

LEG. FINANCE - BILLS 1979 - 1980. 1272

CSSB 114 thru SB 114 1979



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

3/23/90
Date

COMMITTEE REPORT

HOUSE

FURTHER:

April 27, 1979
Mr. Speaker:

Date: 5/14/80

The Committee on FINANCE has had CSSB 114 (Rules) am

"An Act relating to competitive bidding under the Fiscal Procedures Act; eff. date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with ^{fr} CS for CSSB 114 (Finance) same title
 new title
- and recommends Do pass
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

CHAIRMAN

FISCAL NOTE

I. REQUEST HB 155 and CS HB 155 & HCS CSSB 114 (Finance)
 Bill/Resolution No. HB 155 and CS HB 155 & HCS CSSB 114 (Finance)
 Title An Act relating to competitive bidding under fiscal procedures act
 Requested by Representative Meekins Date May 13, 1980

II. FISCAL DETAIL
 Agency Affected ALL
 Program Category Affected All
 BRU, Program, or Subprogram(s) Affected All
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

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

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

It is quite difficult to determine the increase in costs to state operations, as it is not possible to point to any item which will specifically increase those costs.

There are, however, additional costs associated with this legislation but these increased costs will be absorbed by each individual agency within its budget.

IV. DATE May 13, 1980 PREPARED BY George Elgee
 AGENCY Administration
 PHONE 465-2250
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

Original sponsor: Bradley

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 114 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to competitive bidding under the Fis-
7 cal Procedures Act."

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

9 * Section 1. AS 37.05.230(1)(B) is repealed and re-enacted to read:

10 (B) a bid shall be awarded to an Alaska bidder if his
11 bid is not more than 15 percent higher than the bid of the lowest
12 nonresident bidder and the Alaska bidder is an Alaska manufacturer
13 of the supplies, materials, or equipment to be purchased; and

14 * Sec. 2. AS 37.05.230(2) is amended to read:

15 (2) if the amount of the contractual services, purchase, or
16 sale is estimated to exceed \$2,500, sealed bids shall be solicited, when
17 practicable, by publication in a newspaper calculated to reach prospec-
18 tive bidders and by posting notices in public places within the area
19 where the work is to be performed or material furnished and in addition
20 the department may also designate a trade journal for publication; the
21 department shall also solicit bids by sending notices by mail to all
22 active prospective bidders known to it and all bids shall be sealed when
23 received, and shall be opened in public at the hour stated in the notice;
24 the department may limit solicitation of bids or negotiate directly if
25 it finds that it is in the best interests of the state;

26 * Sec. 3. AS 37.05.230(7) is amended to read:

27 (7) the provisions of (1)(b) of this section [RELATIVE TO AN
28 "ALASKA BIDDER"] do not apply to contracts for construction or repair
29 [ESTIMATED TO EXCEED \$5,000, OF EITHER THE DEPARTMENT OF TRANSPORTATION

1 AND PUBLIC FACILITIES WHICH ARE AUTHORIZED UNDER AS 35.15, OR THE DE-
2 PARTMENT OF HIGHWAYS, WHICH ARE AUTHORIZED UNDER AS 19.10].

3 * Sec. 4. AS 37.05.230 is amended by adding a new paragraph to read:

4 (9) the provisions of (1)(B) of this section do not apply to
5 purchases and contracts involving federal money received by the state if
6 the application of a bidding preference would violate federal law or
7 program guidelines.

8 * Sec. 5. AS 37.05.240 is amended to read:

9 Sec. 37.05.240. AWARD OF CONTRACTS AND PURCHASES. A contract or
10 purchase made by or under the supervision of the department for which
11 competitive bids are required shall be awarded to the lowest responsible
12 bidder, taking into consideration conformity with the specifications,
13 terms of delivery, and other conditions imposed in the call for bids.
14 [BIDS MAY BE REJECTED, AND A BID SHALL BE REJECTED IF IT CONTAINS A
15 MATERIAL ALTERATION OR ERASURE WHICH IS NOT INITIALED BY THE SIGNER OF
16 THE BID.] The department may reject the bid of a bidder who is in
17 arrears on taxes due the state or who failed to perform on a previous
18 contract with the state. Where competitive bids are required and where
19 all bids are rejected, new bids shall be called for as in the first
20 instance. Before the awarding of a contract for a building or the
21 making of repairs upon a building, the department shall see that the
22 bids conform with plans and specifications approved by the Department of
23 Transportation and Public Facilities. All bids with the names of the
24 bidders and the amounts of the bids, together with all documents per-
25 taining to the award of a contract, shall be made a part of a file or
26 record and retained by the department for three years, unless reproduced
27 by microfilming and these files or records are open to public inspection
28 at all reasonable times. An aggrieved bidder may within five days after
29 an award of contract appeal to the department for hearing, with notice

1 to interested parties, for redetermination and final award in accordance
2 with law.

3 * Sec. 6. AS 37.05.320 is amended by adding a new paragraph to read:

4 (5) "Alaska manufacturer" means a person engaged in a busi-
5 ness activity in the state by which he, through labor, art, or skill,
6 transforms raw or partially finished materials into some kind of article
7 of trade; and includes a corporation or partnership engaged in such
8 activity

9 (A) whose majority interest is beneficially owned by
10 residents of the state, and

11 (B) a majority of whose owners are residents of the
12 state.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST Bill/Resolution No. HB 155 and CS HB 155 & HCS CSSB 114 (Finance)
 Title An Act relating to competitive bidding under fiscal procedures act
 Requested by Representative Meekins Date May 13, 1980

II. FISCAL DETAIL Agency Affected ALL
 Program Category Affected All
 BRU, Program, or Subprogram(s) Affected All
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

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

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

It is quite difficult to determine the increase in costs to state operations, as it is not possible to point to any item which will specifically increase those costs.

There are, however, additional costs associated with this legislation but these increased costs will be absorbed by each individual agency within its budget.

IV. DATE May 13, 1980 PREPARED BY George Elgee *GE 1980*
 AGENCY Administration
 Original: Legislative Finance PHONE 465-2250
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

Original sponsor: Bradley

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 114 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to competitive bidding under the Fis-
7 cal Procedures Act."

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

9 * Section 1. AS 37.05.230(1)(B) is repealed and re-enacted to read:

10 (B) a bid shall be awarded to an Alaska bidder if his
11 bid is not more than 15 percent higher than the bid of the lowest
12 nonresident bidder and the Alaska bidder is an Alaska manufacturer
13 of the supplies, materials, or equipment to be purchased; and

14 * Sec. 2. AS 37.05.230(2) is amended to read:

15 (2) if the amount of the contractual services, purchase, or
16 sale is estimated to exceed \$2,500, sealed bids shall be solicited, when
17 practicable, by publication in a newspaper calculated to reach prospec-
18 tive bidders and by posting notices in public places within the area
19 where the work is to be performed or material furnished and in addition
20 the department may also designate a trade journal for publication; the
21 department shall also solicit bids by sending notices by mail to all
22 active prospective bidders known to it and all bids shall be sealed when
23 received, and shall be opened in public at the hour stated in the notice;
24 the department may limit solicitation of bids or negotiate directly if
25 it finds that it is in the best interests of the state;

26 * Sec. 3. AS 37.05.230(7) is amended to read:

27 (7) the provisions of (1)(B) of this section [RELATIVE TO AN
28 "ALASKA BIDDER"] do not apply to contracts for construction or repair
29 [ESTIMATED TO EXCEED \$5,000, OF EITHER THE DEPARTMENT OF TRANSPORTATION

1 AND PUBLIC FACILITIES WHICH ARE AUTHORIZED UNDER AS 35.15, OR THE DE-
2 PARTMENT OF HIGHWAYS, WHICH ARE AUTHORIZED UNDER AS 19.10].

3 * Sec. 4. AS 37.05.230 is amended by adding a new paragraph to read:

4 (9) the provisions of (1)(B) of this section do not apply to
5 purchases and contracts involving federal money received by the state if
6 the application of a bidding preference would violate federal law or
7 program guidelines.

8 * Sec. 5. AS 37.05.240 is amended to read:

9 Sec. 37.05.240. AWARD OF CONTRACTS AND PURCHASES. A contract or
10 purchase made by or under the supervision of the department for which
11 competitive bids are required shall be awarded to the lowest responsible
12 bidder, taking into consideration conformity with the specifications,
13 terms of delivery, and other conditions imposed in the call for bids.
14 [BIDS MAY BE REJECTED, AND A BID SHALL BE REJECTED IF IT CONTAINS A
15 MATERIAL ALTERATION OR ERASURE WHICH IS NOT INITIALED BY THE SIGNER OF
16 THE BID.] The department may reject the bid of a bidder who is in
17 arrears on taxes due the state or who failed to perform on a previous
18 contract with the state. Where competitive bids are required and where
19 all bids are rejected, new bids shall be called for as in the first
20 instance. Before the awarding of a contract for a building or the
21 making of repairs upon a building, the department shall see that the
22 bids conform with plans and specifications approved by the Department of
23 Transportation and Public Facilities. All bids with the names of the
24 bidders and the amounts of the bids, together with all documents per-
25 taining to the award of a contract, shall be made a part of a file or
26 record and retained by the department for three years, unless reproduced
27 by microfilming and these files or records are open to public inspection
28 at all reasonable times. An aggrieved bidder may within five days after
29 an award of contract appeal to the department for hearing, with notice

1 to interested parties, for redetermination and final award in accordance
2 with law.

3 * Sec. 6. AS 37.05.320 is amended by adding a new paragraph to read:

4 (5) "Alaska manufacturer" means a person engaged in a busi-
5 ness activity in the state by which he, through labor, art, or skill,
6 transforms raw or partially finished materials into some kind of article
7 of trade; and includes a corporation or partnership engaged in such
8 activity

9 (A) whose majority interest is beneficially owned by
10 residents of the state, and

11 (B) a majority of whose owners are residents of the
12 state.



• Official Business

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

April 26, 1979

Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Speaker:

It is the intent of the House Judiciary Committee that the Department of Administration, in implementing the set-aside provision (Section 4, AS 37.05.230(10)) of CS SB 114 provide by regulation:

1. that no categories of supplies, services, equipment are unavailable for Alaska bidders;
2. that all bids on a specific contract may be rejected if acceptance would not be in the best interests of the state.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles H. Parr".

Charles H. Parr
Chairman, House Judiciary Committee

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CS S. B. 114 (Rules) Bradley
 Title An Act Relating to Competitive Bidding Under the Fiscal Procedures Act
 Requested by Jay Hogan - Legislative Finance Date February 9, 1979

II. FISCAL DETAIL
 Agency Affected All
 Program Category Affected All
 BRU, program, or Subprogram(s) Affected All
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES		34,000	36,040	38,202	40,494	42,924
200 TRAVEL						
300 CONTRACTUAL		150,000	50,000	50,000	50,000	50,000
400 COMMODITIES		400	424	449	476	504
500 EQUIPMENT		2,200				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
*Additional Costs for Goods & Services		2,703,000	2,865,180	3,037,091	3,219,316	3,412,475
TOTAL		2,889,600	2,951,644	3,125,742	3,310,286	3,505,903

FUNDING (Thousands of Dollars)

GENERAL FUND		2,889,600	2,951,644	3,125,742	3,310,286	3,505,903
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The fiscal impact of this bill is difficult to analyze due to lack of data and not knowing exactly how vendors, both in and out of State, will react to preference. It is conceivable that out of State vendors will quit bidding on State business, therefore reducing bid competition. Reduction in vendor competition has the obvious effect of reducing price competition as well. However, to what degree is not known. For estimating purposes we have a conservative 10% as an add to our present purchasing activity.

This then, based on the FY 78 figures, would be: 10% x \$27,026,589 = \$2,702,659.

IV. DATE 4/23/79 PREPARED BY Richard C. Bradley
 AGENCY Division of General Services & Supply
 PHONE 465-2250 or 2251
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS S. B. 114 (Rules) Bradley
 Title An Act Relating to Competitive Bidding Under the Fiscal Procedures Act
 Requested by Jay Hogan - Legislative Finance Date February 9, 1979

II. FISCAL DETAIL

Agency Affected All
 Program Category Affected All
 BRU, Program, or Subprogram(s) Affected All

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES		34,000	36,040	38,202	40,494	42,924
200 TRAVEL						
300 CONTRACTUAL		150,000	50,000	50,000	50,000	50,000
400 COMMODITIES		400	424	449	476	504
500 EQUIPMENT		2,200				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
*Additional Costs for Goods & Services		2,703,000	2,865,180	3,037,091	3,219,316	3,412,475
TOTAL		2,889,600	2,951,644	3,125,742	3,310,286	3,505,903

FUNDING (Thousands of Dollars)

GENERAL FUND		2,889,600	2,951,644	3,125,742	3,310,286	3,505,903
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The fiscal impact of this bill is difficult to analyze due to lack of data and not knowing exactly how vendors, both in and out of State, will react to preference. It is conceivable that out of State vendors will quit bidding on State business, therefore reducing bid competition. Reduction in vendor competition has the obvious effect of reducing price competition as well. However, to what degree is not known. For estimating purposes we have a conservative 10% as an add to our present purchasing activity.

