

**HB**

**225**



# Alaska State Legislature



**Chairman**  
State Affairs Committee

**Member**  
Judiciary Committee  
Labor & Commerce Committee  
Health & Social Services Committee  
Military & Veterans Affairs Committee

**Finance Subcommittees**  
Labor and Workforce Development  
Military and Veterans' Affairs  
Public Safety

**Session:**  
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*A Communication From*  
**REPRESENTATIVE BOB LYNN**  
**District 31 Anchorage**

**E-Mail:** Representative\_Bob\_Lynn@legis.state.ak.us  
**"Bob Lynn's Alaska Blog"** RepBobLynnBlog.com

## FAX

To: Legal Services

Fax #: 465-2029

From: Nancy Manly 465-2794  
Alaska State Capitol, room 104  
Juneau, AK 99801-1182

# of Pages (including cover): 1

Phone: 907-465-4931  
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Re HB 225 26-LS0791\R

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4/14/09

House State Affairs passed out HB <sup>225</sup>255 Version R amended. Please draft a final CS to include the conceptual amendment:

Conceptual Amendment #1 (Seaton)

Require two successive annual reports to legislature, after the effective date, on Section 14 and Section 28 of the bill. bi

## **House Bill 225 Sponsor Statement**

"An Act relating to the State Procurement Code..."

House Bill 225 makes numerous changes to the state's procurement code. Collectively, these changes streamline the procurement code to ensure consistent application of the law, and results in a more understandable, efficient procurement process. These changes are needed to prevent failed procurements and provide modern procurement tools and techniques to the State's workforce.

Streamlining is accomplished in part by simplifying the application of our many preferences, which is currently complex and confusing for our employees and vendors. The bill makes application of the preferences uniform – currently, preferences do not contain the same language so they must be applied differently. The bill eliminates the Alaska Offeror's preference and Employers of people with disabilities preference. The Offeror's preference is only contained in regulations, has no basis in statute, and limits competition for our RFPs. The employers of people with disabilities preference is a seldom used preference that is very difficult for the Division of Vocational rehabilitation to administer. As of today there are only two vendors receiving this preference, both of which are in the business of leasing office space to the state. This bill also eliminates bidder preferences for our office lease procurements and contains an Alaska Veteran preference, which mirrors HB 24.

Another problem we have in state procurement is solved by clarifying the Alaska business license requirements. Under the current law, a high percentage of offers on high dollar, complex projects are rejected on a technicality. The bill also modifies protest procedures to reduce frivolous protests, and affords us greater flexibility to renegotiate contracts.

HB 225 modernizes our Procurement Code and provides tools and techniques to our employees that have proven cost effective in the private sector. For example, the bill allows for electronic receipt of bids, and for successive rounds of negotiations which has been a very successful technique in other states and the private sector. The bill also eliminates the requirement to maintain outdated vendor lists in a time when commerce is moving online.

The dollar threshold for informal or small procurements is also increased, which will simplify many purchases that are now procured via time consuming and more complex formal procurement rules.

It has been many years since our procurement code has been modernized. These changes will position us to become more efficient and cost effective in our purchasing and contracting.

I urge your support on this piece of legislation.

## **HB 225**

### **Sectional Analysis**

**\* Section 1:** Amends AS 24.55.275

Updates a citation to reflect the renumbering of a preference.

**\* Section 2:** Amends AS 36.15.050(a)

Amends the local agricultural preference to grant a seven percent cost preference to the qualifying bid rather than to the low bid, making this preference consistent with other procurement preferences.

**\* Section 3:** Amends AS 36.15.050(b)

Amends the local fisheries preference to grant a seven percent cost preference to the qualifying bid rather than to the low bid, making this preference consistent with other procurement preferences.

**\* Section 4:** Amends AS 36.15.050 by adding a new subsection (h)

Amends the local agricultural and fisheries preferences to disallow a bidder from being granted both a local agricultural/fisheries preference and an Alaska product preference under another statute.

**\* Section 5:** Amends AS 36.30.015(e)

Updates a citation to reflect the renumbering of a preference.

**\* Section 6:** Amends AS 36.30.015(f)

Adds the Alaska Industrial Development Authority and the Alaska Energy Authority to a list of agencies exempt from the procurement code and updates a citation to reflect the renumbering of a preference.

**\* Section 7:** Amends AS 36.30.015(h)

Updates a citation to reflect the renumbering of a preference.

**\* Section 8:** Amends AS 36.30.020

Updates a citation to reflect the renumbering of a preference.

**\* Section 9:** Amends AS 36.30.030

Updates a citation to reflect the renumbering of a preference.

**\* Section 10:** Amends AS 36.30.080(f)

Increases the threshold limit for small procurements of leased space from 3,000 square feet to 7,000 square feet, consistent with section 24.

**\* Section 11:** Amends AS 36.30.110(b)

Clarifies Alaska business license requirements for competitive sealed bids and qualification for the Alaska bidder preference. Change would require bidders to show proof of their Alaska Business License prior to award, but would require the license at the time of bid submission in order to qualify for the Alaska bidder preference.

