

HB

222

FISCAL NOTE

STATE OF ALASKA

BILL NO. HB222

1995 LEGISLATIVE SESSION

Revision Date: March 31, 1995

Department Affected: Education

Title: "An Act allowing a local bidder preference in certain contracts for school construction."

BRU: School Finance

Sponsor: Representative Vezey

Component: Educational Facilities Support

Requester: Representative Vezey

COMPONENT SERIAL NO. 1957

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE FUND SOURCE:						
-----------------------------	--	--	--	--	--	--

FUNDING:

(Thousands of Dollars)

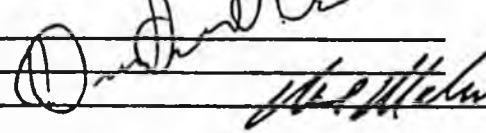
1002 Federal Receipts						
1003 GF Match						
1004 GF	-0-	-0-	-0-	-0-	-0-	-0-
1005 GF/Program Receipts						
1006 GF/MHTA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY95) impact: \$ -0-

ANALYSIS: (Attach a separate page if necessary.) HB222 amends AS 14.11.017 adding a new subsection that allows a municipality that is school district or a regional educational attendance area to include an Alaska bidder preference provision in the grant agreement when determining the award of a contract. HB222 does not have a fiscal impact on Educational Facilities Support. This legislation may have the effect of increasing the cost of school construction projects by the percentage of bidder preference provided. The actual fiscal impact cannot be determined.

Prepared by: Duane Guiley Phone: 465-8679
 Division: School Finance Date: March 31, 1995
 Approved by Commissioner:  Shirley J. Holloway, Ph.D.
 Agency: Education Date: March 31, 1995

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, Alaska 99801-1182
(907) 465-3718

House Majority Leader

SPONSOR STATEMENT

I introduced House Bill 222 because the Alaska Statutes do not mandate a local bidder preference in school district procurements, including school construction. The money used for school construction comes from the state capital budget and a local contribution.

Alaska statutes do not prohibit a local bidder preference. However, the bureaucrats have taken it upon themselves write regulations barring local bidder preference.

This statute would bar the bureaucrats from ever doing this particular abuse of power again.

SPONSOR STATEMENT

Legislative Research Agency

Alaska State Legislature




130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Phone: (907) 465-3991
Fax: (907) 463-3351

March 17, 1995

MEMORANDUM

TO: Representative Al Vezey

FROM: Gordon S. Harrison, Director 

RE: Preferences Granted to Alaska Businesses and Products in State Procurement Code
Research Request 95.163

You asked us to identify the preferences granted to Alaska resident businesses and Alaska products in the state procurement code. The preferences described briefly below were found by searching the statutes for references to "procurement preference" and "bidder preference."

Alaska Businesses

There are two types of resident business bidders' preferences: a 5 percent preference for Alaska bidders, and an unspecified preference for Alaska shipyards. Both apply to state agencies.

General 5 Percent Alaska Bidder Preference

State agencies covered by the state procurement code (AS 36.30), when obtaining goods or services through competitive bidding, must grant a 5 percent preference to an "Alaska bidder." An "Alaska bidder" is a person who holds an Alaska business license and has had a place of business in the state for at least six months (AS 36.30.170(b)). A number of specific types of procurements are explicitly exempt from this bidder preference and other provisions of the procurement code (AS 36.30.385).

Representative Vezey
March 17, 1995
Page 2

State Shipyards

State agencies that operate marine vessels must have their ship maintenance and repair work done in a shipyard within the state, without competitive bidding, unless the agency determines that the proposed cost of the work is unreasonable (AS 36.90.050).

Alaska Products

There is a general preference given for Alaska products (including recycled Alaska products) in procurements by state agencies. In addition, there are specific preferences granted to timber, agriculture, and fisheries products that apply to procurements by municipalities and school districts as well as state agencies. Municipalities and school districts (excluding REAAs) must also grant a preference for recycled Alaska products.

Alaska Products Generally

"Alaska products [defined as at least 25 percent manufactured or produced in Alaska] shall be used whenever practicable in procurements for an agency" (AS 36.30.324).

