of State government's contracts for goods and services going to Alaskan businesses.

Specifically, this legislation would establish an Innovative Construction Procurement Methods Pilot Program within the DOT/PF for a period of two years to implement an Alaska Bonus Program to replace the current preferences.

Current incentives include the Alaskan Bidders Preference, Alaska Subcontracting, Disadvantage Business Enterprises/Equal Employment Opportunity programs, and Alaska Products Preference, and the Alaska Hire Program. The latter two are largely unworkable and consequently underutilized or not utilized at all. Allowing the DOT/PF to test on a trial basis a bonus system which provides bonuses at project completion and encourages the same policy goals would be more economically beneficial for vendors, reduce administrative costs and bid protests, and could likely be used in joint federal/state projects where State preferences are currently not allowed.

The commissioner would establish this program through regulation and report to the legislature on the program's progress 15 and 27 months after implementation. If successful, the legislature could expand and extend this program indefinitely, replacing the current preferences.

Sponsor Statement

Lastly, this bill incorporates a number of provisions from the "Make-It-Alaskan" legislation from the 17th Legislature, House Bill 245, which would also increase the amount of State work going to Alaskans. This bill would:

- 1) Encourage procurement officers to restrict notice of contract solicitation to Alaskan suppliers and providers of services desiring to compete for state contract work. (This practice is already standard in DOT/PF);
- 2) Require the commissioner to include in his report to the legislature on State procurements the number of bidders located in-state and out-of-state that bid or made proposals on procurements;
- 3) Replace the statutory requirement that State publications be produced at State-operated facilities with a requirement that State publications be produced at a private sector facility located in the State when practicable. In addition, standards for the production of publications would be established by the Department of Administration, and a cost box would be required for all publication's exceeding \$1,500 in cost.



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: CS SB 212

APPROVED: 

TITLE: State Procurements and
Publications

DATE: February 2, 1994

The Department of Transportation and Public Facilities is generally supportive of innovative ways of contracting which will reduce the bureaucratic process. Even with an innovative program of bonuses, it may be difficult to alternate the basic process of awarding, furnishing materials, etc. Nearly all successful contractors are Alaska based and only a very small percentage of material originates from out of state.

Position Paper
For Further Information contact J.K. Ginger Johnson at 465-3904.

Discussion Bullets for:

Procurement Code Modifications to Implement a State Bonus Program

Background:

For several years those agencies conducting public works contracts have been concerned over the effectiveness of incentive programs such as "Disadvantaged Business Enterprises/ Equal Employment Opportunity", "Alaskan Hire", and Alaska "preferences" within the State Procurement. And while a considerable effort in both manpower and money have gone into these areas, it remains their belief that the fullest, most positive results possible from these incentive programs have not been attained. Therefore it is suggested that the current preferences be replaced with a bonus program.

Benefits:

The following benefits will be achieved by incorporating a bonus program:

- The program will be more "economically" beneficial to vendors and hence more readily used.
- Administrative enforcement costs associated with bid protests, record keeping requirements and inspections will be reduced.
- "Game playing" on the part of vendors, for the sole purpose of obtaining the contract, would be decreased or eliminated.
- Federal and state mandated incentives could still be implemented, but at a time more conducive to the overall project and with reduced administration costs to all parties.
- Federal regulations which prohibit "localized bidding preferences" do not prohibit performance incentives – and in fact the federal agencies may even provide funding.
- Reciprocal trade statutes based on "preferences" would become inconsequential.
- Over time effectiveness of the incentive programs would improve, administrative costs would decrease, and bid prices would return to the competitive levels that were encountered prior to the bonus program.

Suggested Overview of the Bonus Program:

It is envisioned that the bonus program could pay up to 5% of the contract award amount in additional bonus money. By basing the value of the bonus on the contract award amount, contingency funds could be set aside at the time of award for payment of the bonus at a later date. Upon satisfactory performance, bonus payments in the following areas and in the suggested amounts, could be paid. The various levels of a bonus would be set in the specifications or regulations so they could be adjusted to the changing procurement needs.

