

Commerce

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

November 5, 1976

Dear Member of the Regulation Review Committee:

The Department of Commerce has adopted ~~or made amendments~~ to those regulations listed below. Possible deviations from legislative intent are indicated with an asterisk to the left of the entry, and in such cases the regulation is discussed with reference to the statute being interpreted or implemented. The department held no public hearing before adopting these regulations. Notice of proposed adoption or amendment of these regulations was published in newspapers in Anchorage, Fairbanks, Juneau, Ketchikan, and in the Tundra Times.

3AAC 80.010 Specifies information which must be supplied by persons applying for loans under the Commercial Fishing Loan Act (AS 16.10.300-16.10.370).

*3AAC 80.020 Adds to the requirements for eligibility for loans under the Commercial Fishing Loan Act. These additional requirements appear to implement the policy stated in that Act, except 3AAC 80.020(b) which states that no more than 50 per cent of the loan proceeds may be used to re-finance existing debts. There might be some question as to whether this is in conformity with legislative intent although there is no clear evidence of intent with regard to this question in the statutes.

*3AAC 80.030 Among other things, this regulation requires that a loan not bear a service charge payable to a trustee for the State of Alaska in excess of one half of one per cent per year. There might be some question as to whether this is in conformity with legislative intent, although there is no clear evidence of intent with regard to this question in the statutes.

* 3AAC 80.040 Subsection (a) of this regulation establishes the criteria used in determining the duration of a loan. Subsection (b) of this regulation states that the applicant for a loan shall bear the cost of processing a loan. This presents a question as to whether Subsection (b) is in conformity with legislative intent, although there is no indication in the statutes to what the legislature may have intended.

3AAC 80.050 Adds as a condition of any loan that borrowers be required to furnish financial information on an annual basis and that they submit to audits.

3AAC 80.060 This regulation makes approval by a loan committee prerequisite to receipt of a loan.

3AAC 80.070 This regulation creates a loan committee and specifies those state executives who shall serve on the committee.

3AAC 80.080 This regulation requires successful applicants for loans to execute those instruments which the department specifies.

3AAC 80.090 This regulation provides that before loan funds may be dispensed, the security interest required by AS 16.10.320 must be perfected, i.e., recorded; and in the case of documented vessels, this regulation specifies the coast guard document which must be supplied to the department to perfect a security interest. This regulation also states that the department must be satisfied that the borrower has complied with provisions pertaining to marine insurance requirements and any other provisions which might be included in the loan documents.

3AAC 80.100 This regulation defines the following terms used in 3AAC 80: acceptable collateral, borrower, commercial fisherman, commercial fishing, commissioner, current, department, division, documented vessel, person, resident.

Register 59, October, 1976

3 AAC 80.010

TITLE 3. COMMERCE AND ~~ECONOMIC DEVELOPMENT~~

PART 7. DIVISION OF BUSINESS LOANS

Chapter

80. Commercial Fishing Loans (~~3 AAC 80.010 - 3 AAC 80.100~~)

Section

- 10. Applications for loans
- 20. Loan eligibility and borrower qualifications
- 30. Amount, interest rates and maturity of loans
- 40. Terms of loan
- 50. Supervision of loans
- 60. Approval of loans
- 70. Loan committee
- 80. Execution of instruments
- 90. Disbursement of loan funds
- 100. Definition of terms

3 AAC 80.010. APPLICATIONS FOR LOANS. (a) Commercial fishing loan applications shall be submitted on an appropriate form prescribed by the commissioner and be accompanied by

(1) a letter of intent stating the amount requested, a description of how the proposed loan funds will be used, and the plan of repayment of the loan including the setting up of reserves, if any;

(2) a personal resume including three personal references;

(3) a business history of the applicant which shall include complete copies of state income tax returns for the preceding three years;

(4) proof that the applicant has had a commercial fishing license for the last three years and has been engaged in commercial fishing during each of the same three years as evidenced by Alaska Department of Fish and Game records;

(5) proof that the applicant has been a state resident for the last five years;

(6) current financial statements consisting of a balance sheet and profit-and-loss statement;

(7) a schedule of acceptable collateral, which should include collateral now owned and other collateral which is to be acquired with the loan proceeds, stating date of acquisition, cost, location, market value and existing liens;

(8) proof of unencumbered title to the collateral and in the case of a documented vessel, a Certificate of Ownership for the vessel on Coast Guard Form 1330, dated not more than 20 days prior to the date of application;

(9) a current marine survey if a vessel is used for collateral including pictures of the vessel and

(10) a pro forma financial statement showing the projected income and expenses for the following year.

(b) Exhibits, whenever applicable, shall accompany the application to show the

- (1) potential growth of the business;
- (2) potential employment;
- (3) potential increase in income;
- (4) potential decrease in operating expenses; and
- (5) potential improvement in operational safety.

(c) Applications shall be submitted to the Division of Business Loans, Department of Commerce and Economic Development, Pouch D, Juneau, Alaska, 99811. (Eff. 9/15/76, Register 59)

Authority: AS 16.10.310

3 AAC 80.020. LOAN ELIGIBILITY AND BORROWER QUALIFICATIONS. (a) In addition to the requirements of AS 16.10.300 - AS 16.10.370 as amended a loan will not be made unless

(1) the borrower can provide acceptable collateral and an acceptable repayment schedule;

(2) the purpose of the loan is to repair or improve existing vessels or gear, purchase additional gear, construct and purchase vessels, purchase fishing gear or entry permits or construction of hatchery facilities; and

(3) the borrower has extended to the commissioner or his representative the right to conduct a marine survey of a vessel or vessel construction project which is described by the borrower in an application or supporting documents.

(b) No more than 50 percent of the loan proceeds may be used to re-finance existing debts.

(c) A loan will not be made if the proposed use of funds

(1) is of a speculative nature; and

(2) are intended to purchase a commercial fishing vessel, gear or permit that will not be put to use in the commercial fishing industry in the near future. (Eff. 9/16/76, Register 59)

Authority: AS 16.10.310
AS 16.10.320

3 AAC 80.030. AMOUNT, INTEREST RATES AND MATURITY OF LOANS. A loan will not exceed \$100,000.00, bear interest at a rate in excess of seven percent a year if not in default, or mature later than 15 years from the date

of the loan. A loan will not bear a service charge payable to a trustee for the State of Alaska in excess of one half of one percent a year. (Eff. 9/26/76, Register 59)

Authority: AS 16.10.310
AS 16.10.320

3 AAC 80.040. TERMS OF LOAN. (a) A term of a loan will be fixed in relation to the needs of the borrower and the collateral available to secure repayment of the loan.

(b) All expenses incurred by the department in closing a loan or processing a loan application shall be paid by the applicant, including but not limited to: the cost of credit reports, title reports and insurance, recording fees, appraisals, surveys, out of state travel and other direct costs. (Eff. 9/26/76, Register 59)

Authority: AS 16.10.310

3 AAC 80.050. SUPERVISION OF LOANS. As a condition of any loan and so long as there is an outstanding loan balance the department may require that a borrower furnish annual financial statements consisting of a balance sheet, profit-and-loss statement, sources and application of all funds received and a schedule of change of owner's equity. A borrower shall also submit to an audit or audits to determine whether the provisions of the loan have been complied with, and that a borrower permit periodic inspection of any collateral securing repayment of the loan. (Eff. 9/26/76, Register 59)

Authority: AS 16.10.310

3 AAC 80.060. APPROVAL OF LOANS. A loan will not be granted without the approval of a majority of the loan committee established under section 070 of this chapter. (Eff. 9/26/76, Register 59)

Authority: AS 16.10.310

3 AAC 80.070. LOAN COMMITTEE. (a) A loan committee will consist of the commissioner, the deputy commissioner of commerce and economic development and the director of the division of business loans.