This then, based on the FY 78 figures, would be: 10% x \$27,026,589 = \$2,702,659.

IV. DATE

4/23/79

PREPARED BY

Richard C. Bradley
Richard C. Bradley

AGENCY

Division of General Services & Supply

PHONE

465-2250 or 2251

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)



Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

April 26, 1979

Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Mr. Speaker:

It is the intent of the House Judiciary Committee that the Department of Administration, in implementing the set-aside provision (Section 4, AS 37.05.230(10)) of CS SB 114 provide by regulation:

1. that no categories of supplies, services, equipment are unavailable for Alaska bidders;
2. that all bids on a specific contract may be rejected if acceptance would not be in the best interests of the state.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles H. Parr".

Charles H. Parr
Chairman, House Judiciary Committee

Original sponsor: Bradley

Offered: 4/27/79
Referred: Finance

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 114
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to competitive bidding under the Fis-
7 cal Procedures Act and the identification of Alaska
8 manufactured goods; and providing for an effective
9 date."

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

11 * Section 1. AS 37.05.230(1) is amended to read:

12 (1) a contract for construction and repairs, or a purchase of
13 and contract for supplies including Alaska produced fisheries and agri-
14 cultural products, materials, equipment, and contractual services must
15 be based on competitive bids; an award shall be made to the lowest
16 responsible bidder after advertising for bids, except that

17 (A) (repealed)

18 (B) [A BID SHALL BE AWARDED TO AN ALASKA BIDDER IF HIS
19 BID IS NOT MORE THAN FIVE PER CENT HIGHER THAN THE LOWEST NONRESI-
20 DENT BIDDER'S; AND]

21 (C) competitive bids need not be required

22 (i) for contractual services where no competition
23 exists;

24 (ii) [FOR SALES INVOLVING FAIR TRADE ITEMS;]

25 (iii) in a declared emergency when [, IN THE JUDGMENT
26 OF THE PURCHASING AGENT,] food, clothing, or medical supplies,
27 or materials for use in laboratory and experimental studies
28 may be purchased otherwise to the best advantage of the state;

29 (iv) where rates are fixed by law or ordinance;

1 (v) for items traded in on like items; or

2 (vi) for professional services;

3 * Sec. 2. AS 37.05.230(2) is amended to read:

4 (2) if the amount of the contractual services, purchase, or
5 sale is estimated to exceed \$2,500 sealed bids shall be solicited, when
6 practicable, by publication in a newspaper calculated to reach pro-
7 spective bidders and by posting notices in public places within the area
8 where the work is to be performed or material furnished and in addition
9 the department may also designate a trade journal for publication; the
10 department shall also solicit bids by sending notices by mail to all
11 [ACTIVE PROSPECTIVE] bidders on the certified Alaska bidders list;
12 [KNOWN TO IT AND] all bids shall be sealed when received, and shall be
13 opened in public at the hour stated in the notice; the department may
14 negotiate directly if it finds that it is in the best interest of the
15 state;

16 * Sec. 3. AS 37.05.230(5) is amended to read:

17 (5) an "Alaska bidder," for the purpose of [BID AWARDS UNDER
18 (1)(B)] of this section, is a person who

19 (A) holds a current Alaska business license,

20 (B) submits a bid for goods or services under the name
21 as appearing on his current Alaska business license,

22 (C) has maintained a place of business within the state
23 for a period of six months immediately preceding the date of his
24 bid,

25 (D) has executed an affidavit, under penalty of perjury,
26 stating that he owes no delinquent state taxes, and has sent a copy
27 of the affidavit to the Department of Revenue,

28 (E) is a resident of the state, or, if the bidder is a
29 partnership, corporation, or other association, the majority of the

1 persons employed in the bidder's Alaska office are residents of the
2 state,

3 (F) maintains an inventory in the state.

4 * Sec. 4. AS 37.05.230 is amended by adding new paragraphs to read:

5 (9) the Department of Administration shall compile and update
6 annually a "certified Alaska bidders list" containing the names of
7 bidders certified to be Alaska bidders who maintain inventories in the
8 state;

9 (10) The Commissioner of Administration shall set aside not
10 less than 40 per cent of the total appropriation available for contracts
11 for or purchases of supplies, materials, services or equipment and use
12 those funds for the award of contracts to the lowest responsible Alaska
13 bidder who maintains no offices outside the state and who had for the
14 previous year gross business receipts not in excess of \$1,000,000.

15 * Sec. 5. AS 37.05.320 is amended by adding a new paragraph to read:

16 (5) "declared emergency" means a situation declared by the
17 governor to be an immediate threat to the public peace, safety, health,
18 or the general welfare.

19 * Sec. 6. AS 45 is amended by adding a new chapter to read:

20 CHAPTER 67. IDENTIFICATION OF ALASKA MANUFACTURED GOODS.

21 Sec. 45.67.010. DESIGN OF IDENTIFICATION SEAL. After holding a
22 public hearing to obtain manufactures' advice on the design of a seal to
23 identify goods manufactured in the state, the commissioner shall design
24 the seal. The seal shall bear an appropriate logo and the words "Manu-
25 factured in Alaska".

26 Sec. 45.67.020. PERMIT TO USE IDENTIFICATION SEALS. A person who
27 produces goods manufactured in the state may apply to the commissioner
28 for a permit to use the identification seal prescribed in AS 45.67.010
29 or permit number to be attached to those goods. The identification seal

1 or permit number may be printed on labels of goods to be attached to
2 those goods. The commissioner shall investigate the applicant to deter-
3 mine his eligibility for the permit. A permit shall be issued free of
4 charge to a qualified applicant. The commissioner shall prescribe the
5 form of the application and permit, the period for which the permit is
6 valid, and the procedure for renewal of the permit.

7 Sec. 45.67.030. PENALTIES. (a) A person who knowingly attaches
8 an identification seal to an article, knowing that the article is not a
9 good manufactured in the state, is guilty of a misdemeanor, and upon
10 conviction is punishable by a fine of not more than \$1,000, or by impris-
11 sonment for not more than one year, or by both.

12 (b) A person who knowingly sells or offers for sale an article
13 with an identification seal attached, knowing that the article is not a
14 good manufactured in the state, is guilty of a misdemeanor, and upon
15 conviction is punishable by a fine of not more than \$1,000, or by impris-
16 sonment for not more than one year, or by both.

17 (c) A person who counterfeits an identification seal is guilty of
18 a misdemeanor, and upon conviction is punishable by a fine of not more
19 than \$1,000, or by imprisonment for not more than one year, or by both.

20 (d) A person who knowingly sells, or otherwise provides, identifi-
21 cation seals to another without a permit issued under AS 45.67.020 is
22 guilty of a misdemeanor, and upon conviction is punishable by a fine of
23 not more than \$1,000, or by imprisonment for not more than one year, or
24 by both.

25 (e) For the purposes of this section each article sold or identi-
26 fication seal counterfeited, sold, or otherwise provided constitutes a
27 separate offense.

28 Sec. 45.67.040. DEFINITIONS. In this chapter

29 (1) "commissioner" means the commissioner of commerce and

1 economic development;

2 (2) "goods manufactured in the state" means a new, finished
3 product for marketing to the public, which results from the transforma-
4 tion in the state of raw or partially finished materials into some kind
5 of article of trade; it does not include a finished product which
6 results from the assembly of previously finished components parts,
7 unless all the parts are goods manufactured in the state, or unless the
8 finished product is assembled in its final form only in the state;

9 (3) "identification seal" means the identification seal
10 designed under AS 45.67.010.

11 * Sec. 7. AS 45.67.030 is amended to read:

12 Sec. 45.67.030. PENALTIES. (a) A person who knowingly attaches
13 an identification seal to an article, knowing that the article is not a
14 good manufactured in the state, is guilty of a class B misdemeanor [,
15 AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR
16 BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

17 (b) A person who knowingly sells or offers for sale an article
18 with an identification seal attached, knowing that the article is not a
19 good manufactured in the state, is guilty of a class B misdemeanor [,
20 AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR
21 BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

22 (c) A person who counterfeits an identification seal is guilty of
23 a class B misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF
24 NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR
25 BY BOTH].

26 (d) A person who knowingly sells, or otherwise provides, identifi-
27 cation seals to another without a permit issued under AS 45.67.020 is
28 guilty of a class B misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY
29 A FINE OF NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE

1 YEAR, OR BY BOTH].

2 (e) For the purposes of this section each article sold or identi-
3 fication seal counterfeited, sold, or otherwise provided constitutes a
4 separate offense.

5 * Sec. 8. Section 7 of this Act takes effect January 1, 1980.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Original sponsor: Bradley

Offered: 4/3/79

1 IN THE SENATE

BY THE RULES COMMITTEE

2 CS FOR SENATE BILL NO. 114 (Rules) am
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to competitive bidding under the Fis-
7 cal Procedures Act; and providing for an effective
8 date."

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

10 * Section 1. AS 37.05.230(1) is amended to read:

11 (1) a contract for construction and repairs, or a purchase of
12 and contract for supplies including Alaska produced fisheries and
13 agricultural products, materials, equipment, and contractual services
14 must be based on competitive bids; an award shall be made to the lowest
15 responsible bidder after advertising for bids, except that

16 (A) (repealed)

17 (B) [A BID SHALL BE AWARDED TO AN ALASKA BIDDER IF HIS
18 BID IS NOT MORE THAN FIVE PER CENT HIGHER THAN THE LOWEST NONRESI-
19 DENT BIDDER'S; AND]

20 (C) competitive bids need not be required

21 (i) for contractual services where no competition
22 exists;

23 (ii) [FOR SALES INVOLVING FAIR TRADE ITEMS;]

24 (iii) in a declared emergency when [, IN THE JUDGMENT
25 OF THE PURCHASING AGENT,] food, clothing, or medical supplies,
26 or materials for use in laboratory and experimental studies
27 may be purchased otherwise to the best advantage of the state;

28 (iv) where rates are fixed by law or ordinance;

29 (v) for items traded in on like items; or

1 (vi) for professional services;

2 * Sec. 2. AS 37.05.230(2) is amended to read:

3 (2) if the amount of the contractual services, purchase, or
4 sale is estimated to exceed \$2,500 sealed bids shall be solicited, when
5 practicable, by publication in a newspaper calculated to reach pro-
6 spective bidders and by posting notices in public places within the area
7 where the work is to be performed or material furnished and in addition
8 the department may also designate a trade journal for publication; the
9 department shall also solicit bids by sending notices by mail to all
10 [ACTIVE PROSPECTIVE] bidders on the certified Alaska bidders list;
11 [KNOWN TO IT AND] all bids shall be sealed when received, and shall be
12 opened in public at the hour stated in the notice; the department may
13 negotiate directly if it finds that it is in the best interest of the
14 state;

15 * Sec. 3. AS 37.05.230(5) is amended by adding new subparagraphs to read:

16 (D) has no delinquent state taxes;

17 (E) is a resident of the state, or, if the bidder is a
18 partnership, corporation, or other association, the majority of the
19 persons employed in the bidder's Alaska office are residents of the
20 state;

21 * Sec. 4. AS 37.05.230 is amended by adding new paragraphs to read:

22 (9) the Department of Administration shall compile and update
23 annually a "certified Alaska bidders list" containing the names of
24 bidders certified to be Alaska bidders who maintain inventories in the
25 state;

26 (10) each proposed contract for or purchase of supplies,
27 materials, or equipment shall provide for an award of not less than 40
28 per cent of the total value of the purchase to the lowest responsible
29 Alaska bidder who maintains no offices outside the state and who had for

1 the previous year gross business receipts not in excess of \$1,000,000.

2 * Sec. 5. AS 37.05.320 is amended by adding a new paragraph to read:

3 (5) "declared emergency" means a situation declared by the
4 governor to be an immediate threat to the public peace, safety, health,
5 or the general welfare.

6 * Sec. 6. AS 45 is amended by adding a new chapter to read:

7 CHAPTER 67. IDENTIFICATION OF ALASKA MANUFACTURED GOODS.

8 Sec. 45.67.010. DESIGN OF IDENTIFICATION SEAL. After holding a
9 public hearing to obtain manufactures' advice on the design of a seal to
10 identify goods manufactured in the state, the commissioner shall design
11 the seal. The seal shall bear an appropriate logo and the words
12 "Manufactured in Alaska".