(see table on following page)

Incentive Under Consideration	Suggested Bonus Value (maximum percent of contract)
<ul style="list-style-type: none"> • <i>Disadvantaged Business Enterprises/ Equal Employment Opportunity</i>, both state and federal mandates are address by the current program. (5% of the value of the qualifying DBE/EEO contracted services, up to the allowable maximum dollar amount, would be paid.) 	Recommended bonus . . . 2%
<ul style="list-style-type: none"> • <i>Alaska Hire Program</i>, currently a state program which mandates the use of the local work force on state funded construction projects. (5% of the salaries – as documented in the certified payroll - for all alaskan workers, up to the allowable maximum dollar amount, would be eligible for a bonus.) 	Recommended bonus . . . 2%
<ul style="list-style-type: none"> • <i>Alaska Bidder's Preference</i>, currently a state preference program within AS 36.30 which gives bidders residing in Alaska a bidding advantage over non-resident bidders. In its present form this is not an allowable incentive on federal aid contracts. 	Recommended bonus . . . 2%
<ul style="list-style-type: none"> • <i>Alaska Products Preference</i>, currently a state preference program within AS 36.30 which gives bidders a bidding advantage when using products made in Alaska. In its present form this is not an allowable incentive on federal aid contracts. (3, 5 or 7% of the invoice amount – as documented by the manufacturer - for all alaskan products, up to the allowable maximum dollar amount, would be eligible for a bonus.) 	Recommended bonus . . . 2%
<ul style="list-style-type: none"> • <i>Subcontracting</i>, currently the state requirements within AS 36.30 make it difficult, though not impossible, for non-resident subcontractors to work on state funded construction projects. An alternative to this approach is to reward prime contractors for using local subcontractors. (5% of the value of the qualifying alaskan subcontracted services, up to the allowable maximum dollar amount, would be paid.) 	Recommended bonus . . . 2%

Bonus Program Details:

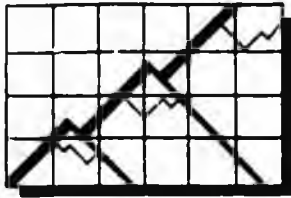
The department has developed conceptual guidelines and parameters in each of the above incentive areas. We would be happy to share this information with lawmakers or assist them in whatever way possible.

Example:

A bridge project with an award amount of \$1,000,000 to resident bidder; locally manufactured materials valued at \$300,000; a local workforce payroll for the prime contractor of \$400,000; local subcontractor services valued at \$100,000; and DBE contracts valued at \$50,000 would produce the following bonus.

- Bidder's Preference for the prime yields a bonus of $\$1,000,000 \text{ times } .02 = \$20,000.00$
- Alaska Product preference for locally manufactured concrete components with a manufactured value of \$300,000 and a DCED Class III certification yields $\$300,000 \text{ times } .07 = \$21,000.00$, but by specification this amount is capped at $\$20,000.00$
- Alaska Hire based upon a certified payroll of \$400,000 yields $\$400,000 \text{ times } .05 = \$20,000.00$
- Subcontracting Bonus based on subcontracts valued at \$100,000 yields $\$100,000 \text{ times } .05 = \$5,000.00$
- DBE Subcontracting Bonus based on subcontracts valued at \$50,000 yields $\$100,000 \text{ times } .05 = \underline{\$2,500.00}$
Yields a subtotal Project bonus of $= \$67,500.00$

But, the OVERALL PROJECT bonus is capped at 5%. Thus the maximum amount payable to the contractor on a \$1 million award is $\$50,000.00$



University of Alaska Small Business Development Center

MEMORANDUM

TO: Senate Economic Task Force

FR: Larry Cash, Chair, Small Business Development Center Task Force on State Procurement

DATE: February 18, 1994

SUBJ: Support for SB 212(FIN) relating to State Procurement (BUY ALASKA)

Members of the UAA Small Business Development Center Advisory Board convened a special Procurement Task Force to discuss state procurement initiatives and specifically SB 212 which was reintroduced this session. The task force met on February 10 and focused their discussions on this important legislation and how it will affect small businesses in Alaska and their ability to compete with out-of-state bidders.

We support the passage of SB 212 and believe it will have a positive impact on small business in Alaska. The fiscal note of \$5000 from Department of Transportation to formulate and administer the Pilot Bonus Program is reasonable and should be passed. We believe the fiscal note of \$256,000 from the Department of Administration should not be construed as an actual budget appropriation as it is an estimate only of potential increased costs resulting from curtailing out-of-state bid solicitations. Because these potential costs will revert to Alaska's private sector, this fiscal note should not be a deterrent to passage of this bill.

A concern was addressed as to the deletion of Section 9 of the original legislation which created a state policy for Procurement of Investment Services. The task force considers this legislation important to the potential development of the financial services industry in Alaska and to support the Permanent Fund investment requirements and should be reconsidered. Furthermore, service fees generated by Permanent Fund investments should be spent in Alaska to the maximum extent possible.

This task force will continue to follow this and other legislation that effects small business and state procurement policy and law. We urge you to support SB 212 and consider our recommendations.

Thank you.