(b) The chairman of the loan committee is the commissioner or in his absence the deputy commissioner of commerce and economic development.

(c) In the absence of any loan committee member, the chairman may appoint an alternate member from among the directors of the following divisions

- (1) the division of insurance;
- (2) the division of banking, securities, small loans, land sales and corporations;
- (3) the division of occupational licensing;
- (4) the division of veterans' affairs; and

(5) the division of economic enterprise.

(d) An action may not be taken at a loan committee meeting unless the chairman or his designee and two members or alternate members are present. (Eff. 9/13/76, Register 59)

Authority: AS 16.10.310

3 AAC 80.080. EXECUTION OF INSTRUMENTS. If a loan is approved by the loan committee, the borrower shall execute the promissory notes, chattel mortgages, security agreements, financing statements, preferred mortgages, assignments, affidavits, insurance pay orders and ~~such~~ other instruments as the department may in its discretion require. (Eff. 9/13/76, Register 59)

Authority: AS 16.10.310

3 AAC 80.090. DISBURSEMENT OF LOAN FUNDS. Loan funds will not be disbursed to the borrower until

(1) a security interest in the collateral has been perfected except that in the case of a mortgage on a documented vessel this requirement shall be satisfied by the establishment of the mortgage as a preferred mortgage pursuant to the provisions of the Ship Mortgage Act, 1920 (46 USC secs. 911 - 984) as evidenced by the delivery to the department of a satisfactory Certificate of Ownership for the vessel on Coast Guard Form 1330, dated after the date on which the mortgage is recorded;

(2) the commissioner or his authorized representative is satisfied that the borrower has complied with the marine insurance requirements contained in any instrument signed by the borrower; and

(3) all other provisions of the loan documents and this chapter have been complied with by the borrower. (Eff. 9/13/76, Register 59)

Authority: AS 16.10.310
AS 16.10.320

3 AAC 80.100. DEFINITION OF TERMS. Unless the context requires otherwise, in this chapter and in the forms and instructions of the commissioner

(1) "acceptable collateral" means adequate security approved by the commissioner to secure repayment of a loan in the event of default and includes, but is not limited to, a mortgage or other security instrument on real property, buildings, machinery and equipment, fixtures, or commercial fishing vessels together with gear and appurtenances;

(2) "borrower" means a commercial fisherman executing an application for a loan;

(3) "commercial fisherman" means a person engaged in commercial fishing;

(4) "commercial fishing" means the taking, planting or cul-

tivating of fish, shellfish, crabs or other fishery resources with the intent of disposing of those resources for profit, by sale, barter, trade, or in commercial channels;

(5) "commissioner" means the commissioner of commerce and economic development;

(6) "current" means a date not exceeding three months from the date an application is received by the department;

(7) "department" means department of commerce and economic development;

(8) "division" means the division of business loans of the department of commerce and economic development;

(9) "documented vessel" means a vessel registered or enrolled or licensed under the laws of the United States, whether permanently or temporarily;

(10) "person" means any individual and does not mean an association, partnership or corporation; and

(11) "resident" means a person who continuously for the last five years has maintained a permanent place of residence within the State of Alaska. (Eff. 9/12/76, Register 59)

Authority: AS 16.10.310

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Dear Members of the Regulation Review Committee:

The Department of Commerce has adopted, or made amendments to those regulations listed below. Possible deviations from legislative intent are indicated with an asterisk to the left of the entry, and in such cases the regulation is discussed with reference to the statute being implemented and interpreted by the regulation. The department held public hearings before adopting these regulations in Anchorage on June 27 and June 29, 1975. Notice of proposed regulations appeared in newspapers in Cordova, Ketchikan, Nome, Anchorage, Fairbanks, and Juneau:

3AAC 64.010. This regulation has been amended to incorporate the substance of the former 3AAC 64.010-3AAC 64.060, 3AAC 64.080-3AAC 64.100, and 3AAC 64.140, which have been repealed. In addition, the following substantive changes and additions have been made: (1) Prior to amendment, 3AAC 64.040 stated that the duration of a lease between permit holders may be less than 30 days only if the period of time does not amount to more than 14 days within one 60 day period. This has been changed by 3AAC 64.010, which excludes permit holders from application of the 30 day limitation; (2) 3AAC 64.010(4)(A) clarifies the substance of former 3AAC 64.030(4), by stating that the lessee of equipment shall be considered the owner of the equipment for purposes of sub-leasing. 3AAC 64.010(a)(4)(B) limits the application of 3AAC 64.010(4)(A), supra, to that period when the vehicles are operated by or for an authorized carrier of household goods engaged in the transportation of household goods.

(3) 3AAC 64.010(a)(7) Modifies the requirements of former 3AAC 64.090, by allowing the carrier to carry in the vehicle a certificate with specified information, instead of a copy of the lease.

(5) 3AAC 64.010(b) Adds a requirement that a carrier or its employee or agent give the owner a receipt upon taking and relinquishing possession of a vehicle.

(6) 3AAC 64.010(c) Adds a requirement that a carrier make a safety inspection of a vehicle before taking possession of it, and further requires a carrier to certify the results of the inspection on a form prescribed by the commissioner and kept by the carrier.

(7) 3AAC 64.010(d) Adds to the requirements formerly imposed by 3AAC 64.100, by requiring the sign identifying the lessee of a leased vehicle to be of a specific composition and to bear a serial number. This section further requires the carrier to remove the sign from the vehicle upon relinquishing possession of it.

(8) 3AAC 64.010 Adds a requirement that the carrier establish that a person other than a regular employee who is assigned to drive a vehicle is familiar with, and that his employment as a driver will not result in, violation of any provision of the motor carrier safety regulations contained in chapter 62 of 3AAC.

(9) 3AAC 64.010 *New requirements relating to* Specifies information and documents which must be carried with the vehicle or left in its terminal.

New requirements which
3AAC 64.015. ~~This regulation~~ relates to the interchange of vehicles between carriers. It requires commission approval before interchange of vehicles unless enumerated conditions are complied with. The conditions relate to: (1) the elements of the agreement between the carriers who are parties to the interchange; (2) the operating authority of carriers which are participating in the interchange; (3) requirements as to bills of lading, apportionment, and collection of revenues; (4) requirements as to safety inspection at the interchange point; (5) requirements as to devices for identifying the carrier operating the vehicle; (6) a requirement that the vehicle operated in the interchange carry a copy of the interchange agreement or a certificate containing specified information.

3 AAC 64.010. LEASING REQUIREMENTS. (1) Common or contract carriers may lease vehicles, but may not lease any vehicle to any person other than another common or contract carrier and, ~~except for other than~~ vehicles exchanged between authorized motor carriers in interchange service as provided in sec. 15 of this chapter, authorized carriers may perform transportation with vehicles which they do not own only under the following conditions, set out in this section.

