

12-16-86 Postponed Indefinitely
Subject to Call-Up per Request

Introduced by: Nash
Date: Oct. 14, 1986
Hearing: Dec. 16, 1986
Vote:
Action:

KENAI PENINSULA BOROUGH
ORDINANCE 86-85 (CORRECTED)

PROMOTING THE FURTHERANCE OF LOCAL HIRE; PROVIDING CERTAIN PRO-
TECTIONS FOR SUBCONTRACTORS; REDUCING SCHOOL CONSTRUCTION COSTS;
AND PROVIDING FOR A CONSTRUCTION OMBUDSMAN.

WHEREAS, the Kenai Peninsula Borough Code provides for a
local hire policy but includes no method of monitoring compli-
ance; and

WHEREAS, the Assembly has established a preference for
prototype school buildings but architectural and engineering fees
do not appear to have been significantly reduced thereby; and

WHEREAS, subcontractors and materialmen, many of which are
local, are not provided sufficient protections from unscrupulous
or insolvent general contractors;

NOW THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI
PENINSULA BOROUGH:

Section 1. That Kenai Peninsula Borough Title 18 is hereby
amended to include the following chapters:

18.05 Local Hire Policy
18.10 Local Hire Bonus
18.20 Architectural and Engineering Fees
18.30 Bid and Advertising Policy
18.40 Payments to Contractors, Subcontractors and Materialmen
18.50 Phase Construction
18.60 Identification of Subcontractors--Preferred List
18.70 Preferential Contract/Hire
18.80 Wages and Salaries
18.90 Construction Ombudsman
18.100 Definitions

Section 2. That Kenai Peninsula Borough 18.10 is amended by
changing the chapter title to be Local Hire Bonus.

Section 3. That Kenai Peninsula Borough Title 18 is amended
by adding a new chapter 18.20 Architectural and Engineering Fees
to read as follows:

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18.20.010 Prototype Construction--A & E Fees--Limitation.
Total contract architectural and engineering fees, other than for inspection and/or management services, including all out-of-pocket expenses, shall not, except where authorized by special ordinance setting forth compelling reasons why the limitation of this ordinance should be suspended, exceed two percent (2%) of the actual construction cost (as distinguished from project costs) of any new construction of a prototype building.

18.20.030 Renovation Projects--A & E Fees--Limitation.
Total contract, architectural and engineering fees, other than for inspection and/or management services, including all out-of-pocket expenses, shall not, except where authorized by special ordinance setting forth compelling reasons why the limitations of this ordinance should be suspended, exceed seven percent (7%) of the actual renovation cost (as distinguished from project costs) of any renovation project of an existing public building or building complex.

18.20.040 A & E Fees--Out-of-Pocket Costs.

A. No contract awarded for architectural and/or engineering fees, other than for inspection, management or emergency services, except where authorized by special ordinance setting forth compelling reasons why the limitations of this ordinance should be suspended, may provide for the reimbursement of any travel, transportation, meal, lodging, printing or other costs in excess of the total contract amount, except as provided in this chapter.

B. Travel, transportation, meal or lodging costs and expenses may be reimbursed for reasonable and necessary travel within the Kenai Peninsula Borough, beyond a 20 mile radius of the primary Peninsula office of any architectural and/or engineering firm which has maintained at least one full-time employee located in the Kenai Peninsula Borough for the previous six consecutive calendar months, to the construction or proposed construction site and return.

18.20.050 Printing--Construction Documents and Blue Prints--Reimbursement.

A. The Mayor shall cause all requests for proposals, contracts, blue prints, drawings and other construction or construction-related documents which are not printed by the Borough printing section to be printed by such firm which submits the lowest bid for that service, or which may hold a current printing contract with the Borough, which will actually print the documents at a location in the Kenai Peninsula Borough.

B. The actual cost of printing the documents not recovered through bid processing fees shall be recovered from construction bond sale proceeds.

Section 4. That Kenai Peninsula Borough Title 18 is amended by adding a new chapter 18.30, Bid and Advertising Policies to read as follows:

18.30.010 Bid and Advertising Policy--Construction.

A. All renovation or new construction projects for public buildings owned by the Borough, not performed by Borough employees, shall be performed only pursuant to contract awarded by competitive bid or proposal.

B. Requests for proposals or bids with a total contract price estimate not exceeding five hundred thousand dollars unless otherwise authorized by the Assembly by resolution citing this section, shall be advertised by publication in all newspapers printed primarily for distribution only within the Kenai Peninsula Borough and by mailing to the Kenai Peninsula Borough address of all contractors maintaining a full-time office within the Kenai Peninsula Borough who have requested inclusion in the Kenai Peninsula Borough Small Contractors Roster for the current calendar year and who are current in sales tax filings and payments.

C. Requests for proposals or bids for new or renovation construction projects with a total construction price estimate of more than five hundred thousand dollars may in addition to the advertisement requirements of Section B., be advertised in any other manner deemed appropriate by the Mayor or otherwise authorized by the Assembly.

