

# COMMITTEE REPORT

SENATE

2/11/75

Mr. President:

Date 2/11/75

The Committee on FINANCE has had HB 77  
spec. approp. University of Alaska  
under consideration. A Majority of the members of the Committee

- recommends it DO PASS
- recommends it DO NOT PASS
- recommends it DO PASS WITH ATTACHED AMENDMENT(S)
- recommends it BE REPLACED WITH CS FOR \_\_\_\_\_ AND THAT  
CS FOR \_\_\_\_\_ DO PASS
- "and" recommends it BE REFERRED TO THE \_\_\_\_\_  
COMMITTEE
- reports it back WITHOUT RECOMMENDATION
- "other"

Members signing the Majority report:

Neal Kay Heidi Chace  
Tom Bateman \_\_\_\_\_  
John C. Smith \_\_\_\_\_  
W. J. ... \_\_\_\_\_

Members NOT concurring in the Majority report:

\_\_\_\_\_ recommends:  
\_\_\_\_\_ recommends:  
\_\_\_\_\_ recommends:  
\_\_\_\_\_ recommends:  
\_\_\_\_\_ recommends:

Neal Kay Chairman

Introduced: 1/27/75  
Referred: Health, Education &  
Social Services and Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 77

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the  
7 University of Alaska; and providing for an effective  
8 date."

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

10 \* Section 1. The sum of \$452,400 and eight per cent a year interest on  
11 that amount from July 10, 1974 to the date of payment is appropriated from  
12 the general fund to the University of Alaska for the payment to Modern  
13 Constructic , Inc., of court awarded "impact" damages arising from the  
14 construction of Wood Center.

15 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.  
16 10.070(c).

17

18

19

20

21

22

23

24

25

26

27

28

29

#

Introduced: 1/27/75  
Referred: Health, Education &  
Social Services and Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 77

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the  
7 University of Alaska; and providing for an effective  
8 date."

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

10 \* Section 1. The sum of \$452,400 and eight per cent a year interest on  
11 that amount from July 10, 1974 to the date of payment is appropriated from  
12 the general fund to the University of Alaska for the payment to Modern  
13 Construction, Inc., of court awarded "impact" damages arising from the  
14 construction of Wood Center.

15 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.  
16 10.070(c).

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

#

Introduced: 1/27/75  
Referred: Health, Education &  
Social Services and Finance

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 77

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the  
7 University of Alaska; and providing for an effective  
8 date."

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

10 \* Section 1. The sum of \$452,400 and eight per cent a year interest on  
11 that amount from July 10, 1974 to the date of payment is appropriated from  
12 the general fund to the University of Alaska for the payment to Modern  
13 Construction, Inc., of court awarded "impact" damages arising from the  
14 construction of Wood Center.

15 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.  
16 10.070(c).

17

18

19

20

21

22

23

24

25

26

27

28

29

#

Introduced: 1/27/75  
Referred: Health, Education &  
Social Services and Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 77

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the  
7 University of Alaska; and providing for an effective  
8 date."

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

10 \* Section 1. The sum of \$452,400 and eight per cent a year interest on  
11 that amount from July 10, 1974 to the date of payment is appropriated from  
12 the general fund to the University of Alaska for the payment to Modern  
13 Construction, Inc., of court awarded "impact" damages arising from the  
14 construction of Wood Center.

15 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.  
16 10.070(c).

17

18

19

20

21

22

23

24

25

26

27

28

29

#

Introduced: 1/27/75  
Referred: Health, Education &  
Social Services and Finance

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 77

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the  
7 University of Alaska; and providing for an effective  
8 date."

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

10 \* Section 1. The sum of \$452,400 and eight per cent a year interest on  
11 that amount from July 10, 1974 to the date of payment is appropriated from  
12 the general fund to the University of Alaska for the payment to Modern  
13 Construction, Inc., of court awarded "impact" damages arising from the  
14 construction of Wood Center.

15 \* Sec. 2. This Act takes effect immediately in accordance with AS 01.  
16 10.070(c).