Alaska products receive a preference of 3, 5, or 7 percent, depending upon the percentage of their manufacture or production that occurs in the state, as follows:

- Class I product--from 25 percent to 50 percent--3 percent preference
- Class II product--from 50 percent to 75 percent--5 percent preference
- Class III product--from 75 to 100 percent--7 percent preference

These preferences apply only to the procurement of state agencies, subject to the exceptions enumerated in AS 30.36.850.

Forest Products

State agencies must grant a preference of 7 percent to Alaska timber products (AS 36.30.322).

Alaska timber products must be used in all projects financed by state money "whenever practicable" (AS 30.15.010). The term "financed by state money" includes "state reimbursement to school districts for school or related construction, foundation funding for education, municipal assistance,

Representative Vezey

March 17, 1995

Page 3

revenue sharing, and state funds for capital projects" (AS 36.15.050(g)(3)). A bid preference amount is not specified.

Agriculture and Fisheries Products

State agencies, school districts (including REAAs), and municipalities must grant a 7 percent preference for local agriculture and fisheries products (AS 36.15.050 and AS 29.71.040).

Recycled Alaska Products

All recycled products receive a 5 percent preference from state agencies, whether they are recycled in Alaska or not (AS 36.30.339). In addition, products recycled in Alaska receive a preference under the same provisions that grant a sliding scale of preference to Alaska products generally in AS 36.30.328 and 332. Municipalities and school districts (excluding REAAs) must extend a similar preference to recycled Alaska products (AS 29.71.050 and AS 14.03.085). The law is ambiguous about the value of the preference to be given recycled Alaska products. Regulations have not been adopted by the commissioner of the Department of Commerce and Economic Development to clarify the value of the preference due Alaska recycled products (see AS 36.30.228).

The procurement code and other statutes provide for other miscellaneous preferences, such as a preference for the use of disabled workers, but these are not based on Alaska residency and are omitted from this memorandum. Also, this memorandum does not deal with the matter of resident employment preferences.

I hope this is the information you were looking for. If you have questions, or would like additional detail on these procurement preferences, please call.

4 AAC 31.080. CONSTRUCTION AND ACQUISITION OF PUBLIC SCHOOL FACILITIES. (a) The construction of a public

educational facility by a school district with money provided through a grant under AS 14.11.011 — 14.11.020, or the construction of a public educational facility which is eligible for reimbursement under AS 14.11.100, must be performed under a written contract awarded on the basis of competitive sealed bids. However, if the estimated cost of the project is less than \$100,000 or if it is in the best interests of the state, the school district may, with the prior approval of the commissioner, construct the educational facility itself using its own employees.

(b) The school district shall provide notice of its solicitation of bids by advertisement at least three times in the 21 days before the bid opening in a newspaper of general circulation, mailing its solicitation of bids to contractors on any bidder list it maintains, and any other means reasonably calculated to provide notice to prospective bidders.

(c) The school district shall provide for the administrative review of a complaint filed by an aggrieved bidder which allows the bidder to file a bid protest, within 10 days after notice is provided of intent to award the contract, requesting a hearing for a determination and award of the contract in accordance with the law. The school district shall provide notice to all interested parties of the filing of the bid protest.

(d) The award of a contract for the construction of an educational facility under this section must be to the lowest responsible bidder without regard to municipal ordinances or school board resolutions granting a preference to local bidders.

(e) The department will, in its discretion, deny or limit its participation in the costs of school construction for a project eligible for reimbursement under AS 14.11.100 if the school district does not comply with the requirements of this section. A school district that enters into a construction contract for a project authorized for construction under AS 14.11.020 which is awarded without competitive bidding under this section, will not receive money under its grant agreement for the construction phase of the project.

(f) Nothing in this section precludes a school district from using design/build contracting methodology, if the department concurs in advance of contracting, the proposed contract is in the state's best interest, and the school district concurs in any directives the department makes concerning the award of the contract.