13 Sec. 45.67.020. PERMIT TO USE IDENTIFICATION SEALS. A person who
14 produces goods manufactured in the state may apply to the commissioner
15 for a permit to purchase identification seals to be attached to those
16 goods. The commissioner shall investigate the applicant to determine
17 his eligibility for the permit. A permit shall be issued free of charge
18 to a qualified applicant. The commissioner shall prescribe the form of
19 the application and permit, the period for which the permit is valid,
20 and the procedure for renewal of the permit.

21 Sec. 45.67.030. PENALTIES. (a) A person who knowingly attaches
22 an identification seal to an article, knowing that the article is not a
23 good manufactured in the state, is guilty of a misdemeanor, and upon
24 conviction is punishable by a fine of not more than \$1,000, or by impri-
25 sonment for not more than one year, or by both.

26 (b) A person who knowingly sells or offers for sale an article
27 with an identification seal attached, knowing that the article is not a
28 good manufactured in the state, is guilty of a misdemeanor, and upon
29 conviction is punishable by a fine of not more than \$1,000, or by impri-

1 sonment for not more than one year, or by both.

2 (c) A person who counterfeits an identification seal is guilty of
3 a misdemeanor, and upon conviction is punishable by a fine of not more
4 than \$1,000, or by imprisonment for not more than one year, or by both.

5 (d) A person who knowingly sells, or otherwise provides, identifi-
6 cation seals to another without a permit issued under AS 45.67.020 is
7 guilty of a misdemeanor, and upon conviction is punishable by a fine of
8 not more than \$1,000, or by imprisonment for not more than one year, or
9 by both.

10 (e) For the purposes of this section each article sold or identi-
11 fication seal counterfeited, sold, or otherwise provided constitutes a
12 separate offense.

13 Sec. 45.67.040. DEFINITIONS. In this chapter

14 (1) "commissioner" means the commissioner of commerce and
15 economic development;

16 (2) "goods manufactured in the state" means a new, finished
17 product for marketing to the public, which results from the transforma-
18 tion in the state of raw materials; it does not include a finished
19 product which results from the assembly of previously finished com-
20 ponents parts, unless all the parts are goods manufactured in the state,
21 or unless the finished product is assembled in its final form only in
22 the state;

23 (3) "identification seal" means the identification seal
24 designed under AS 45.67.010.

25 * Sec. 7. AS 45.67.030 is amended to read:

26 Sec. 45.67.030. PENALTIES. (a) A person who knowingly attaches
27 an identification seal to an article, knowing that the article is not a
28 good manufactured in the state, is guilty of a class B misdemeanor [,
29 AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR

1 BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

2 (b) A person who knowingly sells or offers for sale an article
3 with an identification seal attached, knowing that the article is not a
4 good manufactured in the state, is guilty of a class B misdemeanor [,
5 AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR
6 BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

7 (c) A person who counterfeits an identification seal is guilty of
8 a class B misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF
9 NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR
10 BY BOTH].

11 (d) A person who knowingly sells, or otherwise provides, identifi-
12 cation seals to another without a permit issued under AS 45.67.020 is
13 guilty of a class B misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY
14 A FINE OF NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE
15 YEAR, OR BY BOTH].

16 (e) For the purposes of this section each article sold or identi-
17 fication seal counterfeited, sold, or otherwise provided constitutes a
18 separate offense.

19 * Sec. 8. Section 7 of this Act takes effect January 1, 1980.
20
21
22
23
24
25
26
27
28
29



RECORDS



CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

3/23/90
Date

COMMITTEE REPORT
SENATE

FURTHER:

3/15/79

Date: March 15, 1979

Mr. President:

The Committee on FINANCE has had SB 114
competitive bidding under the Fiscal Procedures Act

under consideration and (a majority of the committee) (the committee)
reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back ^{in a bill} without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]
John Mackay DO PASS IF AMENDED
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

John Mackay NO REC

[Signature]
CHAIRMAN
[Signature]

Introduced: 2/7/79
Referred: Commerce

1 IN THE SENATE

BY BRADLEY

2 SENATE BILL NO. 114

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to competitive bidding under the Fis-
7 cal Procedures Act."

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

9 * Section 1. AS 37.05.230(1)(B) is repealed and re-enacted to read:

10 (B) a bid shall be awarded to the lowest responsible
11 Alaska bidder

12 (i) if the cost of the contract is estimated to
13 exceed \$2,500 but is less than \$200,000; or

14 (ii) if the cost of the contract is estimated to be
15 \$200,000 or more and his bid is not more than 12.5 per cent
16 higher than the lowest nonresident bidder's; and

17 * Sec. 2. AS 37.05.230(1)(C)(iii) is amended to read:

18 (iii) in a declared emergency when, in the judgment
19 of the purchasing agent, food, clothing, or medical supplies
20 [, OR MATERIALS FOR USE IN LABORATORY AND EXPERIMENTAL
21 STUDIES] may be purchased otherwise to the best advantage of
22 the state;

23 * Sec. 3. AS 37.05.230(5) is amended by adding new subparagraphs to read:

24 (D) has no delinquent state taxes;

25 (E) is a resident of the state, or, if the bidder is a
26 partnership, corporation, or other association, the majority
27 interest must be beneficially owned by residents of the state and a
28 majority of the owners must be residents of the state;

29 * Sec. 4. AS 37.05.230 is amended by adding a new paragraph to read:

1 (9) contracts entered into in accordance with this section
2 with an "Alaska bidder" shall recite the fact that the contractor is an
3 "Alaska bidder".

4 * Sec. 5. AS 37.05.320 is amended by adding a new paragraph to read:

5 (5) "declared emergency" means a situation declared by the
6 governor to be an immediate threat to the public peace, safety, or
7 health or the general welfare.

8 * Sec. 6. AS 37.05.230(1)(C)(ii) is repealed.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Original sponsor: Bradley

*This is the
CS for SB 114
passed by
Finance
Finance committee
did not pass
this CS.*

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 114

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to competitive bidding under the Fis-
7 cal Procedures Act; and providing for an effective
8 date."

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

10 * Section 1. AS 37.05.230(1) is amended to read:

11 (1) a contract for construction and repairs, or a purchase of
12 and contract for supplies, materials, equipment, and contractual
13 services must be based on competitive bids advertised to Alaska bidders,
14 or to non-Alaska bidders when no competition between Alaska bidders
15 exists; an award shall be made to the lowest responsible Alaska bidder
16 after advertising for bids, except that

17 (A) (repealed)

18 (B) [A BID SHALL BE AWARDED TO AN ALASKA BIDDER IF HIS
19 BID IS NOT MORE THAN FIVE PER CENT HIGHER THAN THE LOWEST NONRESI-
20 DENT BIDDER'S; AND]

21 (C) competitive bids need not be required

22 (i) for contractual services where no competition
23 exists;

24 (ii) [FOR SALES INVOLVING FAIR TRADE ITEMS;]

25 (iii) in a declared emergency when [, IN THE JUDGMENT
26 OF THE PURCHASING AGENT,] food, clothing, or medical supplies,
27 or materials for use in laboratory and experimental studies
28 may be purchased otherwise to the best advantage of the state;

29 (iv) where rates are fixed by law or ordinance;

1 (v) for items traded in on like items; or

2 (vi) for professional services; and

3 (D) an award may be made to a non-Alaska bidder when no
4 competition between Alaska bidders exists;

5 * Sec. 2. AS 37.05.230(2) is amended to read:

6 (2) if the amount of the contractual services, purchase, or
7 sale is estimated to exceed \$2,500 sealed bids shall be solicited, when
8 practicable, by publication in a newspaper calculated to reach pro-
9 spective Alaska bidders and by posting notices in public places within
10 the area where the work is to be performed or material furnished and in
11 addition the department may also designate a trade journal for publi-
12 cation; the department shall also solicit bids by sending notices by
13 mail to all active prospective Alaska bidders known to it and all bids
14 shall be sealed when received, and shall be opened in public at the hour
15 stated in the notice; the department may negotiate directly if it finds
16 that it is in the best interest of the state;

17 * Sec. 3. AS 37.05.230(5) is amended by adding new subparagraphs to read:

18 (D) has no delinquent state taxes;

19 (E) is a resident of the state, or, if the bidder is a
20 partnership, corporation, or other association, the majority
21 interest must be beneficially owned by residents of the state and a
22 majority of the owners must be residents of the state;

23 * Sec. 4. AS 37.05.320 is amended by adding a new paragraph to read:

24 (5) "declared emergency" means a situation declared by the
25 governor to be an immediate threat to the public peace, safety, health,
26 or the general welfare.

27 * Sec. 5. AS 45 is amended by adding a new chapter to read:

28 CHAPTER 67. IDENTIFICATION OF ALASKA MANUFACTURED GOODS.

29 Sec. 45.67.010. DESIGN OF IDENTIFICATION SEAL. After holding a

1 public hearing to obtain manufactures' advice on the design of a seal to
2 identify goods manufactured in the state, the commissioner shall design
3 the seal. The seal shall bear an appropriate logo and the words
4 "Manufactured in Alaska".

5 Sec. 45.67.020. PERMIT TO USE IDENTIFICATION SEALS. A person who
6 produces goods manufactured in the state may apply to the commissioner
7 for a permit to purchase identification seals to be attached to those
8 goods. The commissioner shall investigate the applicant to determine
9 his eligibility for the permit. A permit shall be issued free of charge
10 to a qualified applicant. The commissioner shall prescribe the form of
11 the application and permit, the period for which the permit is valid,
12 and the procedure for renewal of the permit.

13 Sec. 45.67.030. PENALTIES. (a) A person who knowingly attaches
14 an identification seal to an article, knowing that the article is not a
15 good manufactured in the state, is guilty of a misdemeanor, and upon
16 conviction is punishable by a fine of not more than \$1,000, or by impri-
17 sonment for not more than one year, or by both.

18 (b) A person who knowingly sells or offers for sale an article
19 with an identification seal attached, knowing that the article is not a
20 good manufactured in the state, is guilty of a misdemeanor, and upon
21 conviction is punishable by a fine of not more than \$1,000, or by impri-
22 sonment for not more than one year, or by both.

23 (c) A person who counterfeits an identification seal is guilty of
24 a misdemeanor, and upon conviction is punishable by a fine of not more
25 than \$1,000, or by imprisonment for not more than one year, or by both.

26 (d) A person who knowingly sells, or otherwise provides, identifi-
27 cation seals to another without a permit issued under AS 45.67.020 is
28 guilty of a misdemeanor, and upon conviction is punishable by a fine of
29 not more than \$1,000, or by imprisonment for not more than one year, or

1 by both.

2 (e) For the purposes of this section each article sold or identi-
3 fication seal counterfeited, sold, or otherwise provided constitutes a
4 separate offense.

5 Sec. 45.67.040. DEFINITIONS. In this chapter

6 (1) "commissioner" means the commissioner of commerce and
7 economic development;

8 (2) "goods manufactured in the state" means a new, finished
9 product for marketing to the public, which results from the transforma-
10 tion in the state of raw materials; it does not include a finished
11 product which results from the assembly of previously finished com-
12 ponents parts, unless all the parts are goods manufactured in the state,
13 or unless the finished product is assembled in its final form only in
14 the state;

15 (3) "identification seal" means the indentification seal
16 designed under AS 45.67.010.

17 * Sec. 6. AS 45.67.030 is amended to read:

18 Sec. 45.67.030. PENALTIES. (a) A person who knowingly attaches
19 an identification seal to an article, knowing that the article is not a
20 good manufactured in the state, is guilty of a class B misdemeanor [,
21 AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR
22 BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

23 (b) A person who knowingly sells or offers for sale an article
24 with an identification seal attached, knowing that the article is not a
25 good manufactured in the state, is guilty of a class B misdemeanor [,
26 AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR
27 BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

28 (c) A person who counterfeits an identification seal is guilty of
29 a class B misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF

1 NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR
2 BY BOTH].

3 (d) A person who knowingly sells, or otherwise provides, identifi-
4 cation seals to another without a permit issued under AS 45.67.020 is
5 guilty of a class B misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY
6 A FINE OF NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE
7 YEAR, OR BY BOTH].

8 (e) For the purposes of this section each article sold or identi-
9 fication seal counterfeited, sold, or otherwise provided constitutes a
10 separate offense.

11 * Sec. 7. Section 6 of this Act takes effect January 1, 1980.

Original sponsor: Bradley

Offered: 4/3/79

1 IN THE SENATE

BY THE RULES COMMITTEE

2 CS FOR SENATE BILL NO. 114 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to competitive bidding under the Fis-
7 cal Procedures Act; and providing for an effective
8 date."