(1) ~~Lease Requirements.~~ The lease for the use of a vehicle ~~(1) must be made between the carrier and the owner of the vehicle;~~

(2) ~~(A)~~ must be in writing and signed by the carrier and the owner of the vehicle, or their regular employees or agents authorized to act for them in the execution of leases;

(3) ~~(B)~~ must specify the period of time for which it applies, which may not be less than 30 days; however, this subparagraph does not apply to vehicle lease agreements between permit holders;

(4) ~~(A)~~ must provide that the lessee have exclusive possession, control, use and complete responsibility for the vehicle and its operation for the duration of the lease, except that,

(A) ~~(i)~~ provision may be made in the lease for considering the lessee as the owner for the purpose of subleasing under this section to other authorized carriers for the duration of the lease;

(B) ~~(ii)~~ when entered into by carriers of household goods, for the transportation of household goods, as defined by the Interstate Commerce Commission, the provisions of (A) of this subparagraph need only apply during the period the vehicle is operated by or for the authorized carrier;

(5) ~~(A)~~ must specify the compensation to be paid by the lessee for the rental of the leased vehicle;

(6) ~~(A)~~ must specify the time and date upon which the possession and control of the vehicle will be taken by the lessee, ~~on the circumstances under which the lease begins, and the time or the circumstances under which the possession of the vehicle will be returned to the lessor;~~ the duration of the lease shall coincide with the time of giving receipts for the vehicle as required by paragraph (2) of this section;

and the conditions in which the vehicle is to be used

(7) ~~(A)~~ must be executed in quadruplicate; the original must be retained by the carrier in whose service the vehicle is to be operated, one copy must be filed with the commission within seven days

one copy shall be retained by the owner of the vehicle

of the effective date of the lease, and one copy must be carried on the vehicle specified in the lease during the entire period of the lease; *provided that* However, the carrier or its regular employee or agent may prepare a statement certifying that the vehicle is being operated under the terms of *a* written lease filed with the commission. ~~The certificate~~ *which certificate* must ~~list~~ *contain* the names of the lessor and lessee, ~~fully describe~~ *describe* the vehicle, the effective date and duration of the lease, any restrictions that are in the lease as to commodities to be transported and/or area of service and the location of the premises where the original copy of the lease is kept.

(b)(2) Receipts For Vehicle To Be Specific. When possession of the vehicle is taken by the carrier or its regular employee or agent authorized to act for it, the carrier, or that employee or agent ~~must~~ *shall* give to the owner of the vehicle or the owner's employee or agent a receipt specifically identifying the vehicle and stating the date and the time of day possession of it is taken. ~~When the possession by the carrier ends,~~ the carrier or its employee or agent shall obtain from the owner of the vehicle, or its employee or agent authorized to act for it, ~~and stating the date and the time of day possession of the vehicle is taken by the owner of the vehicle or its employee or agent.~~ *a receipt specifically identifying the vehicle and stating*

(c)(3) Safety Inspection Of Vehicle By The Carrier. The carrier shall before ~~taking~~ *having* possession of any vehicle, inspect it or have it inspected by a person who is competent and qualified to make the inspection and has been authorized by the carrier to make the inspection as a representative of the carrier, in order to insure that the vehicle complies with the Motor Carrier Safety Regulations, as set out in 3-AAC-62. *chapter 62 of this title* The person making the inspection ~~must~~ *shall* certify the results of his inspection on a report in the form authorized by the commission, and the report ~~must~~ *shall* be retained and preserved by the authorized carrier. ~~If his inspection discloses that the vehicle does not comply with the requirements of the safety regulations,~~ possession of the vehicle may not be taken by the carrier. After the inspection has been made, the carrier or an officer or partner of the carrier, or a safety director or other supervisory employee responsible for safety compliance, ~~must~~ *shall* certify on the inspection report that the person who made the inspection, whether an employee or person other than an employee, is competent and qualified to make the inspection and has been authorized to do so by the carrier as its representative. When a vehicle other than a power unit is leased, a form of report applicable to such a vehicle may be used.

(d)(4) Identification Of Vehicle As That Of The Authorized Carrier. The authorized carrier acquiring the use of a motor vehicle under this section ~~must~~ *shall* properly and correctly identify the vehicle during the period of the lease in accordance with the requirements of sec. 500 of this chapter. If a removable device is used to identify the acquiring authorized carrier as

the operating carrier, the device shall be on durable material such as wood, plastic, or metal, and bear a serial number in the acquiring carrier's own series so as to keep proper record of each of the identification devices ⁱⁿ use.

~~(A) Identification To Be Removed When Lease Terminated~~ - The carrier operating a vehicle leased under this chapter must remove its identification before relinquishing possession of the vehicle.

(5)(e) Driver Of Vehicle To Be In Compliance With Safety Regulations. Before any person other than a regular employee of the carrier is assigned to drive a vehicle, the carrier shall make certain that the driver is familiar with, and that his employment as a driver will not result in, violation of any provision of the Motor Carrier Safety Regulations ^{in contained in} chapter 62 of this title.

(6)(f) Record Of Vehicle To Be Maintained; Shipping Documents To Identify The Authorized Carrier. A carrier utilizing a vehicle operated under this section for periods of less than 30 days must prepare and keep a manifest or other documents covering each trip for which the vehicle is used in its service containing the name and address of the owner of the vehicle, the point of origin, the time and date of departure, the point of final destination, and the carrier's serial number of the identification device affixed to the vehicle. During the time that a vehicle subject to this chapter is operated, there must be carried with the vehicle bills of lading, waybills, freight bills, manifests, or other papers identifying the lading, and containing the foregoing information, which clearly indicates that the transportation of the property carried is under the responsibility of the lessee, carrier. These papers shall be preserved by the authorized carrier. This section also applies to vehicles leased for periods of 30 days or more unless the required information is kept at a terminal or office as a part of the records of the carrier.

(Eff. 7/29/64, Reg. 15; am. 9/26/76, Reg. 57) (Ed. note. The provisions of this section were formerly contained in

3 AAC 64.010 - 3 AAC 64.060,

3 AAC 64.080 - 3 AAC 64.100,

3 AAC 64.140)

Authority: AS 42.07.141
AS 42.10.010
AS 42.10.070
AS 42.10.080

3 AAC 64.015. INTERCHANGE OF VEHICLES. (c) Carriers holding permits issued by the commission may, upon prior approval by the commission, interchange any vehicle by lease with one or more other permitted carriers, or one of these carriers may receive from another carrier any of the vehicles in connection with through movement of traffic, under the following conditions set forth in (b) of this section. *(b) of this section. holding permits issued by the commission agreement*

(b) (1) Interchange Agreement To Be Specific. The lease providing for interchange must specifically describe the vehicle to be interchanged, the specific points of interchange, the use to be made of the vehicle and the consideration for such use, and shall be signed by the parties to the lease or their regular employees or agents authorized to act for them in the execution of such leases.

(c) (2) Operating Authority Of Carriers Participating In Interchange. The permits issued under secs. 160-250 of this chapter and held by the carriers participating in the interchange arrangement will authorize the transportation of the commodities proposed to be transported in the through movement and service from and to the point where the physical interchange occurs.

(d) (3) Through Bills Of Lading Required. The traffic transported in interchange service must move on through bills of lading issued by the originating carrier, and the rates charged and revenues collected must be accounted for in the same manner as if there had been no interchange of vehicles. Charges for the use of the vehicles must be kept separate and distinct from divisions of the joint rates or the proportions of them accruing to the carriers by the application of local or proportional rates.

(e) (4) Safety Inspection Of Vehicle. The carrier acquiring the use of a vehicle in interchange shall inspect the vehicle, or have it inspected in the manner provided in sec. 10(3) of this section. A vehicle which does not meet the requirements of sec. 10(3) may not be operated in the respective services of the interchange carriers until the defects have been corrected. Where carriers interchanging vehicles for a through movement of traffic are commonly controlled and jointly maintain and administer a uniform safety program, no safety inspection at the point of interchange is required, so long as the vehicle interchanged has been inspected immediately before the start of the movement in which the interchange occurs and is found to meet the requirements of sec. 10(3) of this section. *provided that*

(f) (5) Identification Of Vehicle As That Of The Operating Carrier. Authorized carriers operating power units in interchange service shall identify those vehicles in accordance with the commission's requirements in sec. 500 of this chapter. Any removable device used to identify the operating carrier must be on durable material such as wood, plastic, or metal, and must bear a serial number in the operating carrier's own series and the carrier must keep a proper record of each identification

device in use.