**\* Section 12:** Amends AS 36.30.130(a)

Eliminates reference to a procurement officer's use of vendor lists, reflecting the repeal of the statute establishing the vendor lists.

**\* Section 13:** Amends AS 36.30.170

Updates a citation to reflect the renumbering of the Alaska bidder preference.

**\* Section 14:** Amends AS 36.30 by adding a new section 36.30.195

Adds a new section to the procurement code that allows for multi-step revised sealed bidding, a new process that will allow a procurement officer to use successive steps of sealed bidding to obtain the best and final bid price for purposes of award.

**\* Section 15:** Amends AS 36.30.200(b)

Minor modification to language regarding construction procurements.

**\* Section 16:** Amends AS 36.30.210(b)

Clarifies construction contractor registration requirements, now explicitly requiring registration before award of a contract.

**\* Section 17:** Amends AS 36.30.210(e)

Clarifies Alaska business license requirements for competitive sealed proposals and qualification for the Alaska bidder preference using language consistent with that used in Section 11.

**\* Section 18:** Amends AS 36.30 by adding a new section 36.30.245

Adds a new section to the procurement code that allows for multi-step negotiations. This has essentially the same effect as Section 14, but it applies to the competitive sealed proposal process. A procurement officer will be able to gain the best and final proposal for purposes of award through successive steps of negotiation and proposal submission.

**\* Section 19:** Amends AS 36.30.250(a)

Updates a citation to reflect the renumbering of a preference.

**\* Section 20:** Amends AS 36.30 by adding a new section 36.30.255

Directs procurement officers to consider only the preferences listed in statute when applying preferences under a competitive sealed proposal process, and instructs them to apply the preferences only to the price portion of a proposal. This effectively eliminates the Alaska offeror's preference contained in regulation at 2 AAC 12.260(e), and which has no basis in statute.

**\* Section 21:** Amends AS 36.30 by adding a new section 36.30.290

Adds a new section allowing an agency to accept electronic bids and proposals.

**\* Section 22:** Amends AS 36.30.308(b)

Revises the approval process for innovative procurements to require review by the chief procurement officer or commissioner of the department of transportation and public facilities rather than the Department of Law, consistent with other alternate procurement processes.

**\* Section 23:** Amends AS 36.30.310

Revises the statute relating to emergency procurements, clarifying that the commissioner of administration shall adopt regulations defining emergency conditions and who shall be responsible for written determinations of the basis for an emergency procurement.

**\* Section 24:** Amends AS 36.30.320(a)

Increases the threshold under which a state agency may use informal procurement process to \$100,000 for goods and professional services, to \$200,000 for construction, and 7,000 square feet for lease of space.

**\* Section 25:** Amends AS 36.30 by adding a new section 36.30.321

Adds a new section consolidating the Alaska bidder and related preferences formerly at AS 36.30.170(b). This section also simplifies the qualification for the disability and employment program preferences, eliminates the seldom used employers of people with disabilities preference, and establishes the Alaska veteran preference and its qualifications.

**\* Section 26:** Amends AS 36.30.322(a)

Modifies the use of local forest products statute to grant a seven percent cost preference to the qualifying bid rather than to the low bid, making this preference consistent with other preferences.

**\* Section 27:** Amends AS 36.30.336 by repealing and reenacting

Clarifies which preferences are cumulative and which may not be combined. (example: bidders can not claim both an employment program preference and disabled bidder preference)

**\* Section 28:** Amends AS 36.30 by adding a new section 36.30.364

Adds a new section allowing the chief procurement officer to renegotiate a contract without an additional competitive process, subject to several conditions ensuring that the renegotiated contract is at least as favorable to the state as the original contract and that the additional period of performance does not exceed five years.

**\* Section 29:** Amends AS 36.30.560

Clarifies the timeframe within which a protest must be filed.

**\* Section 30:** Amends AS 36.30.565(b)

Clarifies the meaning of "good cause" requiring that a protestor show why they could not file a protest before the deadline, allowing a procurement officer to better determine whether to consider a filed protest that is not timely.

**\* Section 31:** Amends AS 36.30 by adding a new section 36.30.567

Adds new sections relating to protests, requiring a protest filing to be accompanied by a refundable \$250 filing fee.

**\* Section 32:** Amends AS 36.30 by adding a new section 36.30.572

Adds a new section to allow a procurement officer to temporarily delay award of a contract in order to address a protest, rather than issue a stay of award.

**\* Section 33:** Amends AS 36.30.655

Eliminates reference to the removal of debarred or suspended persons from vendor lists, reflecting the repeal of a law establishing the vendor lists.

**\* Section 34:** Amends AS 36.30.700

Adds language to the cooperative purchasing section that allows the state to more effectively use contracts established by other public procurement units.

**\* Section 35:** Amends AS 36.30.700 by adding a new subsection (b)

Adds a new section explicitly authorizing the state to participate in cooperative procurements with other governments and waiving procurement preferences that otherwise prevent other public purchasing units from participating in cooperative purchase agreements sponsored or conducted by the state.

**\* Section 36:** Amends AS 36.30.850(b) by adding new paragraphs

Adds new exemptions for; contracts for lease space located outside the state; for contracts for investigative services entered into by the department for the Alaska personnel board, the office of public advocacy, and the Alaska Public Offices Commission; for commodities used in the prisoner employment program; and for professional training.