Section 5. That Kenai Peninsula Borough Title 18 is amended by adding a new chapter 18.40, Payments to Contractors and Subcontractors to read as follows:

18.40.010 Intent. It is the intent of the Kenai Peninsula Borough to ensure, to the maximum degree reasonably possible, that all subcontractors, materialmen and wage earners participating in any Borough construction project, receive payment for their labors and materials in a timely manner.

18.40.020 Payment Schedule. Unless otherwise authorized by resolution of the Assembly, payments on construction contracts shall be made as follows:

A. Equipment and Materials. Payments for equipment and materials shall be made by monthly pay estimate requests certified by the contractor on behalf of itself or any subcontractor,

materialman or equipment supplier for the actual cost including delivery of materials and equipment located on the construction site, or such other interim or alternate site authorized by the construction contract, as approved by the construction Ombudsman and Public Works Department.

B. Wages and Salaries. Payment for wages and salaries shall be made by weekly pay estimate requests upon actual payroll records certified by the contractor on behalf of itself or any subcontractor, for wages and salaries actually incurred during the preceding week as approved by the construction Ombudsman.

C. Administrative Overhead. Payments for administrative overhead shall be made by monthly pay estimate requests submitted to the contractor on behalf of itself or any subcontractor pursuant to the provisions of the construction contract.

D. Subcontract Fiscal Pay Estimates. Payments for the remaining balance due any subcontractor, equipment supplier or materialman shall be made within 72 working hours of certification by the contractor on behalf of itself and the subcontractor, equipment supplier or materialman, that the subcontract or phase is completed and that all wages and salaries, materials and equipment rentals have been paid in full or disputed amounts have been paid into a bank escrow account or deposited into the register of the Superior Court in Kenai pending settlement of any claim thereon or thereto. Remaining balance due payment requests shall be approved by the Borough Public Works Department and construction Ombudsman.

E. Final Payment. Payments for the remaining balance due of the contract price, plus or minus adjustments for change orders approved by the Mayor, and upon approval and acceptance of the construction project by the Mayor, subject to the provisions of Section 18.80, shall be made within 72 working hours of certification by the contractor that all wages, salaries, material and equipment rentals have been paid in full or that any disputed amounts have been paid into a bank escrow account or deposited into the registry of the Superior Court in Kenai pending settlement of any claim thereon or thereto. Remaining balance due payment requests shall be approved by the Borough Public Works Department and construction Ombudsman.

Section 6. That Kenai Peninsula Borough Title 18 is hereby amended by adding a new chapter 18.50, Phase Construction to read as follows:

18.50.010 Intent. It is the policy of the Kenai Peninsula Borough to utilize phase construction practices of the full extent practicable.

Section 7. That Kenai Peninsula Borough Title 18 is hereby amended by adding a new chapter 18.60 Identification of Subcontractors--Preferred List, to read as follows:

18.50.010 Subcontractors--Prequalified Listing.

A. The Public Works Department shall maintain a Borough availability listing of general and specialty contractors who maintain a full-time office with full-time employees within the Kenai Peninsula Borough who have indicated a desire to bid on Borough renovation or construction projects and who are current in all payments of Borough taxes.

B. If any general or specialty contractor requesting to be added to the Borough availability listing are required to be prequalified for any Borough construction project, the Public Works Department shall promptly conduct such prequalification examination as may be necessary to either reject or prequalify the applicant.

Section 8. That Kenai Peninsula Borough Title 18 is hereby amended by adding a new chapter 18.70, Preferential Contract/Hire, to read as follows:

18.70.010 Preferential Contract.

A. The Mayor shall report to the Assembly in writing at anytime that a Borough construction, renovation, repair or maintenance contract is not intended to be awarded to any firm listed in the Borough availability listing of general and specialty contractors, citing the factors for non-selection.

B. The Kenai Peninsula Borough may by resolution, after adopting findings showing that it would be in the overall best interests of the citizens of the Kenai Peninsula Borough, authorizing the award of the contract to a firm listed in the Borough availability listing of general and specialty contractors, notwithstanding that they failed to submit the lowest overall or phase bid.

18.70.020 Preferential Hire.

A. Any contractor or subcontractor performing labor or services within the Kenai Peninsula Borough pursuant to any new construction, renovation, maintenance or repair of any Borough building shall give preference in hiring of hourly employees for that project after award of the contract to qualified and available persons who meet the requirements of employment preference under AS 36.10.140(a); if licensed to drive, have an Alaska drivers license or no other; do not possess a current resident fishing or hunting license from any other state; and have actual-

ly resided within the Kenai Peninsula Borough for more than 30 days.

B. A contractor or subcontractor found to be in substantial or willful violation of this section shall be liable to the Borough in the amount equal to total wages paid in violation of this chapter, together with costs, interest and attorney's fees incurred in obtaining a judgment under this section.