(A) Identification To Be Removed When The Vehicle Is Returned To The Originating Carrier. The carrier operating a vehicle in interchange service under this section must remove its identification before relinquishing possession of the vehicle.

Copies of the Interchange Agreement or a Certificate thereof shall be in the possession of the carriers.

(3)(6) Authorized carriers operating vehicles in interchange service under this section shall carry with each vehicle so operated, except trailers and semi-trailers, a copy of the interchange agreement while the vehicle is being operated by the carrier, fully describing the vehicle, showing the specific point of interchange, the date and time of the assumption of responsibility for the vehicle, and the use to be made of the vehicle while the vehicle is being operated in interchange service. The carriers or their regular employees or agents may prepare a statement certifying that the vehicle is being operated under the terms of a written "interchange of equipment agreement" filed with the commission. The certificate must be signed by an authorized representative of each carrier that will participate in the interline service and shall fully describe the motor vehicle, the name or names of the driver or drivers, the date and time of the assumption of responsibility for the vehicle and the specific interchange point. Such a statement, if issued, may be carried in the vehicle in lieu of a copy of the interchange agreement.

(4)(7) Connecting Carriers Considered As Owners. An authorized carrier receiving a vehicle in connection with a through movement under this section is considered the owner of the vehicle for the purpose of leasing the vehicle to other authorized carriers in furtherance of the movement to the destination or of the return of the vehicle after the movement is completed. (Eff. 9/26/76 Reg. 59)

Authority: AS 42.07.141
AS 42.10.010
AS 42.10.080

3 AAC 64.020. Repealed (Eff. 9/26/76, Reg. 59) 1976

3 AAC 64.030. Repealed (Eff. 9/26/76, Reg. 59) 1976

3 AAC 64.040. Repealed (Eff. 9/26/76, Reg. 59) 1976

3 AAC 64.050. Repealed (Eff. 9/26/76, Reg. 59) 1976

3 AAC 64.060. Repealed (Eff. 9/26/76, Reg. 59) 1976

~~3 AAC 64.070. Repealed _____, 1976~~

3 AAC 64.080. Repealed (Eff. 9/26/76, Reg. 59) 1976

3 AAC 64.090. Repealed (Eff. 9/26/76, Reg. 59) 1976

3 AAC 64.100. Repealed (Eff. 9/26/76, Reg. 59) 1976.

AS 42.10.070

delete

3 AAC 64.140. Repealed (Eff. 9/26/76, Reg. 59) 1978

3 AAC 64.550 Definitions is amended by adding new paragraphs to read:

(14) "lease" means any agreement by which the owner of a vehicle transfer it to another person for a specified period or purpose and for a specified rent or other compensation ~~and~~ consideration

(15) "lessee" means a person entitled to possession of a vehicle under a lease, as defined in this section.

(Eff. 11/4/74, Reg. 52; am. 9/26/76, Reg. 59)

pursuant to

- Authority: AS 42.07.121
- AS 42.07.141
- AS 42.10.070
- AS 42.10.080
- AS 42.10.090
- AS 42.10.110

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Dear Members of the Regulation Review Committee:

The Department of Commerce and Economic Development has amended the regulation discussed below. A possible deviation from legislative intent is indicated with an asterisk to the left of the entry, and in such cases the regulation is discussed with reference to the statute being interpreted or implemented. The department held a public hearing before adopting this amendment in Anchorage on February 18, 1976. Notice of proposed amendment was published in Anchorage, Fairbanks, Juneau, Cordova, Nome, and Bristol Bay newspapers and in the Tundra Times.

- * 3AAC 66.010 Amended by adding a new subsection which requires common carriers by bus to obtain a certificate from the Alaska Transportation Commission in order to operate within the boundaries of a municipality unless the carrier has obtained a permit granted by a municipality with requirements relating to the licensure of carriers by bus substantially similar to those of the state. This regulation appears to be out of conformity with legislative intent as expressed in 42.15.061(h), which states that no certificate may be required from the Alaska Transportation Commission in order to operate a bus within a municipality.

Register, 59, October 1976 COMMERCE

3 AAC 66.010

3 AAC 66.010. CERTIFICATES. (a) ^A ~~No~~ common carrier by bus may ¹⁰¹ transport passengers, their baggage or express in the State of Alaska without first obtaining a certificate from the commission.

(b) The certificate required by this section must be prominently displayed in the carrier's place of business at all times, and none of the activities described in (a) of this section may be conducted by the carrier unless the certificate is displayed in this manner.

(c) Common carriers by bus operating under a franchise or permit granted by a municipality are not required to obtain a certificate from the Alaska Transportation Commission for transportation of passengers, their baggage, or express when the transportation is from one point within the municipality to another point within the municipality only, or to municipal property outside the municipal limits only, when that municipality has adopted regulating ordinances requiring substantially the following:

(1) the certificating requirements of AS 42.15.061 (a), (b), (c), (d), (e), (f) and (g);

(2) the filing of rates and rate schedules as provided in ~~Article 3, AS 42.15~~ with the municipal regulating body; ~~AS 42.15.141 — 42.15.211~~

(3) registration of evidence of public protection as provided in ~~Article 4, AS 42.15~~ to be filed with the municipal regulating body;

(4) the adherence to the provisions of ~~Articles 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100~~ AS 42.15.371, ~~381, 391, 401 and 411~~ with the municipal regulating body.)

(Eff. 12/28/69, Reg. 310; am. 9/19/76, Reg. 59)

Authority: AS 42.07.121
 AS 42.15.011
 AS 42.15.021
 AS 42.15.061
 AS 42.15.421(5)
 AS 42.15.431

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

November 8, 1976

Dear Member of the Regulation Review Committee:

The Department of Commerce has adopted the regulations listed below. Possible deviations from legislative intent are indicated with an asterisk to the left of the entry, and in such cases the regulation is discussed with reference to the statute being interpreted or implemented. Notice of proposed adoption of these regulations was published in newspapers in Anchorage, Fairbanks, and Juneau. Public hearings on these regulations were held in Anchorage on March 17, 1976, Fairbanks on February 26, 1976, and Juneau on March 2, 1974.

3AAC 95.010 Enumerates when sealed and competitive bids are required for construction contract entered into by ASHA. Excludes from the provisions of 3AAC 95 coverage of professionals and persons employed by ASHA to perform functions of a general contractor. Subsection defines the following terms: turnkey, design - construct, and new construction.

3AAC 95.020 Specifies minimum requirements relating to publication of notices of soliciting bids. Requires ASHA to maintain bid lists of general and specialty contractors. Requires ASHA to solicit bids for at least 30 days before a bid may be accepted.

3AAC 95.030 It requires bidders to submit an affidavit with their bids declaring whether or not a board member or an employee of ASHA has a financial, business, or familial interest in or with the bidder. Successful bidders are required to file another affidavit reiterating the same information.

3AAC 95.040 Specifies the work to be performed by ASHA in preparation for soliciting bids, specifies information which must be contained in the invitation to bid, and specifies the information which must be supplied in a bid submitted to ASHA.

3AAC 95.050 Specifies times for submission of sealed bids, submission of revised bids, and withdrawal of sealed bids.

3AAC 95.060 Provides that bids received after a closing time are late bids and shall be returned to the bidder without being considered.

3AAC 95.070 Specifies grounds for rejection of bids.

3AAC 95.080 Enumerates criteria which are to be taken into consideration along with the amount of the bid in determining who is to be awarded contract.