**\* Section 37:** Amends AS 36.30.900 by adding new paragraphs

Moves the definition for “Alaska bidder” (formerly contained in 36.30.170(b)), and adds new definitions for “electronic signature,” “in writing,” “signature,” and “written.”

**\* Section 38:** Amends AS 36.90.049(a)

Updates a citation to reflect the renumbering of a preference.

**\* Section 39:** Amends AS 38.35.017(a)

Updates a citation to reflect the renumbering of a preference.

**\* Section 40:** Amends AS 44.62.310(d)

Adds language to clarify that the Administrative Procedure Act does not apply to meetings with offerors under the multi-step negotiation process contained in section 18 or to renegotiation of contracts in section 29.

**\* Section 41:** Amends AS 44.88.085(a)

Technical change regarding application of the Administrative Procedure Act to AIDEA.

**\* Section 42:** Repeals statutes establishing the vendor list and relationships to other preferences.

**\* Section 43:** Amends the uncodified law of the State of Alaska

Clarifies the application of the procurement act to pending solicitations during transition period.

**\* Section 44:** Amends the uncodified law of the State of Alaska

Changes the catch line of 36.30.360 from “Determination of responsibility” to Determination of nonresponsibility.”

**\* Section 45:** Effective Date

Language making the procurement act effective immediately.

# FISCAL NOTE

STATE OF ALASKA  
2009 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 225  
( ) Publish Date: \_\_\_\_\_

Identifier (file name): HB225-DOA-DGS-04-10-09 Dept. Affected: Administration  
Title An Act relating to the state procurement code... RDU Centralized Administrative Services  
Component Purchasing  
Sponsor Reps. FAIRCLOUGH  
Requester (H)STA Component Number 60

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
<b>OPERATING EXPENDITURES</b>								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2009) cost: \_\_\_\_\_

**POSITIONS**

	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Temporary	0.0	0.0	0.0	0.0	0.0	0.0	0.0

**ANALYSIS:** (Attach a separate page if necessary)

This legislation would make numerous changes to the state's procurement code. Collectively, these changes streamline the procurement code to ensure consistent application of the law, and would result in a more understandable, efficient process. It has been many years since our procurement code has been modernized. These changes are needed to help reduce the number of failed procurements, simplify confusing and burdensome requirements, and to allow for modern procurement techniques.

Prepared by: Vern Jones, Director  
Division: General Services  
Approved by: Kevin Brooks  
Deputy Commissioner

Phone 465-4817  
Date/Time 4/10/09 11:52 AM  
Date 4/10/2009



# Alaska State Legislature

**Representative Anna Fairclough – House District 17**

## MEMORANDUM

**Date:** April 8<sup>th</sup>, 2009

**To:** Representative Bob Lynn  
Chair

**From:** Representative Anna Fairclough

**Re:** HB --- "An Act relating to the State Procurement Code; relating to the procurement of supplies, services, professional services, construction services, state fisheries products, state agricultural products, state timber, and state lumber; relating to procurement preferences; relating to procurement by the office of the ombudsman, the Alaska Industrial Development and Export Authority, the Alaska Energy Authority, and other state agencies and public corporations; and providing for an effective date." (Pending Introduction)

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I am requesting a hearing for HB --- "An Act relating to the State Procurement Code; relating to the procurement of supplies, services, professional services, construction services, state fisheries products, state agricultural products, state timber, and state lumber; relating to procurement preferences; relating to procurement by the office of the ombudsman, the Alaska Industrial Development and Export Authority, the Alaska Energy Authority, and other state agencies and public corporations; and providing for an effective date" at your earliest convenience. I have attached relevant materials for your committee.

Thank you in advance for your consideration.

**Attachments:**

- I. Sponsor Statement
- II. Section Analysis
- III. HB ---

# FISCAL NOTE

STATE OF ALASKA  
2009 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB225-DOC-OC-04-13-09  
( ) Publish Date: \_\_\_\_\_

Identifier (file name): HB225-DOC-OC-04-13-09 Dept. Affected: DOC  
Title: "Act relating to State Procurement Code; procurement of supplies  
services, professional services, construction services, and preferences ..." RDU: Administration & Support  
Sponsor: Representative Fairclough Component: Office of the Commissioner  
Requester: Governor Component Number: 694

## Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>							
<b>CHANGE IN REVENUES ( )</b>							

## FUND SOURCE (Thousands of Dollars)

	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2009) cost: \_\_\_\_\_

### POSITIONS

	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Full-time							
Part-time							
Temporary							

### ANALYSIS: (Attach a separate page if necessary)

This legislation provides language revisions that offer clarification or flexibility in handling certain procurement situations.

Passage of this legislation should have no financial impact to the Department of Corrections.

Prepared by: Leslie Houston, Director  
Division: Administration and Support  
Approved by: Dwayne Peeples, Deputy Commissioner  
Department of Corrections

Phone: (907) 465-3339  
Date/Time: 4/13/09 10:53 AM  
Date: 4/13/2009