17

18

19

20

21

22

23

24

25

26

27

28

29

#

SUMMARY OF INFORMATION RELATING TO  
AWARD TO MODERN CONSTRUCTION CO. ON  
WOOD CENTER BLDG., U OF A, FAIRBANKS CAMPUS

The Wood Center Building was designed by Alaska Architectural Co. during 1968-1970. The Building was bid in early 1970 and award of contract for the construction of the building was made to Modern Construction Company in March of 1970.

1. The Building was completed by Modern Construction Company in early 1972 and upon completion of the work Modern instituted an Arbitration proceeding against the U of A claiming \$1.2 million in extra costs for the impact of a) utilidor change order, b) a steel beam problem and c) other delays allegedly caused by the architect and the University. These issues were Arbitrated by an American Institute of Arbitration appointed panel during September of 1972. The University's attorney argued in the case of a) the utilidor change order that the contractor gave the University a price for this requested change and the University went ahead with the change on this basis and that had the University been aware that the contractor was going to make an impact claim against this change that the University would never have requested the change in the first instance. In the case of b) the architect and his engineer designed certain steel beams that had to be replaced. The University's attorney conceded some cost in the replacement of these beams and although the architect paid certain costs for their replacement, the contractor made claims to added costs for the effect this replacement had on his entire job.

Arbitrators awarded \$383,779 to Modern on October 10, 1972. The Arbitrators gave no breakdown as to which of three items of the claim accounted for what portion of the award.

2. University Attorney (Steve DeLasio) appealed the case to the Superior Court moving that Court vacate the Arbitrators' Award on the ground that Arbitrators exceeded their powers, that there was evidence of partiality and that they impaired the rights of U of A. This was heard on March 15, 1973 and the University's motion was denied.
3. The ruling of the Superior Court was appealed to the Alaska Supreme Court and filed on October 4, 1973. A petition for Rehearing asked that there be clarification of the Arbitrators' award and that the Arbitrators follow the contract in awarding damages.

The Supreme Court upheld the award to Modern on June 10, 1974. The University's Attorney filed for Rehearing. This was denied on June 24, 1974. However, the Supreme Court ordered the Superior Court to require the Arbitration panel to submit an accounting of the \$383,779 award. This accounting is attached.

4. This amount plus the accrual of interest and attorney's fees due Modern Construction up to July 1, 1974 is attached also.



# AMERICAN ARBITRATION ASSOCIATION

PACIFIC BUILDING - 720 THIRD AVENUE • SUITE 909  
SEATTLE, WASHINGTON 98104 (206) 622-6435

Neal Blacker

~~XXXXXXXXXXXXXXXXXXXX~~  
REGIONAL DIRECTOR

Re: 75 10 0059 72  
Modern Construction, Inc.  
-and-  
University of Alaska

October 31, 1974

Bruce T. Rinker, Esq.  
DeGarmo, Leedy, Oles & Morrison  
3108 - 1001 4th Avenue  
Seattle WA 98154

Stephen S. DeLisio, Esq.  
Merdes, Schaible, Staley & DeLisio  
700 "H" Street, Suite 8  
Anchorage AK 99501

RECEIVED  
NOV 6 1974  
MERDES, SCHAIBLE,  
STALEY & DELISIO

Gentlemen:

Arbitrator's compliance with Court Order, Cause number 72-968 in the Superior Court for the State of Alaska Fourth Judicial District, of Superior Court Judge Everett W. Hepp, dated October 3, 1974 and amended Order dated October 29, 1974.

1.

### UTILIDOR IMPACT EXPENSES

Direct Field Labor	\$ 257,802.00
Metal Siding, Insulation and Furring	18,600.00
Extra Concrete protection	9,102.00
Extended Time - Concrete Equipment	32,681.00
Extra Form Materials and Rentals	denied
Concrete Aggregate Source Loss	3,054.00
Extra Snow Removal	424.00
Temporary Enclosure	900.00
Heat Loss, Temporary Enclosure	6,946.00
Extra paver Sawing Expense	1,423.00
Cold Weather Concrete Mix Loss	denied
Extra Cement for Early Cure	5,929.00
Painting Mall Precast	2,500.00
Heating Aggregate	6,338.00
Small Tools Increase	denied
	<u>\$ 345,699.00</u>