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

10 * Section 1. AS 37.05.230(1) is amended to read:

11 (1) a contract for construction and repairs, or a purchase of
12 and contract for supplies, materials, equipment, and contractual
13 services must be based on competitive bids; an award shall be made to
14 the lowest responsible bidder after advertising for bids, except that

15 (A) (repealed)

16 (B) [A BID SHALL BE AWARDED TO AN ALASKA BIDDER IF HIS
17 BID IS NOT MORE THAN FIVE PER CENT HIGHER THAN THE LOWEST NONRESI-
18 DENT BIDDER'S; AND]

19 (C) competitive bids need not be required

20 (i) for contractual services where no competition
21 exists;

22 (ii) [FOR SALES INVOLVING FAIR TRADE ITEMS;]

23 (iii) in a declared emergency when [, IN THE JUDGMENT
24 OF THE PURCHASING AGENT,] food, clothing, or medical supplies,
25 or materials for use in laboratory and experimental studies
26 may be purchased otherwise to the best advantage of the state;

27 (iv) where rates are fixed by law or ordinance;

28 (v) for items traded in on like items; or

29 (vi) for professional services;

1 * Sec. 2. AS 37.05.230(2) is amended to read:

2 (2) if the amount of the contractual services, purchase, or
3 sale is estimated to exceed \$2,500 sealed bids shall be solicited, when
4 practicable, by publication in a newspaper calculated to reach pro-
5 spective bidders and by posting notices in public places within the area
6 where the work is to be performed or material furnished and in addition
7 the department may also designate a trade journal for publication; the
8 department shall also solicit bids by sending notices by mail to all
9 [ACTIVE PROSPECTIVE] bidders on the certified Alaska bidders list;
10 [KNOWN TO IT AND] all bids shall be sealed when received, and shall be
11 opened in public at the hour stated in the notice; the department may
12 negotiate directly if it finds that it is in the best interest of the
13 state;

14 * Sec. 3. AS 37.05.230(5) is amended by adding new subparagraphs to read:

15 (D) has no delinquent state taxes;

16 (E) is a resident of the state, or, if the bidder is a
17 partnership, corporation, or other association, the majority of the
18 persons employed in the bidder's Alaska office are residents of the
19 state;

20 * Sec. 4. AS 37.05.230 is amended by adding new paragraphs to read:

21 (9) the Department of Administration shall compile and update
22 annually a "certified Alaska bidders list" containing the names of
23 bidders certified to be Alaska bidders who maintain inventories in the
24 state;

25 (10) each proposed contract for or purchase of supplies,
26 materials, or equipment shall provide for an award of not less than 40
27 per cent of the total value of the purchase to the lowest responsible
28 Alaska bidder who maintains no offices outside the state and who had for
29 the previous year gross business receipts not in excess of \$1,000,000.

1 * Sec. 5. AS 37.05.320 is amended by adding a new paragraph to read:

2 (5) "declared emergency" means a situation declared by the
3 governor to be an immediate threat to the public peace, safety, health,
4 or the general welfare.

5 * Sec. 6. AS 45 is amended by adding a new chapter to read:

6 CHAPTER 67. IDENTIFICATION OF ALASKA MANUFACTURED GOODS.

7 Sec. 45.67.010. DESIGN OF IDENTIFICATION SEAL. After holding a
8 public hearing to obtain manufactures' advice on the design of a seal to
9 identify goods manufactured in the state, the commissioner shall design
10 the seal. The seal shall bear an appropriate logo and the words
11 "Manufactured in Alaska".

12 Sec. 45.67.020. PERMIT TO USE IDENTIFICATION SEALS. A person who
13 produces goods manufactured in the state may apply to the commissioner
14 for a permit to purchase identification seals to be attached to those
15 goods. The commissioner shall investigate the applicant to determine
16 his eligibility for the permit. A permit shall be issued free of charge
17 to a qualified applicant. The commissioner shall prescribe the form of
18 the application and permit, the period for which the permit is valid,
19 and the procedure for renewal of the permit.

20 Sec. 45.67.030. PENALTIES. (a) A person who knowingly attaches
21 an identification seal to an article, knowing that the article is not a
22 good manufactured in the state, is guilty of a misdemeanor, and upon
23 conviction is punishable by a fine of not more than \$1,000, or by impri-
24 sonment for not more than one year, or by both.

25 (b) A person who knowingly sells or offers for sale an article
26 with an identification seal attached, knowing that the article is not a
27 good manufactured in the state, is guilty of a misdemeanor, and upon
28 conviction is punishable by a fine of not more than \$1,000, or by impri-
29 sonment for not more than one year, or by both.

1 (c) A person who counterfeits an identification seal is guilty of
2 a misdemeanor, and upon conviction is punishable by a fine of not more
3 than \$1,000, or by imprisonment for not more than one year, or by both.

4 (d) A person who knowingly sells, or otherwise provides, identifi-
5 cation seals to another without a permit issued under AS 45.67.020 is
6 guilty of a misdemeanor, and upon conviction is punishable by a fine of
7 not more than \$1,000, or by imprisonment for not more than one year, or
8 by both.

9 (e) For the purposes of this section each article sold or identi-
10 fication seal counterfeited, sold, or otherwise provided constitutes a
11 separate offense.

12 Sec. 45.67.040. DEFINITIONS. In this chapter

13 (1) "commissioner" means the commissioner of commerce and
14 economic development;

15 (2) "goods manufactured in the state" means a new, finished
16 product for marketing to the public, which results from the transforma-
17 tion in the state of raw materials; it does not include a finished
18 product which results from the assembly of previously finished com-
19 ponents parts, unless all the parts are goods manufactured in the state,
20 or unless the finished product is assembled in its final form only in
21 the state;

22 (3) "identification seal" means the identification seal
23 designed under AS 45.67.010.

24 * Sec. 7. AS 45.67.030 is amended to read:

25 Sec. 45.67.030. PENALTIES. (a) A person who knowingly attaches
26 an identification seal to an article, knowing that the article is not a
27 good manufactured in the state, is guilty of a class B misdemeanor [,
28 AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR
29 BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

1 (b) A person who knowingly sells or offers for sale an article
2 with an identification seal attached, knowing that the article is not a
3 good manufactured in the state, is guilty of a class B misdemeanor [,
4 AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR
5 BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

6 (c) A person who counterfeits an identification seal is guilty of
7 a class B misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF
8 NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR
9 BY BOTH].

10 (d) A person who knowingly sells, or otherwise provides, identifi-
11 cation seals to another without a permit issued under AS 45.67.020 is
12 guilty of a class B misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY
13 A FINE OF NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE
14 YEAR, OR BY BOTH].

15 (e) For the purposes of this section each article sold or identi-
16 fication seal counterfeited, sold, or otherwise provided constitutes a
17 separate offense.

18 * Sec. 8. Section 7 of this Act takes effect January 1, 1980.
19
20
21
22
23
24
25
26
27
28
29

Original sponsor: Bradley

Offered: 3/15/79
Referred: Finance

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 114

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to competitive bidding under the Fis-
7 cal Procedures Act; and providing for an effective
8 date."

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

10 * Section 1. AS 37.05.230(1) is amended to read:

11 (1) a contract for construction and repairs, or a purchase of
12 and contract for supplies, materials, equipment, and contractual
13 services must be based on competitive bids advertised to Alaska bidders,
14 or to non-Alaska bidders when no competition between Alaska bidders
15 exists; an award shall be made to the lowest responsible Alaska bidder
16 after advertising for bids, except that

17 (A) (repealed)

18 (B) [A BID SHALL BE AWARDED TO AN ALASKA BIDDER IF HIS
19 BID IS NOT MORE THAN FIVE PER CENT HIGHER THAN THE LOWEST NONRESI-
20 DENT BIDDER'S; AND]

21 (C) competitive bids need not be required

22 (i) for contractual services where no competition
23 exists;

24 (ii) [FOR SALES INVOLVING FAIR TRADE ITEMS;]

25 (iii) in a declared emergency when [, IN THE JUDGMENT
26 OF THE PURCHASING AGENT,] food, clothing, or medical supplies,
27 or materials for use in laboratory and experimental studies
28 may be purchased otherwise to the best advantage of the state;

29 (iv) where rates are fixed by law or ordinance;

1 (v) for items traded in on like items; or

2 (vi) for professional services; and

3 (D) an award may be made to a non-Alaska bidder when no
4 competition between Alaska bidders exists;

5 * Sec. 2. AS 37.05.230(2) is amended to read:

6 (2) if the amount of the contractual services, purchase, or
7 sale is estimated to exceed \$2,500 sealed bids shall be solicited, when
8 practicable, by publication in a newspaper calculated to reach pro-
9 spective Alaska bidders and by posting notices in public places within
10 the area where the work is to be performed or material furnished and in
11 addition the department may also designate a trade journal for publi-
12 cation; the department shall also solicit bids by sending notices by
13 mail to all active prospective Alaska bidders known to it and all bids
14 shall be sealed when received, and shall be opened in public at the hour
15 stated in the notice; the department may negotiate directly if it finds
16 that it is in the best interest of the state;

17 * Sec. 3. AS 37.05.230(5) is amended by adding new subparagraphs to read:

18 (D) has no delinquent state taxes;

19 (E) is a resident of the state, or, if the bidder is a
20 partnership, corporation, or other association, the majority
21 interest must be beneficially owned by residents of the state and a
22 majority of the owners must be residents of the state;

23 * Sec. 4. AS 37.05.320 is amended by adding a new paragraph to read:

24 (5) "declared emergency" means a situation declared by the
25 governor to be an immediate threat to the public peace, safety, health,
26 or the general welfare.

27 * Sec. 5. AS 45 is amended by adding a new chapter to read:

28 CHAPTER 67. IDENTIFICATION OF ALASKA MANUFACTURED GOODS.

29 Sec. 45.67.010. DESIGN OF IDENTIFICATION SEAL. After holding a

1 public hearing to obtain manufactures' advice on the design of a seal to
2 identify goods manufactured in the state, the commissioner shall design
3 the seal. The seal shall bear an appropriate logo and the words
4 "Manufactured in Alaska".

5 Sec. 45.67.020. PERMIT TO USE IDENTIFICATION SEALS. A person who
6 produces goods manufactured in the state may apply to the commissioner
7 for a permit to purchase identification seals to be attached to those
8 goods. The commissioner shall investigate the applicant to determine
9 his eligibility for the permit. A permit shall be issued free of charge
10 to a qualified applicant. The commissioner shall prescribe the form of
11 the application and permit, the period for which the permit is valid,
12 and the procedure for renewal of the permit.

13 Sec. 45.67.030. PENALTIES. (a) A person who knowingly attaches
14 an identification seal to an article, knowing that the article is not a
15 good manufactured in the state, is guilty of a misdemeanor, and upon
16 conviction is punishable by a fine of not more than \$1,000, or by impri-
17 sonment for not more than one year, or by both.

18 (b) A person who knowingly sells or offers for sale an article
19 with an identification seal attached, knowing that the article is not a
20 good manufactured in the state, is guilty of a misdemeanor, and upon
21 conviction is punishable by a fine of not more than \$1,000, or by impri-
22 sonment for not more than one year, or by both.

23 (c) A person who counterfeits an identification seal is guilty of
24 a misdemeanor, and upon conviction is punishable by a fine of not more
25 than \$1,000, or by imprisonment for not more than one year, or by both.

26 (d) A person who knowingly sells, or otherwise provides, identifi-
27 cation seals to another without a permit issued under AS 45.67.020 is
28 guilty of a misdemeanor, and upon conviction is punishable by a fine of
29 not more than \$1,000, or by imprisonment for not more than one year, or

1 by both.

2 (e) For the purposes of this section each article sold or identi-
3 fication seal counterfeited, sold, or otherwise provided constitutes a
4 separate offense.

5 Sec. 45.67.040. DEFINITIONS. In this chapter

6 (1) "commissioner" means the commissioner of commerce and
7 economic development;

8 (2) "goods manufactured in the state" means a new, finished
9 product for marketing to the public, which results from the transforma-
10 tion in the state of raw materials; it does not include a finished
11 product which results from the assembly of previously finished com-
12 ponents parts, unless all the parts are goods manufactured in the state,
13 or unless the finished product is assembled in its final form only in
14 the state;

15 (3) "identification seal" means the identification seal
16 designed under AS 45.67.010.

17 * Sec. 6. AS 45.67.030 is amended to read:

18 Sec. 45.67.030. PENALTIES. (a) A person who knowingly attaches
19 an identification seal to an article, knowing that the article is not a
20 good manufactured in the state, is guilty of a class B misdemeanor [,
21 AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR
22 BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

23 (b) A person who knowingly sells or offers for sale an article
24 with an identification seal attached, knowing that the article is not a
25 good manufactured in the state, is guilty of a class B misdemeanor [,
26 AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR
27 BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

28 (c) A person who counterfeits an identification seal is guilty of
29 a class B misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

(d) A person who knowingly sells, or otherwise provides, identification seals to another without a permit issued under AS 45.67.020 is guilty of a class B misdemeanor [, AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

(e) For the purposes of this section each article sold or identification seal counterfeited, sold, or otherwise provided constitutes a separate offense.