3AAC 95.090 An Alaskan bidder will be awarded a bid if it is not more than 5% higher than the lowest non-resident bid, and establishes criteria for determining who is an Alaskan bidder. Does this correctly implement the legislative intent embodied in AS 18.55.460? It states that ASHA shall use Alaskan professional and contractor services as far as practicable.

3AAC 95.100 Provides for award bids when bidders are equal in light of the criteria established by 3AAC 95.040 and 3AAC 95.080.

3AAC 95.110 Provides that a successful bidder will made a tentative award, which shall become final within a specified period of time if other bidders do not petition for review of the award.

3AAC 95.120 Provides that ASHA shall enter into a contract with a successful bidder in 15 days and provides for a course of action if the successful bidder fails to enter into a contract with ASHA.

Attachment "E"

Register 57 ^{COMED} 1976

COMMERCE

3 AAC 95.010

TITLE 3. COMMERCE

PART 9. ALASKA STATE HOUSING AUTHORITY

CHAPTER 95. PURCHASING AND NEW
CONSTRUCTION BIDDING
PROCEDUREARTICLE 1. NEW CONSTRUCTION BIDDING
PROCEDURESection

- 10. Contract By Sealed Competitive Bids
- 20. Solicitation of Bids
- 30. Conflict of Interest
- 40. Bid Procedure
- 50. Receipt of Bids
- 60. Late Bids
- 70. Rejection of Bids
- 80. Criteria For Awards
- 90. Alaska Bidder Preference
- 100. Tied Bids
- 110. Tentative and Final Awards
- 120. Contract

3 AAC 95.010. CONTRACT BY SEALED COMPETITIVE BIDS. (a)
A construction contract entered into by ASHA for the purpose of new construction in an amount greater than \$2,500 will be based upon competitive and sealed bids or proposals. In addition, all contracts for a "turnkey" and "design-construct" type development will be entered into by ASHA on the basis of a competitive and sealed bid or proposal. All contracts for the purchase or lease of new construction that has been constructed under a turnkey or design-construct concept shall be governed by this section.

(b) Contracts for professional or technical services shall be excluded from the provisions of secs. 10 - 320 of this chapter. Contracts for "construction management" or "construction manager" shall be excluded from the provisions of secs. 10 - 320 of this chapter. "Construction management" describes the function performed for ASHA by a person, company or partnership that is known as "contract manager" that eliminates the need for a general contractor in a construction project. The contract manager, utilizing contract documents, including designs and specifications, performs the tasks of contracting with contractors, supervising the work of the contractors, and generally insure completion of a project that is in compliance with the contract document. A contract manager shall be ~~deemed~~ ^{Accounted} to perform professional or technical services.

~~(c) The following terms and phrases shall mean:~~

(c) *In this chapter*

(1) "turnkey" describes a type of construction where a bidder designs and builds a facility upon real property that it owns and then (i) conveys the completed facility and real property to ASHA at a predetermined purchase price or (ii) leases to ASHA the completed facility at a predetermined lease cost. ASHA is not viewed as an "owner" during construction. Further, ASHA does not usually provide any interim construction financing.

(d) *In this chapter*

(2) "design-construct" describes a type of construction where a bidder designs and builds a facility on real property owned by ASHA. ASHA is viewed as the owner through construction and may have all of the concomitant rights and liabilities of an owner. ASHA may also furnish interim financing.

(e) *In this chapter*

(3) "new construction" describes construction of a previously unbuilt facility or building. Rehabilitation on an existing facility or building is not new construction, unless the total cost of such rehabilitation on a particular existing facility or building is in excess of \$250,000. The construction of a previously unbuilt facility or building that utilizes modular or pre-built units is new construction.

(d) This chapter ^{does} ~~shall~~ not apply to construction of public buildings for lease to the state. (Eff. 10/1/76, Reg. 57)

Authority: AS 18.55.100(a)(4)
AS 18.55.100(a)(5)
AS 18.55.100(a)(9)
AS 18.55.420

3 AAC 95.020. SOLICITATION OF BIDS. (a) A bid will be solicited by publication in newspapers of general circulation in the state and by posting of the notice of the invitation. The invitation to bid will be published in a newspaper at least once a week for two consecutive weeks and will include publication in a newspaper published in Anchorage, Alaska. Notices will be posted, at least, in the main office of ASHA, Anchorage, Alaska, and at the offices of the Associated General Contractors, Anchorage, Alaska. In addition, notices will be posted in a public area in the municipality or community in which the construction will be located.

(b) Bids will, in ASHA's discretion, also be solicited by publication in trade journals or by sending notices by mail to prospective bidders. Bid lists of general contractors and specialty contractors will be maintained by ASHA and general contractors and specialty contractors, or others, are encouraged to make application to have their names included. The bid list shall periodically be updated to include new names and remove the names of contractors and specialty contractors who have ignored acknowledgement of the invitations to bid on at least two successive instances.

(c) Solicitations will be made for at least 30 days before the last day upon which a bid may be accepted by ASHA. (Eff. 1/1/76, Reg. 1.1)

Authority: AS 18.55.100(a)(4)
AS 18.55.420
AS 18.55.460

3 AAC 95.030. CONFLICT OF INTEREST. (a) In addition to other requirements imposed on a bidder by this chapter, a bidder, in submitting his bids, shall declare in an affidavit whether or not a board member or employee of ASHA has a financial, business or familial interest in or with the bidder.

(b) A successful bidder shall execute an affidavit stating whether or not a board member or employee of ASHA has or will have any financial, business or familial interest, direct or indirect, in the contract or the proceeds of the contract. (Eff. 1/1/76, Reg. 1.1)

Authority: AS 18.55.080
AS 18.55.100(a)(4)
AS 18.55.420

3 AAC 95.040. BID PROCEDURE. (a) Prior to the issuance of an invitation to bid, ASHA will compile:

- (1) the scope of work and services requested;
- (2) if applicable, a legal, and a metes and bounds description of the real estate upon which the construction will be performed;
- (3) an estimated maximum cost for the construction;
- (4) if applicable, an estimated total purchase price;

- (5) if applicable, the estimated cost of a lease;
 - (6) if applicable, the value that will be placed upon the real property at the time of conveyance to the contractor;
 - (7) a projected time for construction;
 - (8) an estimated completion date for the construction;
 - (9) an analysis of the source of funding for the project, if known; and
 - (10) requirements for payment and performance bonds, as well as the errors and omissions and insurance coverages.
- (b) An invitation to bid will contain:
- (1) the date of the invitation;
 - (2) the last date and time which a bid will be accepted;
 - (3) a description of the general scope of work and services required;
 - (4) the location of the construction project;
 - (5) a description of the construction project on which a bid is being requested;
 - (6) identification of the location where specifications and other relevant information on the bid can be obtained; and
 - (7) any other information or documentation, including a bid bond, as may be required by ASHA for that particular bid.

(c) A bid submitted to ASHA, pursuant to an invitation to bid, must, in addition to any other requirements imposed on that particular bid, contain:

- (1) the name of the bidder;
- (2) if the bidder is a corporation, the name of the state in which the corporation is incorporated;
- (3) a statement as to whether the corporation is registered as a corporation in the state;

(4) a statement as to whether the corporation has paid all fees, taxes and other monetary requirements due to the state;

(5) if the bidder is not a corporation, the exact identity of its business form;

(6) if the bidder is a partnership, the identity of all partners with addresses;

(7) a credit statement of the partnership, or in the case of a corporation, a credit statement of the corporation;

(8) in the event that the bidder is neither a corporation nor a partnership, the credit statement of the bidder;

(9) a clear and unequivocal statement of the bid in specific response to the invitation and any qualifying or modifying provisions must be explicitly set forth;

(10) a brief, but adequate statement as to the bidder's proposal for securing a requisite work force and supplies for the construction and those areas of construction in which the bidder intends to use subcontractors and subcontracts;

(11) as to the "turnkey" or "design-construct" development, the bidder, in addition to all other requirements imposed on a bidder, shall also provide and itemize:

(A) the location of the real estate by legal, and a metes and bounds description;

(B) the ownership of the real estate;

(C) the price of the real estate;

(D) the price of the building construction;

(E) the price of the total completed project, including the real estate;

(F) rough sketches of the type and building plans;

(G) specifications of building materials;

(H) a statement as to zoning; and

(I) any other information that would be relevant under the invitation to bid.