### BEAM FAILURE AND FINISH IMPACT EXPENSE

Direct Field Labor	denied
Extra Freight Expense	1,351.00
Lounge Clouds (price increase)	2,991.00
Extended Equipment Time	denied
Small Tools Increase	denied
Extra Telephone Expense	65.00
Doors pre-finished vs. Job-finished	1,128.00
	<u>\$ 5,535.00</u>

HEADQUARTERS: 140 WEST 51ST STREET, NEW YORK, N.Y. 10020

REGIONAL OFFICES IN: • BOSTON • CHARLOTTE • CHICAGO • CINCINNATI • CLEVELAND • DALLAS • DETROIT • HARTFORD • LOS ANGELES • MIAMI • MINNEAPOLIS  
NEW BRUNSWICK, N. J. • NEW YORK • PHILADELPHIA • PHOENIX • PITTSBURGH • SAN DIEGO • SAN FRANCISCO • SEATTLE • SYRACUSE • WASHINGTON, D. C.



GENERAL IMPACT AND EXTENDED TIME OF PERFORMANCE

Project Management Allocation	\$	denied	
Project Supervision		denied	
Extended Utility Expense		3,359.00	
	\$	<u>3,359.00</u>	

SIAB ON GRADE REPAIR

Slab on Grade Repair	\$	8,643.00	
	\$	<u>8,643.00</u>	

SUBCONTRACTORS CLAIMS

		denied	
	TOTAL	<u>\$363,236.00</u>	\$363,236.00
<u>INTEREST ON RETAINAGE</u>		\$ 8,643.00	<u>8,643.00</u>
<u>CLAIM PREPARATION EXPENSE</u>		denied	
		<u>\$ 8,643.00</u>	\$371,879.00

BOND, TAXES, INSURANCE

	3.2%	11,900.00	
		<u>11,900.00</u>	\$383,779.00

Overhead

	0%	---	
	TOTAL AWARD		<u>\$383,779.00</u>

2. The administrative fees and expenses of the American Arbitration Association are to be paid by the University of Alaska as billed by the Tribunal Accounts Division of the American Arbitration Association.
3. The fees for the compensation for the Arbitrators shall be borne by the University of Alaska and paid as directed by the Tribunal Accounts Division of the American Arbitration Association.
4. This Award is in full settlement of all claims submitted to this Arbitration.

Clarence H. Campbell, Esq.  
Clarence H. Campbell, Esq.

Robert L. Bloodworth  
Robert L. Bloodworth

E. G. Wernentin  
E. G. Wernentin

On this 31<sup>st</sup> day of Oct 1974, before me personally came and appeared Clarence H. Campbell, Esq., Robert L. Bloodworth, & E. G. Wernentin to me known and known to me to be the individuals described in and who executed the foregoing instrument and they acknowledged to me that they executed the same.

Robert L. Bloodworth  
Notary Public for the State of Alaska

MODERN CONSTRUCTION, INC., vs. UNIVERSITY OF ALASKA

ACCOUNTING

(Per Judgment May 23, 1973)

Principal amount	\$383,779.00
Interest at 8% from Oct. 10, 1972, to July 10, 1974	<u>55,571.19</u>
	<u>\$439,350.19</u>
Costs	\$ 2,708.13
Interest at 6% from Jan. 1, 1973, to July 1, 1974	<u>243.75</u>
	<u>\$ 2,951.88</u>
Costs	\$ 2,597.05
Interest at 8% from May 23, 1973, to July 10, 1974	<u>235.12</u>
	<u>\$ 2,832.17</u>
Attorney fees	\$ 6,200.00
Interest at 8% from May 23, 1973, to July 10, 1974	<u>560.80</u>
	<u>\$ 6,760.30</u>

(Per Judgment Supreme Court July 1, 1974)

Appeal Costs and Attorney fees	474.00
Interest at 8% from July 1, 1974	<u>          </u>
	<u>          </u>
TOTAL	\$452,369.04
Increase over original award	68,590.04

SUMMARY OF INFORMATION RELATING TO  
AWARD TO MODERN CONSTRUCTION CO. ON  
WOOD CENTER BLDG., U OF A, FAIRBANKS CAMPUS

The Wood Center Building was designed by Alaska Architectural Co. during 1968-1970. The Building was bid in early 1970 and award of contract for the construction of the building was made to Modern Construction Company in March of 1970.