* Sec. 7. Section 6 of this Act takes effect January 1, 1980.

Introduced: 2/7/79
Referred: Commerce

1 IN THE SENATE

BY BRADLEY

2 SENATE BILL NO. 114

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to competitive bidding under the Fis-
7 cal Procedures Act."

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

9 * Section 1. AS 37.05.230(1)(B) is repealed and re-enacted to read:

10 (B) a bid shall be awarded to the lowest responsible
11 Alaska bidder

12 (i) if the cost of the contract is estimated to
13 exceed \$2,500 but is less than \$200,000; or

14 (ii) if the cost of the contract is estimated to be
15 \$200,000 or more and his bid is not more than 12.5 per cent
16 higher than the lowest nonresident bidder's; and

17 * Sec. 2. AS 37.05.230(1)(C)(iii) is amended to read:

18 (iii) in a declared emergency when, in the judgment
19 of the purchasing agent, food, clothing, or medical supplies
20 [, OR MATERIALS FOR USE IN LABORATORY AND EXPERIMENTAL
21 STUDIES] may be purchased otherwise to the best advantage of
22 the state;

23 * Sec. 3. AS 37.05.230(5) is amended by adding new subparagraphs to read:

24 (D) has no delinquent state taxes;

25 (E) is a resident of the state, or, if the bidder is a
26 partnership, corporation, or other association, the majority
27 interest must be beneficially owned by residents of the state and a
28 majority of the owners must be residents of the state;

29 * Sec. 4. AS 37.05.230 is amended by adding a new paragraph to read:

1 (9) contracts entered into in accordance with this section
2 with an "Alaska bidder" shall recite the fact that the contractor is an
3 "Alaska bidder".

4 * Sec. 5. AS 37.05.320 is amended by adding a new paragraph to read:

5 (5) "declared emergency" means a situation declared by the
6 governor to be an immediate threat to the public peace, safety, or
7 health or the general welfare.

8 * Sec. 6. AS 37.05.230(1)(C)(ii) is repealed.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSSB 114 (Chapter 67 only)
 Title An act relating to competitive bidding under the Fiscal Procedures Act
 Requested by Senator Bradley Date 3-30-79

II. FISCAL DETAIL

Agency Affected Department of Commerce and Economic Development
 Program Category Affected Development
 BRU, Program, or Subprogram(s) Affected Economic Enterprise
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES	0	0	0	0	0	
200 TRAVEL	0	0	0	0	0	
300 CONTRACTUAL	0	50.0	25.0	15.0	10.0	
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	50.0	25.0	15.0	10.0	

FUNDING (Thousands of Dollars)

GENERAL FUND		50.0	25.0	15.0	10.0	
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	0	0	0	0	0	
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The contractual costs include printing of articles and tags and required advertising to introduce Alaska manufacturers' seals and gain public recognition and approval. Future year fiscal requirements will decline as printing of materials will be the major expenditure. The Division of Economic Enterprise will charge manufacturers using large quantities of the seal for the cost of printing.

IV. DATE 3-30-79 PREPARED BY JM Deagen
 AGENCY Economic Enterprise
 Original: Legislative Finance PHONE 465-2021
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

STATE OF ALASKA
THE LEGISLATURE

FOURTH - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3500

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 8, 1979

SUBJECT: State purchasing exclusively from Alaska businesses:
(Work Order No. 6243)

TO: Senator Patrick Rodey

FROM: Kenneth M. Rosenstein, Legislative Counsel *KMR*

You have requested a legal analysis of the Buy Alaska Committee's legislative proposal requiring that state purchasing be exclusively from Alaska businesses when practicable.

It is not clear that the draft supplied by the Committee accomplishes their purpose. As drafted, it requires that state purchasing contracts be based on competitive bids advertised to Alaska bidders. The award is to be made to the lowest responsible bidder, without limitation to Alaska bidders. To accomplish what I perceive to be the Committee's intent, the award of contract would need to be limited to the lowest Alaska bidder.

Legally, I can find no precedent holding that such a preference is unconstitutional or otherwise unlawful. Indeed, there is precedent specifically upholding such a preference, but on a much more limited scope than proposed by the Committee.

In American Yearbook Co., v. Askew, 339 F. Supp. 719, aff'd mem. 409 U.S. 904 (1972), the plaintiff challenged a Florida statute that required all printing required by a state agency be done within the state. The statute was attacked on the basis that it violated the 14th amendment and commerce clause of the U.S. Constitution. Holding that the statute was a valid exercise of the state's proprietary power, a three judge district court stated:

... [I]n framing specifications for its printing work, the state performs a proprietary function and stands in the shoes of a private party who is entitled in most instances to choose where and by whom his printing will be done. In that posture the state is like a trustee; the citizens are the beneficiaries. It may be necessary for the state to adopt discriminatory purchasing policies, such as those questioned here, to insure that the interest of the people is best served. In fact it is conceivable that the failure to do so would constitute a breach of the state's duty to its residents. In a case such as this, it is not for the Court to question the wisdom of the Legislature in discharging that trust obligation.

399 F. Supp. 719, 722 - 723.

In dealing with the commerce clause challenge, the court cited numerous authorities, including MacMillan Co. v. Johnson, 269 F. 28 (1920), to support its holding that the commerce clause was not violated by the Florida statute. In MacMillan a Michigan statute specified the "conditions under which a book dealer could sell text books to state school districts." 339 F. Supp. 719, 724 (E.D. Mich. 1920). In discussing American Yearbook's commerce clause claims, the court stated:

The [MacMillan] Court laid plaintiff's arguments to rest in language no less pertinent here [in American Yearbook]

"... Plaintiff has no vested right, without the consent of the state, to sell and ship its books to the school officials of Michigan in interstate commerce. This situation depends on the old, familiar rule that a sale or contract cannot be made without the consent and agreement of both of the contracting parties." [269 F. 28, 31]

Senator Patrick Rodey
Page 3
February 8, 1979

... What plaintiff [American Yearbook] fails to recognize is that those statutes [cited by American Yearbook as having been successfully challenged as violative of the commerce clause] regulated private industry. Trade regulations are clearly subject to Commerce Clause restrictions, but statutes that merely specify the conditions of state purchases are not.

399 F. Supp. 719, 724 - 725.

As noted above, the district court's decision in American Yearbook was affirmed by the U.S. Supreme Court in a memorandum decision (409 U.S. 904), but the precedent set by the case need not necessarily be followed by the Alaska Supreme Court.

The Alaska Supreme Court has laid a legal foundation that could serve to justify the preference requested by the Committee. In State v. Reefer King Co. Inc., 559 P.2d 56 (Alaska 1976), the court affirmed the constitutionality of Alaska's fish processors' tax found at AS 43.75.060. That statute distinguishes between shore-based processors and floating processors and taxes the floating processors at a rate four times greater than the rate applied to shore-based processors. The court, in rejecting the challenge based upon the equal protection clauses of the Alaska and U.S. Constitutions, stated:

... [T]he statute reflects a... legislative judgment, that "shore-based" processors make a more valuable contribution to the state and local economies than do the "floating" processors. While the processors may argue that they contribute as much as the "shore-based" processors do, it cannot be disputed that the impacts of the two types of operations on the local communities are substantially different in character.

Senator Patrick Rodey
Page 4
February 8, 1979

... [T]he tax differential bears a fair and substantial relationship to the goal of encouraging societal contributions of the type made by "shore-based" processors... The state may legitimately encourage, through tax incentives or exemptions, industries or types of industries which it considers desirable, and this method of encouragement does not deprive other taxpayers, who do not qualify for the benefit, of their equal protection rights.

559 P.2d 56, 65 - 66.

This same rationale may support the legislature's enactment of legislation granting Alaska businesses an exclusive preference with regard to purchases by the state. This is especially so when it is considered that a court would seem to scrutinize an allegedly discriminating tax more closely than state purchasing policy. There this appears to be fairly persuasive authority that would indicate that there are no serious constitutional issues involved in the Committee's proposal.

KMP:nem

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. S. B. 114 Bradley
 Title An Act Relating to Competitive Bidding Under the Fiscal Procedures Act
 Requested by Jay Hogan - Legislative Finance Date February 9, 1979

II. FISCAL DETAIL

Agency Affected All
 Program Category Affected All
 BRU, Program, or Subprogram(s) Affected All

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES		34,000	36,040	38,202	40,494	42,924
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES		400	424	449	476	504
500 EQUIPMENT		2,200				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
* Additional Costs for Goods & Services		2,703,000	2,865,180	3,037,091	3,219,316	3,412,475
TOTAL		2,739,600	2,901,644	3,075,742	3,260,286	3,455,903

FUNDING (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
GENERAL FUND		2,739,600	2,901,644	3,075,742	3,260,286	3,455,903
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
FULL TIME		2	2	2	2	2
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

The fiscal impact of this bill is difficult to analyze due to lack of data and not knowing exactly how vendors, both in and out of State, will react to preference. It is conceivable that out of State vendors will quit bidding on State business, therefore reducing bid competition. Reduction in vendor competition has the obvious effect of reducing price competition as well. However, to what degree is not known.

* However, the National Association of Purchasing Officials has estimated nationally that an increase in a bidders preference would raise the cost of doing business proportionately with the increase in the preference. If their assumption is correct, then based on the FY 78 figures and using a conservative figure of 10% x \$27,026,589 = \$2,702,659.

IV. DATE _____ PREPARED BY Richard C. Bradley
 AGENCY Administration
 PHONE 465-2250
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

H. B. 114 Bradley

This figure is an estimate only and we feel it is conservative.

Added to this additional overall cost of doing business must be added the extra expense of administering procurement activity such as; determining residency, beneficial ownership. Therefore, we anticipate adding one full time clerical position in both the Anchorage and Juneau offices. Nothing has been addressed as far as potential loss of Federal participation in State programs due to "restraint of trade" or "inter-State commerce".

For informational purposes, we submit the following information:

REPORT TOTAL DOLLARS ON PO'S AND CA'S
JULY 1, 1977 JUNE 30, 1978

PURCHASE ORDERS

IN STATE	\$7,938,898.83
OUTSIDE STATE	\$5,115,022.96

CONTRACT AWARDS

IN STATE	\$8,855,596.66
OUTSIDE STATE	\$5,117,070.15

TOTAL

IN STATE	\$16,794,495.49	62%
OUTSIDE STATE	\$10,232,093.11	38%
GRAND TOTAL		\$27,026,588.60
AK BIDDERS PREFERENCE EXERCISED TO DETERMINE LOW BID		\$ 55,039.18

From a purely professional purchasing standpoint, vendor preferences are not conducive to good purchasing practices nor in the purchasing body's best interest. We are sympathetic to the idea of stimulating in-State business, however, we do not believe this to be the correct vehicle.

The problem is one that requires an in-depth review of the whole State economic picture. A vendor preference is a weak and easy approach to the problem, but cannot, in itself, solve it. It is little more than a token gesture of appeasement to a select few. Competition is the backbone of our "American Way". To reduce or eliminate it adversely affects the very heart of our socio-economic system.

DEPARTMENT OF GENERAL SERVICES
P.O. BOX 95807
SACRAMENTO, 95807



February 21, 1979

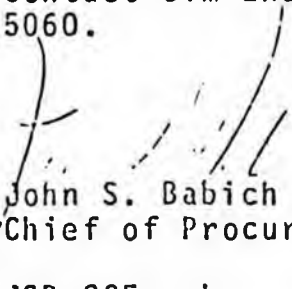
State of Alaska
Department of Administration
Division of General Services & Supply
Mr. Gerald L. White
Sr. Purchasing Agent
State Office Building
10th Floor, Pouch C
Juneau, Alaska 99811

Dear Mr. White:

The State of California had passed legislation allowing for a preference in purchasing from California domiciled companies. In 1970, based on an opinion from the Attorney General, the "Buy California" law was declared unconstitutional and has not been operative since that time.

The State has since passed a Small Business Law which allows for a 5% preference for purchases from California Small Businesses. The Small Business Law was implemented in 1974 and has not faced the problems encountered by "Buy California". The provisions of the law have been supplied to Mr. R. L. Schofield of your office in my February 7, letter.

If you have further questions regarding the Small Business Law, contact Jim Exum, Chief, Small Business Office at (916) 322-5060.


John S. Babich
Chief of Procurement

JSB:GCE:mek
cc: J. Exum

GEORGE R. ARIYOSHI
GOVERNOR



HIDEC MURAKAMI
COMPTROLLER
MIKE N. TOKUNAGA
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P. O. BOX 119
HONOLULU, HAWAII 96810

Letter No.
PS-79-639.2

February 21, 1979

Mr. Gerald L. White
Sr. Purchasing Agent
Division of General Services and Supply
Department of Administration
10th Floor, State Office Bldg.
Pouch C
Juneau, Alaska 99811

Dear Mr. White:

In response to your letter of February 13, 1979, we enclose copies of portions of Chapter 103, Hawaii Revised Statutes, covering preference for Hawaii Products. Also enclosed is an index to the current Hawaii Products List and a copy of the current Rules and Regulations.