UAA Small Business Development Center
Procurement Task Force

Larry Cash, Chair
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Joe Beedle
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Beedle and Associates, Owner

Cindy Matson
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FAX: 786-6519

UAA Purchasing, Acting Director

(7)
Date Referred: March 4, 1994

FURTHER REFERRALS:

Finance

Date of Committee Action: 3/22

The LABOR AND COMMERCE Committee considered:

CSSB 212(FIN) am

CS FOR SENATE BILL NO. 212(FIN) am

STATE PROCUREMENTS AND PUBLICATIONS

"An Act relating to the giving of procurement notices; changing the content of the required procurement reports to the legislature by the commissioner of administration; relating to publications produced by state agencies; establishing an innovative construction procurement methods pilot program; and establishing legislative findings, a legislative purpose, and legislative intent for state procurement; and providing for an effective date."

RECOMMENDATIONS:

be replaced with HCS SB 212(L+C) am the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) DOT, Adm

zero fiscal note _____

zero fiscal note(s) _____ (2/92) Adm.

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>			*	
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
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CHAIRMAN'S SIGNATURE

NFIB Alaska

National Federation of
Independent Business

POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS
NFIB/ALASKA

HOUSE FINANCE COMMITTEE

APRIL 22, 1994

IN SUPPORT OF

SB 212 - STATE AGENCY PUBLICATIONS

9159 Skywood Lane
Juneau, AK 99801



The Guardian of
Small Business

CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS RESA JERREL, AND I AM THE STATE DIRECTOR FOR THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS - NFIB/ALASKA. I AM APPRECIATE THE OPPORTUNITY TO COMMENT IN FAVOR OF SB 212.

BACKGROUND: NFIB/ALASKA IS COMPRISED OF 4,800 SMALL AND INDEPENDENT BUSINESS OWNERS. THE LEGISLATIVE AGENDA OF NFIB/ALASKA IS DETERMINED BY OUR BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR MEMBERS ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR POLICY AND POSITION ON LEGISLATIVE ISSUES.

FOR THE RECORD THE FOLLOWING IS THE RESULT OF THE 1990 NFIB/ALASKA BALLOT QUESTION REGARDING GOVERNMENT COMPETITION:

Should legislation be passed that would restrict government agencies from competing with private business in Alaska?

Yes 83% No 6% Undecided 11%

CURRENT LAW REQUIRES PUBLICATIONS OF STATE AGENCIES TO BE PRODUCED AT A STATE OPERATED FACILITY WHENEVER POSSIBLE. THIS PUTS THE STATE IN DIRECT COMPETITION WITH SMALL BUSINESSES. IT ALSO, PUTS SMALL BUSINESSES AT A DISTINCT DISADVANTAGE IF THEY WANT TO DO BUSINESS WITH THE STATE.

SECTION 5, ON PAGE 5, STARTING AT LINE 6, REPEALS THAT LAW AND SHIFTS THE PREFERENCE FROM STATE OPERATED PRINTING FACILITIES TO PRIVATELY OWNED BUSINESSES. NFIB/ALASKA BELIEVES THAT SB 212 WILL HELP LIMIT THE SIZE AND COST OF STATE GOVERNMENT AND FOSTER ECONOMIC GROWTH IN THE PRIVATE SECTOR.

NFIB/Alaska
SB 212
Page: 2

ALTHOUGH IT DOES NOT ELIMINATE COMPETITION FROM OTHER STATE OR LOCAL AGENCIES - IT IS CERTAINLY A BIG STEP IN THE RIGHT DIRECTION.

THANK YOU FOR THE OPPORTUNITY TO COMMENT IN SUPPORT OF THIS WORTHY LEGISLATION. I WOULD URGE YOU TO MOVE THE BILL OUT OF COMMITTEE SO WE CAN, HOPEFULLY, SEE IT BECOME LAW THIS YEAR. IF YOU HAVE ANY QUESTION, I WOULD BE HAPPY TO TRY AND ANSWER THEM.

STATE OF ALA A
 1994 LEGISLATIVE SESSION
FISCAL NOTE

3
 Bill Version: SB 212
 (S) Publish Date: 2-9-94

Revision Date: 1/27/94 Department Affected: DOT&PF
 Title: State Procurements and Publications BRU: E&OS
 Component: D&C
 Sponsor: Senate L&C Committee Component Serial Number: 547

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	5.0	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:	5.0	0	0	0	0	0

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

1002 FEDERAL RECEIPTS	0	0	0	0	0	0
1003 GF MATCH	0	0	0	0	0	0
1004 GF	5.0	0	0	0	0	0
1005 GF/PROGRAM RECEIPTS	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	5.0	0	0	0	0	0

POSITIONS

FULL-TIME
PART-TIME
TEMPORARY

Changes in CSSB 212 (Fin)
 reflect NO FISCAL CHANGE from the original
 fiscal note. This fiscal note is appropriate.
 2-15-94 date hcl Comte Aide (initial)