(12) a statement that the bidder will comply with the payment and performance bonds requirements, as well as the errors and omissions and insurance coverages;

(13) an affirmative statement of compliance with Alaska and Federal Civil Rights Act and other equal opportunity provisions;

(14) a statement of similar work performed by the bidder for a period of five years before the bid; and

(15) any other information or documentation, including a bid bond, as may be required by ASHA for that particular bid. (Eff. 1/1/76, Reg. 1/1/76)

Authority: AS 18.55.100(a)(4)
AS 18.55.100(a)(9)
AS 18.55.420

3 AAC 95.050. RECEIPT OF BIDS. (a) All sealed bids must be received by ASHA on or before the date and time set forth in the invitation to bid. Upon receipt of a sealed bid, ASHA will date and time stamp the bid and place the respective bid in a file of bids until opening. At the time and place specified in the invitation to bid, all sealed bids will be opened in public. The opening of bids, however, will commence within five minutes of the closing time established for receiving bids. A bidder will not be permitted to alter a bid after the scheduled bid opening time. A tentative award or final award will not be made at the time of the bid opening.

(b) Revised bids may be submitted. However, revised bids must be received by ASHA at least 48 hours prior to the date and time set for the receipt of bids. Such revised bids shall be delivered in a sealed container. Additionally, if the modification or revision is not explicit and if in any sense it is subject to misinterpretation, the revised as well as the original bid are subject to rejection.

(c) Sealed bids may be withdrawn on written or telegraphic request dispatched by the bidder in time for delivery in the normal course of business to the time fixed for opening; provided, that written confirmation of any telegraphic withdrawal over the signature of the bidder is placed in the mail and postmarked prior to the time set for bid opening. Any bid guaranty of any bidder withdrawing its bid in accordance with the foregoing conditions will be promptly returned. (Eff. . / . / . . , Reg. . .)

Authority: AS 18.55.100(a)(4)
AS 18.55.100(a)(9)
AS 18.55.420

3 AAC 95.060. LATE BIDS. It is the responsibility of the bidder to insure that his bid is in the proper office of ASHA prior to the closing time established for receiving bids. Bids received after the scheduled closing time are late bids. Late bids will be returned, unopened, to the bidder. (Eff. . / . / . . , Reg. . .)

Authority: AS 18.55.100(a)(4)
AS 18.55.420

3 AAC 95.070. REJECTION OF BIDS. ASHA will, in its discretion, reject a bid:

- (1) when a bidder has failed to comply with the invitation requirements;
- (2) when a bidder has failed to perform on a previous contract with ASHA;
- (3) when a bidder qualifies or changes the terms and conditions of the invitation to bid in such a manner that the bid is not responsive to the purpose sought by ASHA in issuing an invitation to bid;
- (4) when the bid contains faulty specifications or insufficient information that, in the opinion of ASHA, makes the bid non-responsive to the invitation to bid;
- (5) when the bid is considered late;
- (6) when the lowest responsible bid received is in excess of funds available for construction;
- (7) when the bid is not signed;

(8) when the bidder has unpaid taxes due to the state or the U.S. Government;

(9) when there is a conflict of interest with the bidder and a board member or employee of ASHA; or

(10) when ASHA determines that the bid is not in the best interest of ASHA. (Eff. 7/1/76, Reg. 51)

Authority: AS 18.55.100(a)(4)
AS 18.55.420

3 AAC 95.080. CRITERIA FOR AWARDS. An award of contract will be made to the lowest responsible bidder taking into consideration:

- (1) conformity with specifications;
- (2) terms for performance of the construction;
- (3) compliance with conditions imposed in the invitation to bid;
- (4) past performance of the bidder in performing similar projects for ASHA or others during the preceding five years;
- (5) the price offered;
- (6) the reputation for responsibility of the bidder;
- (7) the academic or professional credentials of the bidder;
- (8) in addition to the above criteria, the bid on a "turnkey" or "design-construct" development shall also be considered on the following basis:
 - (A) the location of the site;
 - (B) the price of the site and ASHA's ability to finance, purchase or lease the project;
 - (C) the design of the construction;
 - (D) the price of the buildings or units;

- (E) the total price of the total project;
- (F) the aesthetics of the projects;
- (G) the practicality of the project.
- (Eff. 1/1/76, Reg. 5.)

Authority: AS 18.55.100(a)(4)
AS 18.55.420

3 AAC 95.090. ALASKA BIDDER PREFERENCE. A bid will be awarded to an Alaska bidder if the bid is not more than five percent higher than the lowest non-resident bid. An Alaska bidder means a bidder who

- (1) holds a current Alaska business license;
- (2) submits a bid under the name appearing on the current Alaskan business license;
- (3) if a corporation, is registered to do business in the State of Alaska; and
- (4) has maintained a place of business in the state for a period of six months immediately preceding the date of the bid. (Eff. 1/1/76, Reg. 5.)

Authority: AS 18.55.100(a)(4)
AS 18.55.420
AS 18.55.460

3 AAC 95.100. TIED BIDS. If two or more bidders are tied, each of whom fully meets the bid conditions and the criteria established in Secs. 40 and 80 of this chapter, an award will be made as provided in this section. Tied bids involving Alaskan firms with non-Alaskan firms, after taking into consideration the five percent Alaska bidder preference, will be made first to the Alaska bidder. If a tie should still remain, the tie will be dissolved by a flip of a coin by the Executive Director of ASHA in the presence of the tied bidders or their designated agents or representatives. (Eff. 1/1/76, Reg. 5.)

Authority: AS 18.55.100(a)(4)
AS 18.55.420

3 AAC 95.110. TENTATIVE AND FINAL AWARDS. (a) A tentative award will be made by ASHA within 20 days after opening the bids. Notice of the tentative award will be forwarded to each bidder by certified mail, return receipt requested, on the date the tentative award is made.

(b) If no bidder files a petition for a hearing within the appropriate time as set forth in Sec. 270 of this chapter, the award will become final. If a petition is filed within the appropriate time, but an aggrieved bidder does not appear and participate in the hearing, the petition shall not be considered and the tentative award will become final. If an aggrieved bidder fails to file a notice of appeal to the superior court from the decision of the hearing officer under Sec. 270 of this chapter within the appropriate time, the tentative award will become final. (Eff. 7/1/76, Reg. 5.1)

Authority: AS 18.55.100(a)(4)
AS 18.55.100(a)(5)
AS 18.55.100(a)(9)
AS 18.55.420

3 AAC 95.120. CONTRACT. (a) After the tentative award is made final, ASHA and the successful bidder will enter into a contract within 15 calendar days.

(b) Upon the failure or refusal of the successful bidder to enter into a contract with ASHA that complies with the requirements of the invitation to bid, ASHA will, in its discretion, cancel the award. ASHA will then:

(1) make the award to the next lowest responsible bidder if the next lowest bidder does not have any, direct or indirect, financial relationship with the original lowest bidder;

(2) reject all bids; or

(3) submit a new invitation to bid.