(g) A school district may, with prior approval by the department, purchase an existing facility for use as an education-related facility if

- (1) a cost saving over new construction is achieved;
- (2) the purchase price is arrived at through arm's-length negotiation and is supported by a real estate appraisal that meets accepted standards; and
- (3) the purchase is in the best interests of the state and the school district. (Eff. 12/2/83, Register 88; am 8/31/90, Register 115)

Sec. 14.11.017. Grant conditions. (a) The department shall require in the grant agreement that a municipality that is a school district or a regional educational attendance area

(1) agree to construction of a facility of appropriate size and use that meets criteria adopted by the department if the grant is for school construction:

(2) provide reasonable assurance by a means acceptable to the department, that the cost of the project will be uniform with the costs of the most current construction or major maintenance projects, as appropriate, in the area:

(3) agree to limit equipment purchases to that required for the approved project plan submitted under (5) of this subsection and account for all equipment purchased for the project under a fixed asset inventory system approved by the department:

(4) submit project budgets for department approval and agree that the grant amount may, at the discretion of the department, be reduced or increased by amounts equal to the amounts by which contracts vary from the budget amounts approved by the department: and

(5) submit to the department for approval, before award of the contract, a plan for the project that includes educational specifications, final drawings, and contract documents.

(b) The cost of any school construction or major maintenance activity encompassed by the definition of "costs of school construction" under AS 14.11.135 is payable under a grant awarded from the appropriate fund under AS 14.11.015 without regard to whether the costs were incurred before the

(1) award of the grant;

(2) approval of the grant application by the board: or

(3) effective date of an appropriation to the appropriate grant fund for the year in which the grant is funded.

(c) The department, by regulation, may establish the time period in which activities described in (b) of this section must have occurred in order to be paid under a grant. (§ 6 ch 5 SLA 1990; am §§ 11, 12 ch 78 SLA 1993)

Effect of amendments. — The 1993 amendment, effective June 26, 1993, added "if the grant is for school construction" in paragraph (a)(1); inserted "or major maintenance" and references to "appropriate" in paragraph (a)(2) and subsection (b); substituted "project" or "appropriate" for "school construction" throughout; inserted "submitted under (5) of this subsection" in paragraph (a)(3); deleted "construction" preceding the first "contract" and "drawings" in paragraph

(a)(5); added subsection (c); and made stylistic changes.

Editor's notes. — Section 23(a), ch. 78, SLA 1993 provides that the amendment of (a) and (b) by § 11, ch. 78, SLA 1993 does not apply to grants awarded under AS 14.11.005 — 14.11.019 after June 30, 1993.

Section 23(b), ch. 78, SLA 1993 provides that the addition of (c) by § 12, ch. 78, SLA 1993 does not apply to capital improvement grants included in appropriations for fiscal year 1994.

Sec. 36.30.170. Contract award after bids. (a) Except as provided in (b) — (h) of this section, the procurement officer shall award a contract based on the solicited bids with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid.

(b) The procurement officer shall award a contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent, an Alaska products preference as described in AS 36.30.322 — 36.30.338, and a recycled products preference under AS 36.30.339 have been applied. In this subsection, "Alaska bidder" means a person who

(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;

(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;

(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 all partners are residents of the state; and

(5) if a joint venture, is composed entirely of ventures that qualify under (1) — (4) of this subsection.

(c) Except as otherwise provided under (e) or (f) of this section, if a bidder qualifies under (b) of this section as an Alaska bidder, is offering services through an employment program, and is the lowest responsible and responsive bidder with a bid that is not more than 15 percent higher than the lowest bid, the procurement officer shall award the contract to that bidder. This subsection does not give a bidder who would otherwise qualify for a preference under this subsection a preference over another bidder who would otherwise qualify for a preference under this subsection.

(d) The procurement officer shall award an insurance-related contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent. In this subsection, "Alaska bidder" means a person who meets the criteria set out in (b)(1) — (5) of this section and who is an Alaska domestic insurer.

(e) If a bidder qualifies under (b) of this section as an Alaska bidder, is a sole proprietorship owned by an individual who is a person with a disability, and is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid, the procurement officer shall award the contract to that bidder. This subsection does not give a bidder who would otherwise qualify for a preference under this subsection a preference over another bidder who

would otherwise qualify for a preference under this subsection or (f) of this section.

(f) If a bidder qualifies under (b) of this section as an Alaska bidder, if 50 percent or more of the bidder's employees at the time the bid is submitted are persons with a disability, and if the bidder is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid, the procurement officer shall award the contract to that bidder. The contract must contain a promise by the bidder that the percentage of the bidder's employees who are persons with a disability will remain at 50 percent or more during the contract term. This subsection does not give a bidder who would otherwise qualify for a preference under this subsection a preference over another bidder who would otherwise qualify for a preference under this subsection or (e) of this section.