1. The Building was completed by Modern Construction Company in early 1972 and upon completion of the work Modern instituted an Arbitration proceeding against the U of A claiming \$1.2 million in extra costs for the impact of a) utilidor change order, b) a steel beam problem and c) other delays allegedly caused by the architect and the University. These issues were Arbitrated by an American Institute of Arbitration appointed panel during September of 1972. The University's attorney argued in the case of a) the utilidor change order that the contractor gave the University a price for this requested change and the University went ahead with the change on this basis and that had the University been aware that the contractor was going to make an impact claim against this change that the University would never have requested the change in the first instance. In the case of b) the architect and his engineer designed certain steel beams that had to be replaced. The University's attorney conceded some cost in the replacement of these beams and although the architect paid certain costs for their replacement, the contractor made claims to added costs for the effect this replacement had on his entire job.

Arbitrators awarded \$383,779 to Modern on October 10, 1972. The Arbitrators gave no breakdown as to which of three items of the claim accounted for what portion of the award.

2. University Attorney (Steve DeLisio) appealed the case to the Superior Court moving that Court vacate the Arbitrators' Award on the ground that Arbitrators exceeded their powers, that there was evidence of partiality and that they impaired the rights of U of A. This was heard on March 15, 1973 and the University's motion was denied.
3. The ruling of the Superior Court was appealed to the Alaska Supreme Court and filed on October 4, 1973. A petition for Rehearing asked that there be clarification of the Arbitrators' award and that the Arbitrators follow the contract in awarding damages.

The Supreme Court upheld the award to Modern on June 10, 1974. The University's Attorney filed for Rehearing. This was denied on June 24, 1974. However, the Supreme Court ordered the Superior Court to require the Arbitration panel to submit an accounting of the \$383,779 award. This accounting is attached.

4. This amount plus the accrual of interest and attorney's fees due Modern Construction up to July 1, 1974 is attached also.



# AMERICAN ARBITRATION ASSOCIATION

PACIFIC BUILDING - 720 THIRD AVENUE - SUITE 909  
SEATTLE, WASHINGTON 98104 (206) 622-6435

Neal Blacker  
~~XXXXXXXXXXXX~~  
REGIONAL DIRECTOR

Re: 75 10 0059 72  
Modern Construction, Inc.  
-and-  
University of Alaska

October 31, 1974

Bruce T. Rinker, Esq.  
DeGarmo, Leedy, Oles & Morrison  
3108 - 1001 4th Avenue  
Seattle WA 98154

Stephen S. DeLisio, Esq.  
Merdes, Schaible, Staley & DeLisio  
700 "H" Street, Suite 8  
Anchorage AK 99501

RECEIVED  
NOV 4 1974  
MERDES, SCHAIBLE,  
STALEY & DELISIO

Gentlemen:

Arbitrator's compliance with Court Order, Cause number 72-968 in the Superior Court for the State of Alaska Fourth Judicial District, of Superior Court Judge Everett W. Hepp, dated October 3, 1974 and amended Order dated October 29, 1974.

1.

## UTILIDOR IMPACT EXPENSES

Direct Field Labor	\$ 257,802.00
Metal Siding, Insulation and Furring	18,600.00
Extra Concrete protection	9,102.00
Extended Time - Concrete Equipment	32,681.00
Extra Form Materials and Rentals	denied
Concrete Aggregate Source Loss	3,054.00
Extra Snow Removal	424.00
Temporary Enclosure	900.00
Heat Loss, Temporary Enclosure	6,946.00
Extra paver Sawing Expense	1,423.00
Cold Weather Concrete Mix Loss	denied
Extra Cement for Early Cure	5,929.00
Painting Mall Precast	2,500.00
Heating Aggregate	6,338.00
Small Tools Increase	denied
	<hr/>
	\$ 345,699.00