(Eff. 7/1/76, Reg. 5.1)

Authority: AS 18.55.100(a)(4)
AS 18.55.100(a)(5)
AS 18.55.100(a)(9)
AS 18.55.420

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

November 8, 1976

Dear Member of the Regulation Review Committee:

The Department of Commerce has adopted the regulations discussed below. The regulations are summarized in the most general terms, with only a few salient points mentioned. Following the summary of each article, regulations which might be out of conformity with legislative intent are described in greater particularity with reference to the statute(s) supposedly being interpreted or implemented. Notice of proposed adoption of these regulations was published in newspapers in Anchorage, Fairbanks, and Juneau. Public hearings on these regulations were held in Anchorage on March 17, 1976, Fairbanks on February 26, 1976, and Juneau on March 2, 1976.

3AAC 95.130 - 3 AAC 95.260 related to ASHA's procedures in the purchase of supplies, materials, equipment, contractual services, and leases of space. Salient points of these regulations are the following:

*When the value of a purchase exceeds 300 dollars, competitive bids are required to be solicited. (3AAC 95.130)

*De-centralized purchasing is authorized. (3AAC 95.140)

*Competitive bidding may be dispensed with in an emergency (3AAC 95.150)

*When the value of a purchase is between \$300 and \$2,500, ASHA is required to solicit three bids by telephone. (3AAC 95.170)

*When the value of a purchase exceeds \$2,500, sealed bids are required to be solicited. (3AAC 95.180)

*Late bids will not be considered (3AAC 95.200)

*Contracts will be awarded to the lowest responsible bidder. (3AAC 95.200(a)). Characteristics of lowest responsible bidder are defined to include factors other than having submitted the lowest bid. (3AAC 95.220(b)).

*Awards made to successful bidders are on a tentative basis, and become final on failure of other bidders to overturn the award. (3AAC 95.250)

*Administrative appeal is afforded aggrieved bidders (3AAC 95.270)

*The decision of the hearing officer is the final level of administrative review, i.e. exhausts administrative remedies (3AAC 95.270)

*Aggrieved bidder must post a \$750 bond to get a hearing and if bidder loses, that money will be spent to pay costs of hearing (3AAC 95.280)

One might argue that 3AAC 95.160, along with sections in other chapters of Title 3 which embody a similar approach (3AAC 96.30, 3AAC 96.90, 3AAC 97.70, 3AAC 97.190, 3AAC 97.040(c)(3), 3AAC 97.050(c)(3), 3AAC 95.030, 3AAC 96.040, (c)(3), 3AAC 96.050(c)(3), 3AAC 96.100(c)(3), 3AAC 96.110(c)(3), 3AAC 97.160(c)(3), and 3AAC 97.170(c)(3)), might be out of conformity with the legislative intent of AS 18.55.080, which reads as follows:

MEMBERS OR EMPLOYEES PROHIBITED FROM ACQUIRING INTEREST IN PROJECTS. No member or employee of the authority shall acquire an interest, direct or indirect, in a housing or public project, or in property or a contract for materials or services included or planned to be included in a project. If a member or employee owns or controls an interest, he shall immediately disclose the interest in writing to the authority. Failure to make disclosure constitutes disclosure in office.

The regulations cited above would require persons who are awarded ASHA contracts, or are retained as real estate appraisers or realtors by ASHA, or in certain instances even bid on ASHA contracts, to declare in an affidavit whether or not a board member or employee of ASHA has a financial, business, or familial interest in or with the bidder, appraiser, or realtor.

AS 18.55.080 provides that an ASHA board member or employee must immediately disclose any interest he might have in a contract for materials or services. Was this the sole method the legislature envisioned for implementing its intent that there be no conflicts of interest between ASHA and its suppliers? Or does the intent of this section encompass requiring suppliers to execute such affidavits?

Further, 3AAC 95.230, providing for a preference for Alaskan bidders, might be out of conformity with the legislative intent of AS 18.55.460, which reads as follows:

PREFERENCE FOR STATE PROFESSIONAL AND CONTRACTOR'S SERVICES. In planning, designing, and constructing projects under secs. 300-470 of this chapter, the authority shall use Alaskan professional and contractor services as far as practicable and shall encourage the use of local building materials.

3AAC 95.230 provides that a bid will be awarded to an Alaskan bidder if the bid is not more than five per cent more than the lowest non-Alaskan bid. This regulation defines an Alaska bidder as one who, among other things, has maintained a place of business in the state for a period of six months immediately preceding the bid. Is the provision for an award to an Alaskan whose bid is five percent higher a correct implementation of the intent of the legislature? What about the regulation's definition of who qualifies as an Alaskan under this regulation?

TITLE 3. COMMERCE

PART 9. ALASKA STATE HOUSING AUTHORITY

CHAPTER 95. PURCHASING AND NEW
CONSTRUCTION BIDDING
PROCEDURE

ARTICLE 2. PURCHASING

Section

- 130. Competitive Bids
- 140. Purchasing Centralized at ASHA
- 150. Emergency Purchases
- 160. Conflict of Interest
- 170. Purchases Greater than \$300
- 180. Purchases Greater than \$2,500
- 190. Receipt of Bids
- 200. Late Bids
- 210. Rejection of Bids
- 220. Selection of Successful Bidder
- 230. Alaska Bidder Preference
- 240. Tied Bids
- 250. Tentative and Final Awards
- 260. Contract

3 AAC 95.130. COMPETITIVE BIDS. (a) Competitive bids will be solicited by ASHA in the purchase of all supplies, materials, equipment, contractual services and leases of space when the dollar value exceeds \$300, unless:

- (1) there is no competition;
- (2) rates are fixed by law or ordinance; or
- (3) it is for professional services such as consultant engineers, architects, attorneys or appraisers.

(b) The Executive Director of ASHA shall have the discretion and make the decision as to the form, terms and conditions, and the extent of solicitation on any bid, provided that this discretion and decision is consistent with Secs. 130 - 260 of this chapter.

(c) The provisions of this chapter ~~shall~~^{will} not be followed if ASHA can purchase, in the opinion of the Executive Director of ASHA, the goods or services at a fair and competitive price through either a United States Department of Housing and Urban

Development Consolidated Supply program/contract or a State of Alaska Consolidated Supply program/contract.
(Eff. 7/15/76, Reg. 57)

Authority: AS 18.55.100(a)(4)
AS 18.55.100(a)(9)
AS 18.55.420

3 AAC 95.140. PURCHASING CENTRALIZED AT ASHA. (a) Purchasing under this chapter will be centralized and conducted from the main office of ASHA in Anchorage, Alaska, except as provided in (b) of this section.

(b) The Executive Director of ASHA will, in his discretion, delegate, in writing, to an employee not located at the main office of ASHA, the right to solicit and purchase specified supplies, materials, equipment and services. These goods or services will be solicited and purchased by the employee if, in the opinion of the Executive Director of ASHA, they can be more economically or efficiently purchased through the employee. An employee authorized to solicit and purchase goods and supplies will obtain competitive bids and then award the purchase to the lowest responsible bidder according to the procedures in this chapter. (Eff. 7/15/76, Reg. 57)

Authority: AS 18.55.100(a)(4)
AS 18.55.420

3 AAC 95.150. EMERGENCY PURCHASES. Under specific written approval from the Executive Director of ASHA, goods and services may be purchased or contracted without following the competitive bid procedures of this chapter, provided the purchase or contract is an emergency. An emergency shall be a situation where life, health and property are threatened with immediate injury, destruction, peril or substantial inconvenience. Upon making an emergency purchase, the facts constituting the emergency and the purchase will be set forth in writing. (Eff. 7/15/76, Reg. 57)

Authority: AS 18.55.100(a)(4)
AS 18.55.420

3 AAC 95.160. CONFLICT OF INTEREST. (a) On the purchase or contract for goods or services in an amount between \$300 and \$2,500, the successful bidder shall be required to execute an affidavit indicating whether or not a board member or employee of ASHA has a financial, business or familial interest in or with the bidder or the proceeds of the contract.