Basically, the Hawaii Products Preference provides for preference for Hawaii products based on the amount of Hawaii input. Preference is 3 percent where Hawaii input is 25-50 percent; 5 percent where Hawaii input is 50-75 percent; and preference is 10 percent where Hawaii input is more than 75 percent. Generally, we have found that the Hawaii Products preference has not been a great benefit to Hawaii manufacturers or producers. The size of the current Hawaii Products List attests to that fact.

NASPO has consistently opposed any form of preference law, as did the National Governor's Conference last year. In spite of objections, it seems that in-state preferences will continue as a means of protecting local business, though I wonder if it really is in the best interest of the community.

Due to the recurring interest in the subject, I would appreciate results you obtain from your survey.

Sincerely,

A handwritten signature in dark ink, appearing to read "Earl B. Dedell".

Earl B. Dedell, Chief
Purchasing and Supply
Division

EDD/jas

Enc.

 ILLINOIS
DEPARTMENT OF
ADMINISTRATIVE SERVICES

office of
procurement

February 23, 1979

PURCHASING DIVISION
801 William G. Stratton Building
Springfield, Illinois 62706
217/782-2301

Mr. Gerald L. White
Sr. Purchasing Agent
Department of Administration
Div. of General Services and Supply
18th Floor, State Office Building
Pouch C
Juneau, Alaska 99811

RE: In-State Preference

Dear Mr. White:

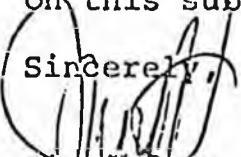
The State of Illinois does not have an in-state preference statute and we do not practice in-state preference.

The Illinois Purchasing Act, Section 5, D3e, does make the following provision: When a public contract is to be awarded to the lowest responsible bidder a resident bidder must be allowed a preference as against a non-resident bidder from any state which gives or requires a preference to bidders from that state. The preference is to be equal to the preference given or required by the state of the non-resident bidder. This section of our law was declared unconstitutional in 1973 and we have not attempted to enforce this provision since that time.

We are in complete agreement with the NASPO Resolution V adopted October 5, 1978 at the 33d annual meeting held in Springfield, IL wherein it was resolved that the National Association of State Purchasing Officials is opposed to the use of preferences in awarding state contracts.

We are certainly interested in receiving a recap of your inquiry on this subject.

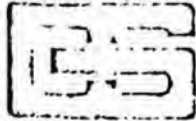
Sincerely,


Jimmie North
State Purchasing Agent

JN:mrc

STATE OF

IOWA



DEPARTMENT OF GENERAL SERVICES □ DES MOINES, IOWA 50319

PURCHASING DIVISION

HON. ROBERT D. RAY
GOVERNOR

February 23, 1979

STANLEY L. McCAUSLAND
DIRECTOR

JACK T. PITZER
CHIEF PURCHASING OFFICER

DUANE W. CARLSON
ASSISTANT CHIEF PURCHASING OFFICER

Gerald L. White
Sr. Purchasing Agent
Division of General Services and Supply
Department of Administration
10th Floor, State Office Building
Pouch C
Juneau, Alaska 99811

Dear Mr. White:

The State of Iowa does not have an in-state preference as such. Our statute gives preference to in-state bidders when price and other factors are "comparable".

For your information, at the last meeting of the National Association of State Purchasing Officials in Springfield, Illinois, a complete report on in-state purchasing preference was submitted to the membership. Copies of that report should be available through the NASPO office. Also, at that meeting, the members of NASPO passed a resolution opposing such preferences.

I hope this information assists you with your study.

Sincerely yours,

A handwritten signature in cursive script that reads "Jack T. Pitzer".

JACK T. PITZER
Chief Purchasing Officer

JTP/np

STATE OF MICHIGAN



WILLIAM G. MILLIKEN, Governor

DEPARTMENT OF MANAGEMENT AND BUDGET

STEVENS T. MASON BLDG.,
P.O. BOX 30026 LANSING, MICHIGAN 48909
GERALD H. MILLER Director

February 23, 1979

Mr. Gerald L. White
Senior Purchasing Agent
STATE OF ALASKA
Department of Administration
Pouch C
Juneau, Alaska 99811

Dear Mr. White:

In response to your letter of the 13th of February, wherein you requested information about in-state preference laws, the State of Michigan has taken a firm stand on any legislation of this nature for the last 30 years. We feel that in-state preference laws are detrimental to our state in the give and take of doing business with other states; consequently we only have one area in our responsibility where there is an in-state preference law and that is in printing and the printing laws have been on the books since 1938. That particular law states any printing that can be done in Michigan must be bid to Michigan vendors only. One other small way we do favor in-state vendors is that all things being equal, the Michigan vendor would get the award, in the case of a tie bid.

As a professional purchasing manager, I would urge you to take a strong stand with your legislature to protect your state from these kinds of laws where in-state vendors get preference. I would guess that with the distance that a vendor has to travel to your state, you would have something of a built-in preference law.

If you need any help from me or my staff, please don't hesitate to ask. We are only too glad to help.

Sincerely

A handwritten signature in dark ink, appearing to read "A. Richard Bos".

A. Richard Bos, Director
PURCHASING DIVISION

ARB:gs



STATE OF ALASKA

JAY S. HAMILTON, GOVERNOR

DEPARTMENT OF ADMINISTRATION

DIVISION OF GENERAL SERVICES AND SUPPLY

13TH FLOOR, STATE OFFICE BLDG.
POUCH C - BUREAU 5311

February 13, 1979

Raymond L. Moore
Director of Purchasing
Office of Administration
P.O. Box 809
Jefferson City, MO 65101

Dear Mr. Moore:

The Alaska State Legislature is looking into in-state bidders preference for Alaska. At the present time, the State of Alaska has a 5% in-state preference, however, there is a possibility this may be increased.

We would appreciate by return mail information on whether or not your state has an in-state preference and, if so, what are the limits and/or guidelines?

We will be happy to provide a recap of our inquiry if so desired. Your early reply would be appreciated.

Sincerely,



Gerald L. White
Sr. Purchasing Agent

1. See attached - no percentage preference
2. This is my opinion it is not legal to use % preference in expenditure of federal funds re OMB Circular A102 attachment "O" and FMC 74-7.
3. Current legislature has pending 5 or 6 bills for in-state preference but no different than current statutes except one which is for 1 1/2% preference on public or heavy public for state and all political subdivisions incl schools.
4. Please send me a recap

CHARLES S COATES SR CHAIRMAN
CHARLES C GAITHER MEMBER
HENRY C WENDLER, MEMBER



HOMER A FOERSTER
EXECUTIVE DIRECTOR

STATE BOARD OF CONTROL

LYNDON BAINES JOHNSON STATE OFFICE BUILDING

PO BOX 13047 CAPITOL STATION

AUSTIN, TEXAS 78711

February 23, 1979

REPLY TO

Mr. Gerald L. White
Sr. Purchasing Agent
State of Alaska
Department of Administration
Division of General Services and Supply
10th Floor
State Office Building
Pouch C
Juneau, AK 99811

Dear Mr. White

The State of Texas does not have an in-state preference except in cases of tie bids.

There has been some effort in the past to adopt such legislation but it never did receive very much support. From the procurement standpoint to obtain the most value for the tax dollars, we have been opposed to in-state preference.

Sincerely

A handwritten signature in cursive script that reads "Homer A. Foerster".

Homer A. Foerster
Executive Director

HAF:e



SCOTT M. MATHESON
Governor

STATE OF UTAH
DEPARTMENT OF FINANCE
147 STATE CAPITOL
SALT LAKE CITY, UTAH 84114
PHONE (801) 533-5721

D. DALE WILLIAMS
Director of Finance
DIVISION OF PURCHASING
J. DOUGLAS CHRISTIANSEN
State Purchasing Agent

February 21, 1979

Mr. Gerald L. White
Sr. Purchasing Agent
Department of Administration
10th Floor - Pouch C
State Office Building
Juneau, Alaska 99811

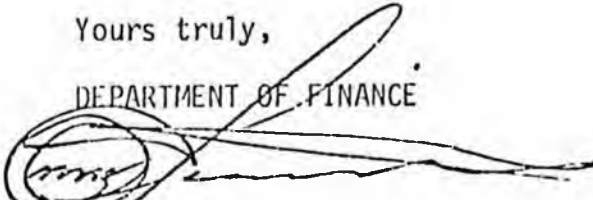
Dear Mr. White:

The State of Utah does have a 5% Preferred Bidder Law, which is used only when the out-of-state bidder has a similar law. You may know that N.A.S.P.O., over the years, has been very much against states having any preference law. Since our law is a reciprocal law, there are only five or six states that our Utah manufacturers can qualify under. We are desirous of eliminating it from the Utah Code, as much as it has meant to Utah manufacturers.

A copy of our law is enclosed.

Yours truly,

DEPARTMENT OF FINANCE



J. Douglas Christiansen
State Purchasing Agent

JDC/skp

Enclosure

COMMONWEALTH of VIRGINIA

Department of General Services

Division of Purchases and Supply

217 Governor Street

OFFICE OF
DIVISION DIRECTOR

POST OFFICE BOX 1110
RICHMOND, VIRGINIA 23219

February 16, 1979

Mr. Gerald L. White
Sr. Purchasing Agent
Division of General Services and Supply
10th Floor, State Office Building
Pouch C
Juneau, Alaska 99811

Dear Gerald:

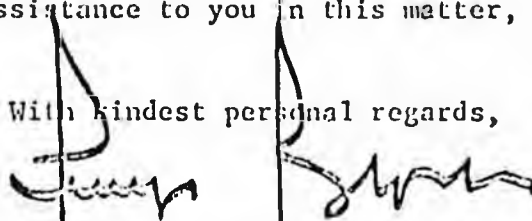
In reply to your letter of February 13 regarding in-state preference, the Commonwealth of Virginia does not have any law which governs in-state preference other than one which gives the award to a Virginia vendor in case of a tie bid with a bidder from out of State.

During the 1977 General Assembly, an in-state preference law was proposed; however, it was passed by during that session and has never been revived. We believe our legislators realized that there could be an atmosphere of reciprocity on the part of the bordering states and found that the in-state preference could possibly add to the prices quoted by our vendors.

We might also add that it is our understanding that no manufacturer in a state which has the in-state preference law on the books can sell any of his materials, equipment or supplies to the Commonwealth of Pennsylvania, which, in turn, is not too far removed from the Commonwealth of Virginia.

If we can be of any further assistance to you in this matter, please let us know.

With kindest personal regards,


Phillip R. Brooks
Director

PRB/a



STATE OF VERMONT

DIVISION OF PURCHASING
AGENCY OF ADMINISTRATION

MONTPELIER, VERMONT 05602

802-828-2211

February 22, 1979

Mr. Gerald L. White, Senior Purchasing Agent
Division of General Services and Supply
Department of Administration
State of Alaska
State Office Building
Pouch C
Juneau, Alaska 99811

Dear Mr. White:

This is in reference to your inquiry of February 13. We do not have any in-state preference statutes. The subject is frequently suggested by someone in our legislature, and, to date, we have been able to discourage its implementation.

I am sure you know that the National Association of State Purchasing Officials has rejected this concept for many years as only being damaging to the states that have it, with little or no assistance to those within the state that cannot be competitive.

Very truly yours,

RICHARD C. RAYMOND
Purchasing Director

RCR:dw

The Procedures

- a. Regarding the inapplicability of the Robinson-Patman Act and (if so) the "Fair Trade" laws
- b. Advising that identical bids will be reported to the Justice Department in accordance with the President's Executive Order 10936, and also to the State Attorney General.
3. Reject all bids and seek to negotiate an agreement based upon issuing a "blanket" type order for a large quantity to be delivered when and if needed.
4. Prevail upon local distributors to have their companies release them from resale price maintenance policies and follow up by direct contact with their main headquarters.
5. Publicize the situation when local suppliers are concerned.

Responsibility of the Purchasing Official to Report Collusion

Executive Order 10936, dated April 24, 1961, required all departments, agencies, and instrumentalities of the federal government to report any instances of identical bids submitted in advertised procurement. In addition, the order instructed the Attorney General to establish a system whereby *state* and *local* governments would also be invited to submit reports of identical bids which they might receive in advertised procurement.

THESE PROCEDURES, put into effect on November 1, 1961, were designed to discourage identical bidding, to reduce the cost of government, and help maintain a competitive economy.

ABOUT 2,000 STATE AND LOCAL GOVERNMENT AGENCIES WERE INVITED to participate in the reporting program. Under this program, identical bids on line items costing more than \$1,000 are reported on forms supplied by the Attorney General ("Identical Bid Report Form DJ-1510").