Changes in CSSB 212 (L&C)
 reflect NO FISCAL CHANGE from the original
 fiscal note. This fiscal note is appropriate.
 2/8/94 date ADT Comte Aide (initial)

estimate of current year (FY94) impact: \$ 0

ANALYSIS: (Attach a separate page if necessary) The \$5,000 will be used to develop regulations for the pilot program. Since this is a pilot program, it will not be applied to all state funded projects but on selected ones with the most opportunity for success. In FY94 about \$30 million in state funded projects were awarded. We anticipate it being used on approximately 10% of the projects. Although any bonuses should be off set by lower bids, it may be necessary to set aside project specific funds to pay for the bonuses.

Prepared by: Mal Linthwaite, Director

Phone: 465-2951

Division: E&OS

Date: February 1, 1994

Approved by Commissioner: B.A. Campbell

Phone: 465-3901

Agency: Department of Transportation and Public Facilities

Date: February 2, 1994

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XPRT CONSULTANTS

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Anchorage, Alaska 99516
(907) 346-3416

(907) 463-3241

FAXNOTE TO: (907) 465-2293

FAXNOTE - 11 pages:

Consists of this page + 10 pages
of attachments

Date: 22 April 1994

TO: Cileen Maclean, Co-Chair
Ron Larson, Co-Chair
House Finance Committee
Alaska State Legislature
Juneau, AK 99801

Phone (907) 465-3757 or 4833 or 3878

Attached is/are Copy of letter & comments re: SB 212

"Innovative Contracting" is a bad idea.
Bonuses will not be limited to just Alaska businesses
Outside Contractors can earn the bonuses also!
You can't cut the budget while giving away
millions through bonuses!

FROM: XPRT CONSULTANTS

Peggy R. Thomas
PEGGY R. THOMAS
Chief Executive Officer

DON'T GIVE AWAY 5%
OF THE CAPITAL BUDGET.
Delete "innovative contracting"
from SB 212

See Details in attachments.

PEGGY R. THOMAS
9701 Brien Street
Anchorage, Alaska 99516
(907) 346-3416

FYI
Info Copy to:
Co-Chair of House
Finance Committee
4/22/94
- P. Thomas

TO: FAX (907) 465-4565

FAX LETTER

16 March 1994

Hon. Ramona Barnes, Speaker,
and Members of
The Alaska House of Representatives
Box V
Juneau, AK 99811

RE: CSSB 212 (FIN) AM - State Procurement Code Amendments

Dear Madam Speaker and Members of the House:

**PLEASE REFER COPIES OF THIS LETTER TO STAFF AND MEMBERS!
GREAT CARE AND MORE STUDY IS NEEDED BEFORE SB 212 IS PASSED!**

Specific detailed comments are attached for your use and action.

Although parts of the bill provide valid, even laudable solutions, Section 8, regarding innovative contracting, is not a plausible solution to perceived problems, and may have grave consequences. Purity of motive for adoption of Section 8 (Innovative Contracting) is not entirely clear. Therefore, you should at least be aware that incentive contracting methods are already acceptable under federal guidelines regarding federal funding and also under AS 36.30. By making a special exception to the law, hidden or private agendas may result in and promote corrupt practices.

My attached review is no smoke screen, but the proposed Section 8 of subject bill may be. I am a qualified expert, with over forty years experience in government agencies engaged in public procurement and contracting. For the purposes stated, Section 8 is not needed.

Please give weight to the attached review comments and suggestions regarding subject bill in your deliberations.

If I can be of any further assistance, or service please call (907) 346-3416.

Sincerely,

Peggy R. Thomas
PEGGY R. THOMAS, C.P.M.
Chief Executive Officer

Attachment

Review Comments - CSSB 212 (FIN) AM (9 pages)

REVIEW COMMENTS - CSSB 212(FIN)AM - AMEND STATE PROCUREMENT CODE

Very few changes are needed to make the proposed bill plausible. EXCEPT that Section 8 should not be enacted at all. Comments include specific reference to CSSB 212(FIN)AM, section-by-section, as indicated herein.

Because of the nature and importance of fundamental principles which will be affected if Section 8 is enacted, that section is addressed first below. Comments regarding other sections of the bill follow Section 8.

Section 8. INNOVATIVE CONSTRUCTION PROCUREMENT METHODS PILOT PROGRAM.