(g) The division of vocational rehabilitation in the Department of Education shall add to its current list of qualified employment programs a list of individuals who qualify as persons with a disability under (e) of this section and of persons who qualify under (f) of this section as employers with 50 percent or more of their employees being persons with disabilities. A person must be on this list at the time the bid is opened in order to qualify for a preference under (e) or (f) of this section.

(h) A preference under (c), (e), or (f) of this section is in addition to any other preference for which the bidder qualifies, including the preference under (b) of this section; however, a bidder may not receive a preference under both (e) and (f) of this subsection for the same contract.

(i) This section applies to all insurance contracts involving state money. In this subsection, "state money" includes state grants and reimbursement to municipalities, school districts, and other entities.

(j) In this section, "person with a disability" means an individual (1) who has a severe physical or mental disability that seriously limits one or more functional capacities in terms of employability; in this paragraph, "functional capacities" means mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills;

(2) whose physical or mental disability

(A) results from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders, paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, or end stage renal disease; in this subparagraph, "neurological disorders" include stroke and epilepsy; or

(B) is a disability or combination of disabilities that are not identified in (A) of this paragraph and that are determined on the basis of an evaluation of rehabilitation potential to cause substantial functional limitation comparable to a disability identified in (A) of this paragraph; and

(3) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time. (§ 2 ch 106 SLA 1986; am §§ 7 — 9 ch 65 SLA 1987; am §§ 6, 18 ch 102 SLA 1989; am § 3 ch 175 SLA 1990; am §§ 1 — 3 ch 114 SLA 1992)

Revisor's notes. — Subsection (i) was formerly AS 36.30.350(e). Renumbered in 1992. Subsection (j) enacted as (i). Relettered in 1992.

Effect of amendments. — The 1989 amendment, effective September 10, 1989, deleted "as defined under AS 36.30.100(c)" following "employment program" in subsection (c); and divided subsection (i) (formerly AS 36.30.350(e)) into two sentences, substituting "In this subsection, 'state money' includes" for "Including" at the beginning of the present second sentence.

The 1990 amendment, in subsection (b), inserted "and a recycled products preference under AS 36.30.339" in the first sentence in the introductory paragraph and

made a series of minor stylistic changes throughout the subsection.

The 1992 amendment, effective June 23, 1992, made a subsection reference substitution in subsection (a); rewrote subsection (c); and added subsections (e)-(i).

Editor's notes. — Section 5, ch. 114, SLA 1992 provides that the 1992 amendments to this section apply "to procurements that begin on or after June 23, 1992."

Opinions of attorney general. — An agent will be considered the bidder only if the agent is in fact a principal with the power to convey a leasehold interest in its own right. Otherwise, he is not entitled to the bidder preference. July 1, 1989 Op. Att'y Gen.

NOTES TO DECISIONS

Quoted in *State v. Johnson*, 779 P.2d 778 (Alaska 1989).

Collateral references. — Validity, construction, and effect of requirement under state statute or local ordinance giv-

ing local or locally qualified contractors a percentage preference in determining lowest bid. 39 ALR4th 587.

Sec. 36.30.180. Purpose. The legislature finds that there exists in the state continuing high unemployment, underutilization of resident construction and supply firms, and high costs unfavorable to the welfare of Alaskans and to the economic health of the state. The purpose of bidder preference for resident firms when the state acts as a market participant is to encourage local industry, strengthen and stabilize the economy, decrease unemployment, and strengthen the tax and revenue base of the state. (§ 1 ch 70 SLA 1985)



Alaska State Legislature
 House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

PLEASE!
 Fill IN ALL
 AREAS OF THIS
 FORM!

DATE: APRIL 4, 1994

PLACE: Capitol Room 106

SUBJECT OF MEETING:
 HB 222: SCHOOL CONSTRUCTION
 ALASKA BIDDER
 PREFERENCE

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Duane Guiley	DOE	501 W 10th JUNIOR	975			<input checked="" type="radio"/> Y	<input type="radio"/> N	HB222
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	