C. Recoveries made pursuant to their chapter shall be dedicated to the cost of maintaining a construction Ombudsman.

Section 9. That Kenai Peninsula Borough Title 18 is hereby amended by adding a new chapter 18.80 Wages and Salaries, to read as follows:

18.80.010 Salaries and Wages. Any salary or wage paid to any employee by any person or firm pursuant to a new construction, renovation, repair or maintenance project of the Borough shall not be less than the current prevailing rate of wages for each pay period as set forth in the latest Determination of Prevailing Rate of Wages issued by the Alaska Department of Labor before the end of that pay period.

18.80.020 Penalty.

A. In addition to any claim or penalty which may be found due to any employee under any state or federal law or cause of action, any contractor or subcontractor found to be in substantial or willful violation of this chapter shall be liable to the Borough in an amount equal to the total amount of wages due but not paid, together with interest thereon, costs and actual attorney's fees incurred in obtaining and enforcing a judgment under this chapter.

B. Recoveries made pursuant to this chapter shall be dedicated to the cost of maintaining a construction Ombudsman.

Section 10. That Kenai Peninsula Borough Title 2 is amended by adding a new chapter 2.62, Borough Ombudsman, to read as follows:

2.62.010 Creation.

A. There is created in the totally exempt service, in the legislative branch, the office of Borough Ombudsman.

B. The Borough Ombudsman and such deputies and staff as may from time to time be required, shall be appointed, retained, disciplined or dismissed by a two-thirds (2/3) majority of the entire Assembly authorized to vote on the issue.

2.62.020 Duties. The Ombudsman has jurisdiction to:

A. Investigate complaints of administrative acts of departments or agencies of the Borough which might be:

- 1) contrary to law;
 - 2) unreasonable, unfair, oppressive, arbitrary, capricious, an abuse of discretion or unnecessarily discriminatory, even though in accordance with law;
 - 3) based on a mistake of fact;
 - 4) based on improper or irrelevant grounds;
 - 5) unsupported by an adequate statement of reasons;
 - 6) performed in an inefficient or discourteous manner;
- or
- 7) otherwise erroneous;

the Ombudsman may investigate to find an appropriate remedy.

B. Act as construction Ombudsman pursuant to Kenai Peninsula Borough 18.90 for Borough construction projects.

2.62.030. Minimum Qualifications. The Ombudsman must have been a registered voter in the Kenai Peninsula Borough for not less than one year; be over 21 years of age; have not received other than an honorable discharge from any service in the military forces of the United States; have a high school diploma or equivalent; have construction or building trades supervision experience; contract interpretation experience; small business administration experience; and be able to communicate freely in the oral and written English language.

2.62.040 Investigation--Procedures--Powers.

A. In an investigation, the Ombudsman may

1) make inquiries and obtain information considered necessary, including, subject to the privilege which witnesses have in the courts of this state,

i) compel by subpoena, at a specified time and place, the appearance and sworn testimony of a person who the Ombudsman reasonably believes may be able to give information relating to a matter under investigation; and

ii) compel a person, by subpoena, to produce documents, papers or objects which the Ombudsman reasonably believes may relate to the matter under investigation.

2) hold private hearings.

B. The Ombudsman shall maintain confidentiality with respect to all matters and the identities of the complainants or witnesses coming before the Ombudsman except insofar as disclosures may be necessary to enable the Ombudsman to carry out duties and to support recommendations.

C. If a person refuses to comply with a subpoena issued under this section, the Superior Court may, on application of the Ombudsman, compel obedience by proceedings for contempt in the manner as in the case of disobedience to the requirements of a subpoena issued by the court or refusal to testify in the court.

D. The provisions of AS 25.55.180-300 shall apply to the Borough Ombudsman except where clearly not applicable to Borough government.

Section 11. That Kenai Peninsula Borough Title 18 is amended by adding a new chapter 18.90 Construction Ombudsman, to read as follows:

18.90.010 General Duties.

A. The Borough Ombudsman, or designee, shall investigate complaints of improper hiring or wage and hour practices and subcontract claim of satisfaction practices of contractors engaged in new construction, alteration, maintenance or repair of Borough construction projects as provided in this code.

B. Reports shall be made to the Assembly and where applicable to the Mayor and various agencies of state or federal government.

18.90.020 Partial Funding. That portion of the total cost of the Ombudsman services which relate to construction contracts for bonded capital projects shall be paid from the bonded indebtedness for those projects.

Section 12. That Kenai Peninsula Borough Title 18 is amended by adding a new chapter 18.100, Definitions, to read as follows:

18.100.010 Definitions. In this title:

(1) "administrative act" means an action, omission, decision, recommendation, practice, policy or procedure of an

agency, but does not include the preparation or presentation of legislation or the substantive content of a judicial order, decision or opinion;

(2) "agency" includes a department, office, institution, corporation, authority, organization, commission, committee, council or board of the Kenai Peninsula Borough, including the Borough School District, but does not include the Mayor, the Borough Clerk, a member of the Assembly or a member of the elected board of education or member of an elected service area board.

Section 13. That this ordinance shall take effect immediately upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH ON
THIS _____ DAY OF _____, 1986.

Jonathan W. Sewall, Assembly President

ATTEST:

Borough Clerk