The Legislature SHOULD NOT ADOPT this section based on numerous questions which remain unanswered for valid reasons outlined below:

1. Proposed "innovative" methods were crafted to circumvent federal rules which specifically prohibit application of local preference in procurement. (This purpose was clear in explanatory information distributed at hearings on the bill.)
2. Proposed "innovative" methods attempt to legitimize "buying in" or "low-balling" of bids under the guise of innovation, even though such practices fly in the face of recognized fundamentals of good procurement practice.
3. Proposed "innovative" methods preclude compliance with cost and pricing data requirements which are absolutely essential to determination of reasonableness of price for change orders and price adjustments.
4. Proposed "innovative" methods make it impossible for a contractor to certify the accuracy and completeness of current cost and pricing data which is submitted for a contract. Contractor cost and pricing data are required by both federal and state law. Also see COST OR PRICING DATA DISCUSSION below.
5. Proposed "innovative" methods equate to cost-plus-percentage-of-cost contracting if a "bonus" is to be provided subsequent to completion of the work as a percent of the contract amount. Both federal law and AS 36.30.370 prohibit the use of such contracts. The basic contract amount is based on costs, and the promise of provision of a fee, bonus, or whatever it may be called as a percent of the actual violates the prohibition.) If the amount of fee or bonus is known (at award) by provision in the contract, then the amount of it must properly be included in the bid/contract total for purposes of bid evaluation.
6. Proposed "innovative" methods will require contractors to finance and carry an additional 5% (or other bonus percentage of the cost of a job until after the "bonus" is paid, including the interest cost of money, much to their financial detriment. It is usual to retain a percentage of the contract amount of completed work pending final completion of a construction contract. If the retainage is 10%.

then the contractor is already perhaps footing the bill for interest on the retainage, and if interest on an extra 5% (or other bonus percentage) is added to that it may be injurious. This will place additional burden on local contractors.

7. Proposed "innovative" methods will result in inadequate bonding of construction contracts. Bonding requirements are based on the amount of the bid and/or contract, and probably will not include any potential after-the-fact 5% (bonus) which in reality should be a part of the contract bid price. Insufficient bonding, anything short of bonding based on the full amount required for completion of the work, does not adequately protect either State or surety interests.

8. Proposed "innovative" methods will cause bonding companies to raise the cost of, or perhaps even refuse to bond State contractors due to inconsistency between bonding provisions, bond penal sums, contract amount(s), and the actual liability of the surety.

9. Proposed "innovative" methods either put the contractor at risk for potential failure to "earn" an after-the-fact bonus (which an agency could arbitrarily or otherwise subjectively determine)

or

Proposed "innovative" methods constitute promise to pay the fee or bonus whether or not it is merited, thus said fee or bonus is part of the basic contract price which effectively raises the price of the original bid.

10. Proposed "innovative" method is based on belief and hope that if contractors know they will receive a bonus after-the-fact, they will bid lower to get the job. This is intended to provide the same advantage to Alaska businesses that 5% Alaska bidder preference would give. Either concept is anti-competitive, and will not succeed in fostering Alaska's economy. In the trade, this is called "buying in" and is totally contrary to acceptable contracting practices.

Proposed "innovative" methods are based on a false premise which assumes that Alaska bidders cannot successfully compete with outside firms for State construction contracts. Alaska bidders quite frequently compete successfully against outside firms for federal construction contracts.

If there is a serious negative flow of State business going "outside" it is surely not concentrated in the construction area!

Construction contracts are performed in Alaska.

Why then should it be necessary to "innovate" construction contracting? More realistically, then, the real problem may be in other contracting areas, i.e., equipment and materials purchases, or contracts for services other than construction.

PREFERENCE IS NO ANSWER - THE REAL PROBLEM NEEDS A VALID SOLUTION.

PARTIAL PROBLEM DEFINITION AND SOLUTION CAN BE ACHIEVED AS FOLLOWS:

It is unlikely that any consistent success of outside firms in competition for State contracts to the exclusion of Alaska firms can be explained as differences in costs alone. Logically, the differences in costs for an Alaska contractor to perform a construction contract versus the costs incurred by an outside firm to do the same project in Alaska are probably minimal, i.e.:

- All construction contracts over \$2,000 require that labor shall be paid no less than statutorily prescribed wage rates. (This is also true for federal contracts.) Therefore, labor costs should be virtually the same for both Alaskan and outside firms.

- Materials which are incorporated in the work if not already in Alaska, must be purchased and shipped to Alaska. This is true for both Alaskan and outside firms, and therefore material costs should be virtually the same for both.

- Alaska firms generally hire local labor, thus no transportation of personnel from outside Alaska is required. This should lower costs for Alaska firms. Also, even if only outside firm managers or supervisors are transported here from outside, and their salaries are lower than Alaska's norm, they also must be housed in Alaska during the job, which should increase the cost for the outside firm.