HOW THIS INFORMATION IS USED. From time to time the Attorney General consolidates all the identical bid data reported by local, state and federal agencies. Though this information provides a stream of intelligence useful in detecting suspected collusion among bidders, purchasing officials should also supplement these reports with any specific information they may have of suspicious behavior.

HELP FROM STATE ATTORNEY GENERAL. Several states have established anti-trust sections in the office of the Attorney General, while still others have instituted reporting systems similar to the federal procedure.

The Buying Cycle

AFFIDAVITS OF NON-COLLUSION. Both Minnesota and Oregon have systems by which state and local government agencies can protect themselves against collusion. Basically there are two procedures:

1. Requiring that all bidders submit a prescribed affidavit and information form certifying non-collusion.
2. Reporting identical bidding and all suspected collusive bidding to the anti-trust section of the state Attorney General's office.

Other states, including California, New York, and Texas, have been or are offering active legal assistance to all public purchasing officials in a strong attempt to battle collusion.

TRIPLE DAMAGES. Public agencies which prove in civil court that they have been overcharged, due to collusion between bidders, can collect triple damages. An example is the actions filed by cities against manufacturers of electrical controlling machinery which have resulted in many out-of-court settlements. Also, in criminal actions taken against conspirators by the U.S. Department of Justice, many heavy fines have been paid by those involved in price-fixing activities forbidden by Federal anti-trust laws.

LOCAL PREFERENCE

Not all abuses of the principle of free, competitive bidding can be laid at the door of the bidders. The practice of granting preference to local suppliers has its roots in the ordinances and regulations which govern purchasing.

Definition

"Local Preference" usually refers to any advantage or privilege accorded to a supplier who is a taxpayer in the local community. The actual preference can take many forms.

Local Preference by States

A survey by *Government Product-news* magazine showed that about one-third of the states offer a definite price preference to in-state suppliers. In most of these cases it is specified by state law. Where it is in effect, the in-state bidder generally receives an advantage of 5% in price when bidding against an out-of-state supplier.

Many states, however, invoke the principle of in-state preference only in the case of tie bids. Minnesota and South Dakota use in-state prefer-

The Procedures

ence as a reciprocity measure against other states which apply price preferences. In-state preference is defined in a number of ways. While in some cases the supplier need only be a resident or have a staffed office in the state, in other cases he must be incorporated in the state, have offices and warehouses in the state, or the product must be manufactured or grown in the state.

Local Preference in Cities and Counties

Most large cities and major counties also allow some degree of local preference, although in the majority of cases it is applied only in the cases in which price, quality and service are identical. While the preference may be based on statutes or codes, in other cases it is simply a matter of voluntary policy. In reply to a survey by *Government Product-news* magazine, one purchasing agent reported that his city *did* grant a preference to local suppliers, but that the amount and nature of the preference was "confidential." (We wonder how public business can be considered a secret matter.)

REASONS FOR LOCAL PREFERENCE. These subsidies are generally promoted by pressure groups of merchants or by the desire of elected officials to curry favor among their constituents. Although the average taxpayer will generally object, his voice is seldom heard because he isn't "organized" or because this is not the type of moral issue or popular cause likely to generate a crusade.

WHEN "LOCAL PREFERENCE" IS WARRANTED. There can be little quarrel with a policy favoring local merchants or supplies in cases of tie bids when all other things are equal. Such a policy is beneficial to both buyer and seller and does not increase the cost to the taxpayer.

THE ETHICAL ISSUE. We do, however, disagree completely with those agencies which believe they should give preference to local suppliers simply because "they are taxpayers in the community," even if it increases the cost to the remaining taxpayers. The issue thus becomes a matter of discrimination, in which one small group of taxpayers is given an advantage at the expense of a larger group.

FALLACY OF A "BUY AT HOME" POLICY. While purchasing agent for the city of Milwaukee, Mr. Nicholson was frequently pressured to confine his purchases to the products of local manufacturers. On one occasion, Milwaukee labor unionists protested vigorously against the out-of-town purchases of chairs for the Mayor's office, arguing that this order should have gone to a Milwaukee chair company, because it was a local firm.

The Buying Cycle

These unionists refused to realize that if it was improper for their city to buy chairs from out of town, after fair and competitive bidding, it would be equally improper for citizens or cities elsewhere to buy goods made in Milwaukee. Should New Yorkers only buy in New York? Or Chicagoans only in Chicago? Then turbines made by Allis-Chalmers Co., gears by the Falk Corp., power shovels by the Bucyrus-Erie Co., and machines by the Chain Belt Co., should be restricted to the local Milwaukee market. Such a policy would put major Milwaukee industries out of business.

WHO IS BEING FOOLED? Despite the obvious fallacy of the "Buy at Home" principle, it is still an official policy in many government agencies, as this news item shows:

"HARRISBURG, PA. — Pennsylvania's Department of Property and Supplies, looking for ways to cut the percentage of orders placed with out-of-state suppliers, has announced that it is planning to hold a state-wide vendors' conference on 'How to Do Business with Pennsylvania.'

"The conference . . . is aimed at simplifying present procurement procedures and expanding the commonwealth's bidders list in order to place a substantially greater amount of the state's purchases with Pennsylvania businesses.

"Currently, the state spends more than \$125 million annually for goods and services, with up to 35% of the orders going outside Pennsylvania."

TAXPAYERS PAY THE COST. Pennsylvania manufacturers, like those elsewhere, cannot exist on business generated in their own states, but must depend on nation-wide, if not world-wide, sales to show a profit. By what manner of reasoning then do local or state officials believe they are benefiting their in-state taxpayers by attempting to confine their purchases to local suppliers? Who pays the extra cost? It simply means that taxes must be raised that much more.

OTHER WAYS OF OFFERING LOCAL PREFERENCE. Aside from the practice of giving the local vendor an out-and-out price subsidy, there are other ways in which outside suppliers are often placed at a disadvantage.

Some government agencies do not include "outsiders" on their bid list. In still other cases, suppliers who have submitted bids in good faith in the expectation that the award would go to the lowest responsible bidder,

The Procedures

have found that their bids were used for bargaining with local firms, playing his prices against theirs to "beat them down."

This practice eventually results in a greater cost to the taxpayers besides being unethical. Many a qualified and deserving supplier has ceased bidding to those shortsighted public agencies who try to erect a "Chinese Wall" around their purchases. When local bidders find that outside bidders have quit bidding, they have the field to themselves and can bid as high as they wish without fear of being undersold.

Legality of Local Preference

The legality of statutory charter or ordinance provisions authorizing or requiring the granting of local preference has frequently been challenged, and in most cases the courts have ruled the law unconstitutional.

In one of the first cases, a New York state law was held invalid, with the court stating that "Preference . . . within a state has been held to violate the United States Constitution." In the last few years, local preference laws have been ruled unconstitutional in Illinois, Georgia, and California.

LOCAL PREFERENCE OPPOSED BY MOST PURCHASING AGENTS. Most public purchasing agents prefer to adhere closely to the requirement for full and open competition on public purchases whenever it is practical to obtain full and open competitive bids. They also quite unanimously prefer to show preference for local suppliers only where all other factors are equal. In a publication titled *Principles and Best Practices in State Purchasing* the Council of State Governments says:

"Preference should be given to state bidders or to state-produced commodities only when there is no sacrifice or loss to the state in price or quality."

The same report gives a concise summary of its reasons for taking this stand:

"Giving a state bidder a subsidy at the taxpayer's expense usually cannot be justified, as it tends to limit and sometimes eliminate competition. It also invites retaliatory action by other states which, in the long run, would increase interstate trade barriers and work to the detriment of the businessmen of the state.

"It is believed that free trade is a far better solution to this economic problem than the basically unhealthy practice of subsidization through granting a percentage preference either to an

The Buying Cycle

in-state bidder or as goods grown, processed or manufactured within the state."

SUMMARY OF ARGUMENTS OPPOSING LOCAL PREFERENCE. One of the best statements on this subject appeared in the *Public Management Journal* of the National City Managers Association:

"In a recent memorandum to the Mayor and City Council members, Wayne F. Anderson, City Manager, Evanston, Ill., outlined four reasons against giving preferential treatment to local vendors regarding city purchases. Anderson pointed out that:

1. "When a 'buy local' policy raises the city's cost of supplies and equipment, every household in the city is required to pay more taxes for the benefit of, at most, several hundred local vendors.
2. "Competition for the city's business is lowered because outside vendors are likely to decide against bidding where the local bidder is given preferential treatment.
3. "The existence of a 3 to 5 percent preference differential allows a local vendor to quote a higher price than he otherwise would and therefore to exploit the city.
4. "A city that establishes a 'buy local' policy must realize that its commercial houses and manufacturers would lose business if other cities did the same thing. The city and economy as a whole are best served by a free flow of goods and as few barriers to free competition as possible. An award may be made to a local vendor even though his bid is not low if other cost considerations, such as ease of selection, pick-up and delivery speed, and service and maintenance, make it advantageous to buy from him."

"BUY AMERICAN" PREFERENCE IN FEDERAL PURCHASING

The "Buy American Act" of March 3, 1933 (41 V.S.C. 10a-10d) requires that the federal government give preference to domestic manufacturers. (Whether to make this clause applicable is always decided before bids are advertised.) As administered in accordance with Executive Order No. 10582, dated December 17, 1954, this Act applies to components, materials and end products mined, produced, or manufactured in the United States. Exceptions are limited to cases in which:

- A. The item is for use outside the United States.

DEPARTMENT OF ADMINISTRATION

DIVISION OF GENERAL SERVICES AND SUPPLY

*16TH FLOOR, STATE OFFICE BLDG.
POUCH C - JUNEAU 53811*

February 13, 1979

John E. Short
Assistant Administrator
General Services Administration Div.
Department of Administration
One West Wilson St., Room 119
Madison, WI 53702

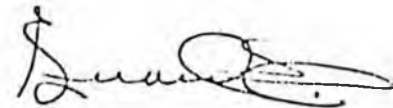
Dear Mr. Short:

The Alaska State Legislature is looking into in-state bidders preference for Alaska. At the present time, the State of Alaska has a 5% in-state preference, however, there is a possibility this may be increased.

We would appreciate by return mail information on whether or not your state has an in-state preference and, if so, what are the limits and/or guidelines?

We will be happy to provide a recap of our inquiry if so desired. Your early reply would be appreciated.

Sincerely,



Gerald L. White
Sr. Purchasing Agent



State of Wisconsin \ DEPARTMENT OF ADMINISTRATION

Lee Sherman Dreyfus
Governor

Kenneth E. Lindner
Secretary

1 WEST WILSON STREET
MADISON, WISCONSIN 53707

February 20, 1979

Gerald L. White
Sr. Purchasing Agent
Division of General Services & Supply
Department of Administration
State of Alaska
Pouch C - Juneau, AK 99811

Dear Mr. White:

Enclosed is a photocopy of the responses of 40 states to the survey questionnaire Purchasing by the States, 5th Edition, indicating the status of in-state preference laws as of June 30, 1977. I do not believe that the situation has changed greatly since then and you may find this information helpful in your survey. As of the time that the document was published, State of Alaska had not responded to the survey although Dick has substantively furnished information.

The State of Wisconsin, like 38 other states has the "tie breaker" type of preference, i.e., everything being equal, award is made to the in-state bidder. This is not invoked very often as we do not have many identical bid transactions (and when we do, we report them to the U.S. Attorney General and the State Attorney General!)

I am also enclosing a photocopy of an article from Governmental Purchasing, February 1978, which marshalls some familiar arguments about in-state preference. I appreciate that Alaska and Hawaii have marketing and distribution problems not shared by the contiguous 48 but I think it is reasonable to assume that both states wind up paying more than they would without an in-state preference percentage. If I remember correctly, the Alaska law clearly identifies legislative intent to subsidize which is considerably more above board than other in-state preference legislation.

Sincerely,

John Short
Assistant Administrator
GSA Division

Enclosure

cc: Homer Foerster, CPPO, President, NASPO

DEPARTMENT OF ADMINISTRATION

DIVISION OF GENERAL SERVICES AND SUPPLY

16TH FLOOR, STATE OFFICE BLDG.
POUCH C - JUNEAU 99811

February 13, 1979

John E. Short
Assistant Administrator
General Services Administration Div.
Department of Administration
One West Wilson St., Room 119
Madison, WI 53702

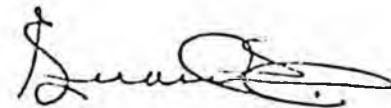
Dear Mr. Short:

The Alaska State Legislature is looking into in-state bidders preference for Alaska. At the present time, the State of Alaska has a 5% in-state preference, however, there is a possibility this may be increased.

We would appreciate by return mail information on whether or not your state has an in-state preference and, if so, what are the limits and/or guidelines?