## BEAM FAILURE AND FINISH IMPACT EXPENSE

Direct Field Labor	denied
Extra Freight Expense	1,351.00
Lounge Clouds (price increase)	2,991.00
Extended Equipment Time	denied
Small Tools Increase	denied
Extra Telephone Expense	65.00
Doors pre-finished vs. Job-finished	1,128.00
	<hr/>
	\$ 5,535.00

HEADQUARTERS: 140 WEST 51ST STREET, NEW YORK, N.Y. 10020

REGIONAL OFFICES IN: • BOSTON • CHARLOTTE • CHICAGO • CINCINNATI • CLEVELAND • DALLAS • DETROIT • HARTFORD • LOS ANGELES • MIAMI • MINNEAPOLIS  
NEW BRUNSWICK, N. J. • NEW YORK • PHILADELPHIA • PHOENIX • PITTSBURGH • SAN DIEGO • SAN FRANCISCO • SEATTLE • SYRACUSE • WASHINGTON, D. C.



GENERAL IMPACT AND EXTENDED TIME OF PERFORMANCE

Project Management Allocation	\$	denied	
Project Supervision		denied	
Extended Utility Expense		3,359.00	
	\$	<u>3,359.00</u>	

SLAB ON GRADE REPAIR

Slab on Grade Repair	\$	8,643.00	
	\$	<u>8,643.00</u>	

SUBCONTRACTORS CLAIMS

		denied	
	TOTAL	<u>\$363,236.00</u>	\$363,236.00
<u>INTEREST ON RETAINAGE</u>		\$ 8,643.00	<u>8,643.00</u>
<u>CLAIM PREPARATION EXPENSE</u>		denied	
		\$ 8,643.00	\$371,879.00

BOND, TAXES, INSURANCE

	3.2%	11,900.00	
		<u>\$383,779.00</u>	

Overhead

	0%	---	
		<u>\$383,779.00</u>	

TOTAL AWARD

- The administrative fees and expenses of the American Arbitration Association are to be paid by the University of Alaska as billed by the Tribunal Accounts Division of the American Arbitration Association.
- The fees for the compensation for the Arbitrators shall be borne by the University of Alaska and paid as directed by the Tribunal Accounts Division of the American Arbitration Association.
- This Award is in full settlement of all claims submitted to this Arbitration.

Clarence H. Campbell, Esq.  
Clarence H. Campbell, Esq.

Robert L. Bloodworth  
Robert L. Bloodworth

E. G. Wernentin  
E. G. Wernentin

On this 31<sup>st</sup> day of Dec 1974, before me personally came and appeared Clarence H. Campbell, Esq. & Robert L. Bloodworth & E. G. Wernentin to me known and known to me to be the individuals described in and who executed the foregoing instrument and they acknowledged to me that they executed the same.

*Handwritten signature and notes at the bottom right of the page.*

MODERN CONSTRUCTION, INC., vs. UNIVERSITY OF ALASKA

ACCOUNTING

(Per Judgment May 23, 1973)

Principal amount	\$383,779.00
Interest at 8% from Oct. 10, 1972, to July 10, 1974	<u>55,571.19</u>
	<u>\$439,350.19</u>
Costs	\$ 2,708.13
Interest at 6% from Jan. 1, 1973, to July 1, 1974	<u>243.75</u>
	<u>\$ 2,951.88</u>
Costs	\$ 2,597.05
Interest at 8% from May 23, 1973, to July 10, 1974	<u>235.12</u>
	<u>\$ 2,832.17</u>
Attorney fees	\$ 6,200.00
Interest at 8% from May 23, 1973, to July 10, 1974	<u>560.80</u>
	<u>\$ 6,760.80</u>

(Per Judgment Supreme Court July 1, 1974)

Appeal Costs and Attorney fees	474.00
Interest at 8% from July 1, 1974	<u>          </u>
	<u>          </u>
TOTAL	\$452,369.04
Increase over original award	68,590.04