- Equipment required for performance of a job is normally already in Alaska if used by Alaska firms, but an outside firm will either have to obtain/rent and operate equipment on the Alaska economy or ship in equipment from outside. Therefore, Alaska firms seem not to be at a disadvantage.

- Bonding and insurance requirements are the same for outside and Alaska contractors.

- Business management by long distance usually costs more than local management presence.

- If contract provisions regarding wage rates, insurance, supervision, proper handling of changes, and other aspects of job performance are properly administered, there should not be any substantial differences in COSTS incurred by either local or outside contractors.

So, where are the differences? Apparently, there is some laxity or advantage which is enjoyed by the outsiders which is not afforded the locals. If labor laws and other contract requirements are upheld and enforced by the State's Procurement and Contracting Officers then Alaska firms should be able to bid on a par with outsiders. They do it in federal work (Many years of personal experience of the undersigned has shown that wage laws and other provisions which are actively and effectively enforced by the fed promote fairness in competition), so why can't we do it with State

work? Bidder awareness and assurance of agency dedication to fair, effective administration of State contracts will promote trust in the fairness and increased opportunity of the competitive process.

If the State wishes to use "incentive" type contracts, the law already provides for that, and new "innovative" methods are not needed. AS 36.30.370 currently permits "any type of contract" except cost-plus-percent-of-cost. Properly designed incentive type contracts are fully acceptable under both federal and State contracting law. The contract type used will not necessarily cause change in the number of contract awards to Alaska firms. BUT, if other more complex types of contract are needed, i.e., incentive fee, performance incentive, etc., etc., then these should be competently developed and used by the procurement and contracting professionals who are engaged in spending the State's money, within existing law.

Use of the more complex contracts, i.e., cost type, incentive type, etc., usually is not a good idea because of the excessive amount of administrative effort required for both contractors and agencies. Contracts obviously are lacking in proper administration and enforcement now, and to further complicate the already weak function now would simply result in more waste. Incentive type contracts are much more costly to administer than the more simple fixed price type of contract. Also, the most preferable type of contract for purposes of transferring risk to the contractor, instead of to the State, is the firm fixed price type of contract. Variations from the firm fixed price type of contract routinely lessen the risk on the Contractor and increase the risk on the contracting agency.

Not to despair! It is possible to beef up the force, and make effective contract administration by contracting professionals a way of life. Actions which can be taken to produce better performance, professionalism, and excellence in State contracting include:

- Emphasis on pertinent training and development,
- Better definition of qualifications and duties, and
- Improved and more comprehensive regulations and procedures,

All of the above will go further toward fostering Alaska's economy than any amendment one could make in the State Procurement Code.

AS 36.30 is good, and good law should neither be cluttered nor watered down by addition of any unnecessary or overly indulgent provisions.

(Continued Next Page)

Section 1. FINDINGS, PURPOSE, AND INTENT

This section gives insight into the background (problems) which the enactment of CSSB 212(FIN)AM is purportedly intended to resolve.

However,

(1) If Section 8 is enacted as proposed, it will not help "develop and maintain a strong, stable, and prosperous economy based on private investment" as stated in subsection (a)(1). The State's contribution of "bonus" money to contractors is not by any stretch of the imagination, "private investment." (See details under Section 8.)

(2) If Section 8 is enacted as proposed, the intended "strong and healthy free enterprise system and opportunity for Alaskan businesses to have free entry into the business market and to grow and expand," will not be fulfilled. Legalization of "low-balling" of bids in order to "buy-in" to State contracts (as permitted by Section 8) will work in direct opposition to the admitted benefits of the free enterprise system. In effect, Section 8 will dampen ability of Alaskan business by snatching away opportunity from those businesses who are not willing or not in a position to finance the added amount of the proffered bonus money during the progress of a contract from beginning to end. This concept is hardly "free entry" into the business market. Depending upon the rate of interest for financing a job, a contractor could even spend more than the amount of the bonus (5% ?) which may be dangled as a carrot under "innovative" methods, but payable only after-the-fact. The after-the-fact bonus won't help a contractor to "grow and expand" if the cost of money during the job erodes the bonus to be paid at the end. (See details under Section 8.)

(3) Certainly, maximum use of Alaska's products "strengthens, stabilizes, and diversifies Alaska's economy. There should never be any question as to the true economic value of the State's use of products of Alaska origin. The real problem is not really economic value or diversity, it is lack of product knowledge and/or zeal on the part of those who either specify, purchase, or issue contracts. If those who make the procurement/contracting decisions had more incentive to make full use of Alaska-origin products, i.e., reward if successful, and/or reflection in negative performance evaluations if unsuccessful, then the true economic value of the State's acquisitions would, no doubt, quickly prove to be more beneficial to Alaska's economy. (Also see comments under Section 8.)

