

# MEMORANDUM

State of Alaska

Department of Law

TO: Pat Galvin  
Commissioner  
Dept. of Natural Resources

DATE: April 7, 2009

FILE NO.: 661-09-0121

TEL. NO.: 269-5211

FROM: Lisa Weissler  
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SUBJECT: Review of Authority to Seek  
Professional Services forms  
submitted by ANGDA

You asked us to review several proposed contracts that ANGDA submitted to the Department of Revenue for approval. In particular, you asked whether those contracts are consistent with ANGDA's statutory framework.

### Short answer

Our review of the "Authority to Seek Professional Services" forms supplied by your administrative director, as well as a cost recovery agreement between ANGDA and the BLM concludes that these agreements are within the scope of ANGDA's authority.

### Background

ANGDA was created in 2002 by voter initiative and codified in Title 41.

Title 41 sets out a broad list of purposes for the Authority, but appears to contain some internal inconsistencies, or at least ambiguities.

AS 41.41.010 sets out the overarching purpose of ANGDA - to bring natural gas from the North Slope to market. Subsumed within that broader purpose are the specific services and functions provided by ANGDA, such as acquiring North Slope natural gas; designing and constructing a pipeline system; designing, constructing and operating other facilities necessary for delivering "the gas" - presumably this article refers to North Slope gas -- to market and to Southcentral Alaska; and acquiring a natural gas share sufficient to ensure the long-term feasibility of the pipeline system.

By comparison, AS 41.41.200 (7) gives the Authority the power to issue bonds or incur indebtedness to pay for the costs of a "project." "Project," in turn, is defined somewhat more narrowly than the purpose described above:

"[P]roject" means the gas transmission pipeline, together with all related property and facilities, to extend from the Prudhoe Bay area on the North Slope of Alaska either to tidewater at a point on Prince William Sound and the spur line from Glennallen to the Southcentral gas distribution grid or to tidewater at a point on Cook Inlet, and includes planning, design, and construction of the pipeline and facilities as described in AS 41.41.010 (a)(1) - (5). AS 41.41.990 (3).

AS 41.41.070(d) provides broad authority to ANGDA to "contract for and engage the services of bond counsel, consultants, experts, and financial advisors the authority considered necessary for the purpose of developing information, furnishing advice, or conducting studies, investigations, hearings, or other proceedings."

Finally, ANGDA is given the power "in furtherance of its corporate purpose" to "make and execute contracts and other instruments" without any limiting language as to the project. AS 41.41.200(4).

"It is a basic rule of statutory construction that courts must attempt to harmonize the specific provisions of an act with the legislature's expression of its intent." *Commercial Fisheries Entry Com'n v. Apokedak*, 680 P.2d 486, 490 (Alaska 1984). Because ANGDA's authority to make and execute contracts is broad and not specifically limited to the defined "project," in our view the Authority's power to make and execute such contracts applies to the broader purposes expressed in AS 41.41.010.

With that in mind, we have reviewed the "Authority to Seek Professional Services" forms provided by your director of Administrative Services to determine whether they are consistent with the broad purposes of ANGDA, as expressed in AS 41.41.010.

### Analysis

- 1. Authority to Seek Professional Services for Pipeline Alignment and Construction Engineer. Agency reference number: Asps 09-0030 RFP 2009-0400-8336.**

This contract involves hiring a contractor to refine alignment of a high pressure gas spur line connecting Delta Junction to Beluga. The form states that this contract is sought "[i]n conjunction with ANGDA's "on-going work to bring natural gas to market."

Entering into a contract related to delivering natural gas to the Alaska market clearly fits within the broad authority of ANGDA if the gas is North Slope natural gas, as

specified in AS 41.41.010. If the gas is not North Slope gas, the connection is more problematic and the Department of Revenue may want to request additional information from ANGDA to determine whether work under this contract will ultimately relate to delivering North Slope natural gas.

**2. Authority to Seek Professional Services for Enterprise Coordinator.  
Agency reference number: Asps 09-0031 RFP 2009-0400-8363.**

This contract involves hiring a contractor to develop a business and financial management framework to deliver natural gas to the Alaskan market. This includes management of a financial plan to include a combination of utility rates, bonding and legislative funding to finance the project.

We understand ANGDA's general plan is to tap into a main line to Canada with a spur line that would bring some of the North Slope gas to markets in Southcentral Alaska. The contract's purpose appears consistent with both the broad purposes of ANGDA, set out in AS 41.41.010, as well as the definition of project in AS 41.41.900(4).

**3. Authority to Seek Professional Services for Permitting Coordinator.  
Agency reference number: Asps 09-0029 RFP 2009-0400-8335.**

This contract involves hiring a permitting coordinator to execute a pipeline permitting plan to "bring North Slope natural gas to market in Alaska." This purpose appears consistent with both the broad purposes of ANGDA, set out in AS 41.41.010, as well as the definition of project in AS 41.41.900(3).

**4. Standard Agreement Form for Professional Services. Agency  
Encumbrance Number 491017**

This is an agreement with EJJ Enterprises, awaiting signature of the DOR director of administrative services.

This contract for EJJ Enterprises is to revise and update a business plan for ANGDA programs. This contract, under which EJJ is to assist ANGDA in, among other things, work with a financial advisor in pursuit of project financing, is within the scope of ANGDA's authority to acquire gas, and design and build a pipeline.

**5. Cost Recovery Agreement between ANGDA and the BLM.**

Your administrative director also provided us with a copy of a cost recovery agreement between ANGDA and BLM for payment of costs for processing an ANGDA

right-of-way application for a natural gas pipeline between Palmer, Glennallen and Delta Junction and Fairbanks.

We understand that ANGDA's plan is to tap into a main line to Canada with a spur line that would bring some of the North Slope gas to markets in Southcentral Alaska, and, in this case, Fairbanks. This purpose appears consistent with both the broad purposes of ANGDA, set out in AS 41.41.010, as well as the definition of project in AS 41.41.900(4), though not necessarily consistent with the definition of "project" in AS 41.41.990(3). Accordingly, if ANGDA gets to a point where it may issue bonds "in order to pay for costs of the project" we recommend that the definition of project in AS 41.41.990(3) be amended to remove any ambiguity as to whether bonds can be issued for purposes of a line to interior Alaska.

We hope this answers your questions. If you have any questions, or if there are additional authorizations that you would like us to review, please let us know.

cc Harold Heinze

LZO:kp