We will be happy to provide a recap of our inquiry if so desired. Your early reply would be appreciated.

Sincerely,



Gerald L. White
Sr. Purchasing Agent

Preference Is Not Preferred

By John Short

"I realize it's probably a lost cause because I don't even have the support of the manufacturers on this," the author of a bill to give businessmen an in-state preference in getting contracts for state and municipal purchases told the Wisconsin Assembly Tourism and Economic Development Committee at a recent hearing on the legislation.

The author was the only person to back the bill which would have required that Wisconsin firms be given a chance to match low bids received on state and municipal purchase contracts from out-of-state bidders. Opposition came not only from the Wisconsin Association of Manufacturers and Commerce, but also from the Printing Industries of Wisconsin, the major graphic arts trade association, the Milwaukee Association of Purchasing Management and concerned public purchasers from the state and local units of government.

Not all preferential legislation meets with opposition. A dozen states have overt in-state preference laws. Many municipalities have ordinances requiring them to extend a local preference. Some states and local units of government practice preference as a matter of policy rather than law.

The surface appeal of some type of preferential treatment of in-state vendors or in-state manufactured products is quite compelling to state legislatures. A buy-

John Short, a native of Wisconsin, is an administrator in the Wisconsin State Department of Administration. He served as Director of the State Bureau of Purchases and Services for ten years, and is currently chairman of the National Association of State Purchasing Officials' Committee on Research. He is co-chairman of NASPO Liaison Committee to the Coordinating Committee on a Model Procurement Code. A self-proclaimed refugee from the University of Wisconsin's School of Journalism, Short brings a wealth of purchasing experience to his discussion of in-state preference procurement policy.

locally policy has a similar appeal to municipal and county government. Closer examination shows that such a policy has many disadvantages with adverse effects both on government and the firms that the policy purports to assist. As the Milwaukee Chapter of NAPM pointed out at the legislative hearing, the intended goal of increasing business for Wisconsin firms was certainly a laudable goal, but in their opinion the bill would not result in good legislation for the people of Wisconsin nor create any more business for Wisconsin firms in the long run.

"Preferential treatment on bids is entirely contrary to good purchasing practice, subsidizes in-state firms, restricts competitive bidding, discourages out-of-state vendors from bidding, invites collusion among in-state vendors, and results in denying taxpayers the best quality at the lowest price," William Mohaupt, President of The Wisconsin Association of Public Purchasers and Purchasing Administrator for Milwaukee County told the Assembly Committee.

William J. Beam, Purchasing Agent of the Milwaukee Area Technical College, advised the Committee that these shelter type laws would not stand up in the market place and would die quickly when put to the test in the business world. He said public purchasers spend a lot of valuable time in research of the best product to perform the function. They would be very naive to think that they had a local corner on the market of the best products available and would soon shrivel in isolation.

In March 1975 The Council of State Governments published *State and Local Government Purchasing*, an in-depth study of public purchasing with findings that preference is arguably unconstitutional as a barrier to interstate commerce; preference is in direct conflict with the principles of competition and precludes the purchaser from obtaining the best competitive price; and potential sources of supply are reduced.

The National Association of State Purchasing Officials, an affiliate of The Council of State Governments, has been concerned with the issue of in-state preference since the beginning of the Association in the late 1940's. NASPO has adopted resolutions expressing its opposition to in-state preference on a half dozen occasions.

NASPO has also closely monitored the status of in-state preference legislation. In 1970 the NASPO Committee on Competition in Governmental Purchasing conducted an indepth survey of in-state preference policy and practice. A summary of that survey, with an update from data collected for preparation of *Purchasing By the States, Fifth Edition, June 1977*, follows:

	1970		1977*	
	Yes	No	Yes	No
1. Overt In-state Preference	12	31	12 ¹	32
2. Percentage Advantage to In-state Bidders				
3%		2		3
5%		6		4
10%		2		3
3. "Tie-Breaker" In-state Preference in case of tie bids only	38	10	39	5
4. Reciprocity	7		9	

*1977 Data from *Purchasing By the States, Fifth Edition, June 1977 Draft*
 (1) Idaho reports preference in Printing only.

There has been no change in the number of overt in-state preference laws. In fact, most of these laws date back 40 to 50 years. The states do report a growing number of efforts at the introduction of in-state preference laws.

The majority of states have the provision, usually statutorily imposed, that in case of tie bids preference will be given to an in-state bidder. While this is clearly "in-state preference" such "tie-breaker" awards impact neither the cost to the state nor freedom of competition. As one state purchasing official puts it, "It beats flipping a coin".

Just who is an "in-state" bidder is a definition troublesome to many states. There is no question with manufacturers, processors, wholesalers, distributors or retailers owned and operated solely within the given state, but most states indicate that they also accept any business with a branch office or warehouse in-state and a substantial number accept any vendor with a bona fide mailing address in-state.

In the early 1960's only two states had reciprocity laws, i.e. applying sanctions only against vendors from states which had in-state preference acts. The 1970 survey identified 7 such states and by 1977 there are 9 which have statute law of reciprocity and a number of

"Legislators find surface appeal in the concept of preferential treatment for local vendors."

others which follow the practice administratively.

The thoughtful public purchasers recognize a dual concern in administering their purchasing programs. They are charged with the purchase of materials, supplies, equipment and contractual services at the lowest possible cost consistent with utility. At the same time they have an obligation to enlarge the competitive climate and to see to it that there is nothing which would

be an impediment to local or in-state firms from flourishing in that competitive environment. Public purchasers also recognize that these two concerns may at times seem to be in conflict; they need not be.

The Wisconsin State Bureau of Purchases and Services suggests a resolution of this conflict in a "white paper" on the subject of in-state preference prepared over ten years ago to have a document ready to respond to the issue at any time. The paper has been updated a number of times and was the basis for information provided the Assembly Committee at the recent hearing.

The paper points out that public purchasers know the essence of private enterprise is free competition and only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. Such competition and resulting economic well-being cannot be realized unless the actual and potential capacity of local and in-state business is encouraged and developed. The paper suggests the emphasis should be on appropriate measures taken before going to bid rather than imposing an artificial restraint on competition at time of award.

The public purchaser wants to treat all prospective bidders equally. There are operational patterns which can be followed to give a little more equality to in-state and local bidders.

Generic specifications are preferable, but it is impossible with the myriad requirements of governmental

"Preferential treatment on bids is entirely contrary to good purchasing practices..."

(continued on page 34)

Preference Is Not Preferred

(continued from page 23)

purchasing to avoid the judicious use of the "brand name or equal" specification for many purchases. Products of in-state or local manufacturers should be specified whenever possible and first if more than one brand name is used.

When generic specifications are used, they are derived in part from specification meetings with manufacturers. Local and in-state manufacturers in the field should always be parties to spec meetings. While generic specifications cannot be restrictive, they should be framed with an awareness of the potentials for local production. To service a contract, particularly to meet the specified delivery, a contractor is usually required to maintain an extensive inventory. Geographical considerations call for nearby warehousing and in some problem situations this can be spelled out as mandatory in the procedural specifications of the solicitation for bids.

Freight is part of the contractor's selling cost and local vendors have a built-in advantage when bids call for delivery f.o.b. destination.

Frequently the element of service is important, either in installation or in maintenance, and if service is identified as a criterion in award at the time the solicitation of bids goes out, it certainly can weigh heavily

"Preferential treatment invites collusion among in-state vendors..."

in the decision process. Finally, in-state or local vendors should be reminded that they enjoy a natural geographic advantage in sales engineering.

Valid support of in-state and local vendors is better accomplished in the construction of technical and procedural specifications rather than in an arbitrary award of bids.

In-state and local preference is inequitable because it results in part of the tax dollar being spent in subsidy instead of value. Sound governmental purchasing equates with the concept of best value procurement i.e. award to the lowest responsible bidder meeting the specifications. The mission of the public purchaser is to conserve public funds and to spend one penny more for whatever reason is not doing that job.

The public purchaser acts in agency for his state, county, municipality or school district and for the taxpayers. This is a stewardship of critical responsibility. Implicit in this stewardship is a grant of discretion and any infringement results in proportionately poorer purchasing performance. The purchasing agent who has his market place artificially constrained can not exercise the ingenuity and initiative which are the hallmarks of the professional public purchaser.

JOB OPPORTUNITIES

(Continued from page 27)

view of the company's personnel practices, recent hiring and termination trends, application flow, etc. The purpose of the plant inspection is to determine what may be the reasons for the company's minority and female employment pattern. Such a follow-up may also be conducted by mail.

Subsequent to the follow-up action, Commission staff will review the information gathered and decide on a course of action. Such a course may be to monitor the company's statistical patterns in the future, or to consider the company as an equal opportunity employer and do nothing further. Or, it may be deemed necessary to offer the company the opportunity to enter into a Conciliation Agreement: a legally binding document committing the company to take certain affirmative steps and to meet hiring and promotional goals and timetables for minority and female employees.

Should a company decline to enter into a Conciliation Agreement, or enter into it and later be in violation of it, a Public Hearing may be held before a panel of the

Commission. A possible outcome of such a hearing is a determination that the company is not an equal opportunity employer, and a recommendation issued to the Procurement Department and the participating agencies that the company not be accepted or retained as a bidder.

To date, implementation has been hampered by lack of sufficient staff. The computerization, however, will change that. It will enable City officials to pinpoint employment imbalances rapidly through a variety of break downs of data, typically, by plant size, industry, or geographic locations. Another by product will be categorization of companies by zipcode which will permit use of less expensive mail service at a saving of several thousand dollars per mailing.

Once employment imbalances are located from the computerized data, staff analysts will work with managements to draw up corrective programs aimed at increasing and upgrading numbers of minority and female workers. Firms failing to comply will lose Commission certification.

Funds for the computerization are being provided under a one-year \$134,000 Federal grant coming through the Area Manpower and Training Council. The money will pay an eleven-member temporary staff which will effect the computerization using existing keypunch machinery.

The Philadelphia Plan is just one technique of the Commission on Human Relations in a larger effort whose ultimate goal is an employment climate that is fairer to all citizens.

"Bidders wanting to supply everything from paper clips to heating oil must demonstrate non-discriminatory hiring practices."

(28)

	A		B		C		D		E		F		G		H
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	
ALABAMA	x		x		x		x		x				x		No
ALASKA	x	x	5%		x		x		x		x	x	x		No
ARIZONA	x		5%		x		x				x			x	
ARKANSAS	x		5%		x		x		x		x			x	**
CALIFORNIA		x		x											
COLORADO	x		x		x		x		x		x		x		
CONNECTICUT	x		x		x		x		x		x		x		
DELAWARE															
FLORIDA	x		x		x		x		x		x		x		No items
GEORGIA	x		x		x		x		x		x		x		No
HAWAII		x	3/5/10%		x		x		x		x		x		
IDAHO	x		10%		x								x	x	Printing
ILLINOIS		x	x		x		x		x		x		x		No
INDIANA															
IOWA	x		x												
KANSAS	x		x		x		x		x		x		x		No
KENTUCKY		x	x												No preference
LOUISIANA	x		3%		x		x		x		x		x		No
MAINE	x		x		x		x		x		x		x		
MARYLAND	x		x		x		x		x					x	
MASSACHUSETTS	x		5%		x								x		
MICHIGAN	x		x		x		x								
MINNESOTA	x		x		x		x		x						
MISSISSIPPI	x		x		x		x		x		x		x		No
MISSOURI	x		x		x								x		
MONTANA	x		3%		x		x		x		x		x		
NEBRASKA	x		x		x										
NEVADA															
NEW HAMPSHIRE	x		x		x		x		x		x		x		
NEW JERSEY															
NEW MEXICO															
NEW YORK		x	10%		x				x		x		x		
NORTH CAROLINA	x								x						
NORTH DAKOTA	x		x		x				x				x		***
OHIO															
OKLAHOMA	x		3%		x						x		x		****
OREGON	x		x		x		x								
PENNSYLVANIA		x	x		x		x		x		x		x		No
RHODE ISLAND	x		x		x		x		x						
SOUTH CAROLINA	x		x		x		x		x		x		x		
SOUTH DAKOTA	x				x		x						x		
TENNESSEE															
TEXAS	x		x		x		x								
UTAH															
VERMONT	x														
VIRGINIA	x														
WASHINGTON		x	x		x		x		x		x		x		*****
WEST VIRGINIA															
WISCONSIN	x		x		x		x		x		x		x		No
WYOMING			5%		x		x		x		x		x		

- * Public works construction only
 ** Except printing & office supplies
 *** If State has a preference against us we
 we take same preference against them
 **** If produced, manufactured, or grown in
 Oklahoma
 ***** Items manufactured by rehabilitation
 workshops

- A-Tie bids only?
 B-Percentage?
 C-By statute?
 D-Mandatory?
 E-Discretionary?
 F-Request of in-state bidder?
 G-All items?
 H-Specific?