(4) No matter whether "governmental agencies purchase and use "out-of-state products or services, money will continue to flow outside of Alaska unless all products required are manufactured in Alaska. As for out-of-state services, there must be more zeal on the part of those who either specify, purchase, or issue contracts to develop and utilize in-state sources. If the incentive to issue service contracts to Alaska firms were increased as discussed under (3) above, there would be much more utilization of local business for services.

(5) Bid documents for State contracts should always specify "Alaskan products" especially when "comparable" to "out-of-state goods" which would be purchased instead. (Also see discussion under (3) above.) It is doubtful that the "loss of revenue in the state" is any greater than the excess cost of purchasing goods for which the price may have been increased by the amount of any bonus or preference afforded to Alaska bidders. (5? ?) When true comparability exists between in-state and out-of-state products, there is actual financial benefit to the State from procurement of the lowest priced item. If there is desire and capacity in the State by a business to compete as a true production base for manufactured products, then the market will evolve to the benefit of the local source. However, in most cases there is not a base of production in Alaska from which to acquire manufactured products, i.e., manufacturing is not a predominant trend in Alaska industry. Until it is, only the markup (if any) on manufactured items will benefit Alaska businesses who sell to the State.

(6) Reasons underlying the "frequently awarded" contracts "to out-of-state firms, even though Alaska suppliers . . . are more accessible and responsive" may be more than just the most obvious reasons. At first blush, it may seem that those who specify, purchase, or contract for items and services are simply not doing their jobs by failure to utilize Alaska products and provide ample opportunity to Alaska businesses. The reasons may go much deeper than that, and there may be a darker side to the flow of business to outside firms. As previously discussed, it matters not where the products are purchased, if goods are not manufactured in Alaska, money will flow outside. However, in acquiring goods which are not of Alaska origin, Alaska businesses still realize their own markup, above costs of getting the goods to Alaska. The difference in price then is merely the amount of markup, because an Alaska business may avail itself of good purchasing practices (lower cost) by shopping the market effectively to hold down costs, including shipping. The cost of getting the goods to Alaska is going to be an element of price whether purchase is from an outside source or from an Alaskan business. Likely, the flow of contracts to outside businesses for the State's construction contracts stems from lack of enforcement of labor laws, subcontracting provisions, and/or other statutory compliance requirements present in the State's contracts. There is no question that local contractors are preferable for the State's business, but innovative contracting as proposed by Section 8 is not the answer. (See details under Section 8.)

(7) Yes, Alaska MUST "examine its purchasing practices in order to ensure that state agencies support Alaskan businesses by making every reasonable effort to identify available Alaskan goods and services and to foster bidding by local businesses and labor forces." However, the State must first look inside its operations to assure top quality in the administration of its contracting and procurement programs. External fixes, like paying contractors to bid low, to entice them to do business with the State to their own financial detriment, and perpetuation of preferences, etc., will not yield the desired result. Fixing the in-house capacity, getting the SERIOUS attention of those engaged in SPENDING the State's money is the real answer. Refer to the discussion in (3) above. (Also see details under Section 8.)

(8) Once the State (or the Legislature) has the full SERIOUS attention of those engaged in SPENDING the State's money, i.e.,

They (procurement and contracting officers) must either zealously pursue and fulfill legislative intent, serve the best interests of the State, and uphold the public trust in implementation and execution of the provisions of AS 36.30 in order to receive incentive awards for success in their jobs,

OR

Their failure will be reflected in periodic performance evaluation.

Section 2. AS 36.30.130 (a) is amended . . .

Subsection (3)(B) of amended AS 36.30.130(a) should be deleted.

Under subsections (3)(A) and (B) regarding mailing of notices "to all active prospective contractors on the appropriate list maintained under AS 36.30.050" but only "on request" to outsiders, the question needs to be asked:

Have prospective contractors
"requested" the mailing if they paid a
fee, and asked to be on the mailing
list for specific items or services?

The answer probably is a resounding "Yes!"

Whatever the intent, if competition is restricted in the way proposed by this section, i.e., issuing solicitations only within the State, before and separately from soliciting outside, it will constructively be anti-competitive, and will slow down (double the time required for) processing a State procurement and/or contract from solicitation to award. (The period from user request to award of a contract/purchase order in professional procurement vernacular is normally referred to as procurement "lead-time".)

SUGGESTION FOR IMPROVEMENT IN PUBLIC NOTICE REQUIREMENTS:

It could greatly benefit Alaskan businesses, and give them more incentive if the law prescribed public announcement (press releases) of bid awards as a result of competitive procurement methods. Procurement Officers who read the news would become more aware of the successful bidders for all types of State contracts. Public awareness would increase pressure on agencies to do business in Alaska. Such notices should be by press release to local newspapers in the State, and should contain the information which is not unlike that which the Legislature will require in reports submitted under AS 36.30.540 (6) as amended by Section 4 below.

When two rounds of competition (first inside the State, then another outside) are required for award of a State contract, it will more likely increase the urgency of need. Such delay in the process will likely result in more frequent resort to emergency authority under AS 36.30.310, thus reducing competition and further eroding opportunity for Alaska business.

COST OR PRICING DATA DISCUSSION

AS 36.30.040 (b) (11) and (12) require the adoption of regulations pertaining to "(11) providing for conducting price analysis; (12) use of payment and performance bonds . . ."

Cost or pricing data as required by AS 36.30.400, in the case of a change order or modification to a contract is impossible to certify as accurate, if the price as submitted does not include all costs, or is not truly reflective of the actual or ultimate known price of the contract. Whenever a contract is to be awarded, such as a construction contract, which contains provisions for change orders and/or price adjustments of any kind, it is known going in, that there will be non-competitive negotiations in the event that such changes or adjustments become necessary during the performance of the contract. Since this is the case, in satisfaction of the statutory requirement of AS 36.30.400, it is only prudent to obtain cost and pricing data certified as accurate, complete, and current as of date of the contract award. Without such cost and pricing data, it is impossible to determine at a later date the actual extent and exactly which elements of cost are affected by changes or adjustments. If changes and adjustments are made in absence of overall cost and pricing data for the entire contract, it is highly probable that increases in contract amount will be too generous and decreases will be too small to assure the best and fairest deal is obtained for the State.

Change orders and price adjustments are non-competitive, i.e., these actions are not based on adequate price competition, even though the basic contract was. Unless procurement officers are obtaining some form of certified cost and pricing data from successful contractors at time of award, if the contract contains provisions for future change orders or price adjustments they have not complied with the statutory mandate to obtain such data.

There is no purpose to be served by getting separate and distinct cost and pricing data only for and at the time of each individual change order and/or price adjustment. Standing alone, in isolation, there is no credence to be gained from a contractor's proposed prices (or cost breakdowns) for only the change or adjustment unless it is possible to also know the amounts included in the original contract price of the work to be changed or the original cost of the amount(s) related to any authorized adjustment in price.

It is sheer folly to attempt to evaluate the reasonableness of proposed price changes, whether up or down, or price adjustments due to changed conditions or any other authorized reason, without first knowing how much the contractor had in the job for that element of the work up front. In order to assure that the cost elements are not out of balance, it is appropriate to get that information at the beginning of the job, before the need for identification of which elements of the job will be affected by the pricing exercise to finalize a change order or adjustment.

Appropriate public announcement of contract awards must include:

The name and address of the successful bidder.

Date of award.

Amount of the contract.

Description of goods, services, construction.

Statement of basis for award, i.e., "As a result of competitive bids solicited under Invitation for Bids (IFB) number _____."

Number of bids/offers solicited.

Number of bids/offers received.

Section 3. AS 36.30.130(a) is repealed and reenacted . . .

This section is not needed if Section 2 is revised as suggested above. This Section 3 will generate confusion due to its delayed effective date. Section 3 should be deleted in its entirety. If a time limit is needed for Section 2, it should be put into Section 2, i.e., "Subsections (3)(A) and (3)(B) shall expire four years after the effective date of this Act" or better yet, state a certain date, i.e., " . . . shall expire September 1, 1998."

Section 4. AS 36.30.540 is amended . . .

Proposed reporting requirements are not excessive, and should keep the legislature well-informed as to State performance of its procurement function. In particular, if subsection (6) data which would provide statistical information, is accumulated as suggested under Section 2 above re: public announcement of contract awards, it will provide a constant flow of information which could be consolidated for reporting purposes annually, or as desired.

It may be a good idea in future, particularly with the advent of annual instead of biennial reports, to encourage agencies to develop techniques for validating their data. Some prescription of management reports requirements may be appropriate for inclusion in agency regulations.

Professional analysis of reports to the Legislature would greatly enhance their usefulness, and provide insight to potential or existing problems and trends.

Section 5, 6, 7. (Repeals and amendments: AS 44.99 Production, Disclosures, etc., of State Publications)

The changes made in these sections are good correction of current law regarding State Publications, and should go a long way toward avoidance of State competition with the private sector. Alaskan businesses are fully capable and deserving of receiving contracts to perform printing services.

Section 8. (See Page 1 of Review Comments)

Sections 9 and 10. Effective dates

Section 3 should be deleted, and therefore Section 10 will not be needed. Delay of four (4) years for an effective date will create extreme confusion.