(b) On the purchase or contract for goods or services in an amount greater than \$2,500, the bidder in submitting his bid shall declare in an affidavit whether or not a board member or employee of ASHA has a financial, business or familial interest in or with the bidder.

(c) The successful bidder shall also execute an affidavit indicating whether or not a board member or employee of ASHA has or will have a financial, business or familial interest, direct or indirect, in the purchase or contract or the proceeds of the contract. (Eff. 7/23/76, Reg. 5?)

Authority: AS 18.55.100(a)(4)
AS 18.55.420

3 AAC 95.170. PURCHASES GREATER THAN \$300. (a) Telephonic bids will be solicited if the purchase, including construction, is estimated to be between \$300 and \$2,500. The telephonic solicitation will be directed to at least three suppliers or sellers of the services or goods. The solicitation will be directed to those suppliers, sellers or purveyors located within the area where the services or goods will be used. A written record shall be maintained by ASHA of all suppliers, sellers and purveyors that are telephonically contacted. The record shall indicate, by illustration and not limitation,:

- (1) the name of the supplier, seller or purveyor;
- (2) the name of the person to whom ASHA spoke with;
- (3) the date of the contract;
- (4) the date the bid must be received by ASHA;
- (5) the amount of the bid, if given by telephonic conversation; and
- (6) a summary of the telephonic conversation.

(b) Other than the specific conditions or terms set out in this section, a bid and award made under this section shall be governed by the terms and conditions of Secs. 130 - 260, 270 - 320 of this chapter, except that a bidder may submit its bid by telephonic conversation. (Eff. 7/23/76, Reg. 5?)

Authority: AS 18.55.100(a)(4)
AS 18.55.420

3 AAC 95.180. PURCHASES GREATER THAN \$2,500. (a) Sealed bids will be solicited if the purchase is estimated to exceed \$2,500. Bids will be solicited by publication in newspapers of general circulation in the state and by posting of the notice of solicitation in a prominent place.

(b) A solicitation for a bid will be published in a newspaper at least once a week for two consecutive weeks and will include publication in a newspaper that publishes in Anchorage, Alaska. Notice will be posted, at least, in the main office of ASHA, Anchorage, Alaska, or in a public area in the municipality where the goods or services are to be solicited.

(c) Bids will, in ASHA's discretion, also be solicited by publication in trade journals or by mailing of the invitation to bid to prospective bidders. Bid lists of general contractors, specialty contractors, suppliers, etc., shall be maintained by ASHA and general contractors, specialty contractors, suppliers, or others, are encouraged to make application to have their names included. The bid list shall periodically be updated to include new names and remove the names of contractors, specialty contractors, suppliers, or others, who have ignored acknowledgement of the invitations to bid on at least two successive occasions. Solicitations will be made for at least 20 days before the last day upon which a bid may be accepted by ASHA.

(d) The invitation to bid will contain:

- (1) the date of the invitation to bid;
- (2) the date that the contractual services, or items purchased are to be performed or delivered;
- (3) the destination point and the method of transportation;
- (4) the quantity of items to be purchased and the unit of measure of the items to be purchased;
- (5) the description of the type and quality of the item to be purchased, including standard specifications where it is feasible;
- (6) if additional bids are requested for alternative quantities or qualities of the same item, the solicitation will contain the word "alternate" and the specific alternative bids that are requested;
- (7) the time and place of the opening of the bids;

(8) identification of location where the necessary bid forms or additional information may be obtained; and

(9) any other information or documentation, including a bid bond, as may be required by ASHA for that particular bid.

(e) A bid submitted to ASHA, pursuant to an invitation to bid, must, in addition to any other requirements imposed on that particular bid, contain:

(1) the name of the bidder;

(2) if the bidder is a corporation, the name of the state in which the corporation is incorporated;

(3) a statement as to whether the corporation is registered as a corporation in the state;

(4) a statement as to whether the corporation has paid all fees, taxes and other monetary requirements due to the state;

(5) if the bidder is not a corporation, the exact identity of its business form;

(6) if the bidder is a partnership, the identity of all partners with addresses;

(7) a brief, but adequate statement as to the bidder's proposal for securing a requisite work force and supplies for the construction and those areas of construction in which the bidder intends to use subcontractors and sub-contracts; and

(8) a clear and unequivocal statement of the bid in specific response to the invitation to bid and any qualifying or modifying provisions must be explicitly set forth.

(f) In the discretion of ASHA, the bid shall also contain:

(1) a credit statement of the partnership, or in the case of a corporation, a credit statement of the corporation;

(2) in the event that the bidder is neither a corporation nor a partnership, the credit statement of the bidder. (Eff. 7/1/76, Reg. 57)

Authority: AS 18.55.100(a)(4)
AS 18.55.100(a)(9)
AS 18.55.420

3 AAC 95.190. RECEIPT OF BIDS. (a) All sealed bids must be received by ASHA on or before the date and time set forth in the invitation to bid. Upon receipt of each sealed bid, ASHA will date and time stamp the bid and place the respective bid in a file of bids until opening. At the time and place specified in the invitation to bid, all sealed bids will be opened in public. The opening of bids, however, shall commence within five minutes of the closing time established for receiving bids. A bidder will not be permitted to alter a bid after the scheduled bid opening time. A tentative award or final award will not be made at the time of the bid opening.

(b) Revised bids may be submitted. However, revised bids must be received by ASHA at least 48 hours prior to the date and time set for the receipt of bids. Such revised bids shall be delivered in a sealed container. Additionally, if the modification or revision is not explicit and if in any sense it is subject to misinterpretation, the revised as well as the original bid are subject to rejection.

(c) Sealed bids may be withdrawn on written or telegraphic request dispatched by the bidder in time for delivery in the normal course of business to the time fixed for opening; provided, that written confirmation of any telegraphic withdrawal over the signature of the bidder is placed in the mail and postmarked prior to the time set for bid opening. Any bid guaranty of any bidder withdrawing its bid in accordance with the foregoing conditions will be promptly returned. (Eff. 7/1/76, Reg. 57)

Authority: AS 18.55.100(a)(4)
AS 18.55.420

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3 AAC 95.200

3 AAC 95.210

3 AAC 95.200. LATE BIDS. It is the responsibility of the bidder to insure that his bid is in the proper office of ASHA prior to the closing time established for receiving bids. Bids received after the scheduled closing time are late bids. Late bids will be returned, unopened, to the bidder. (Eff. 7/13/76, Reg. 59)

Authority: AS 18.55.100(a)(4)
AS 18.55.420

3 AAC 95.210. REJECTION OF BIDS. ASHA will, in its discretion, reject bids:

(1) when a bidder has failed to comply with the invitation requirements;

(2) when a bidder has failed to perform on a previous contract with ASHA;

(3) when a bidder qualifies or changes the terms and conditions of the invitation to bid in such a manner that it is not responsive to the purpose sought by ASHA in issuing an invitation to bid;

(4) when the bid contains faulty specifications or insufficient information that, in the opinion of ASHA, makes the bid non-responsive to the invitation to bid;

(5) when the bid is late;

(6) when the lowest responsible bid received is in excess of funds available;

(7) when the bid is not signed;

(8) when the bidder has unpaid taxes due to the state or the U.S. Government;

(9) when there is a conflict of interest with the bidder and a board member or employee of ASHA; or

(10) when ASHA determines that the bid is not in the best interest of ASHA. (Eff. 7/13/76, Reg. 59)

Authority: AS 18.55.100(a)(4)
AS 18.55.420

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3 AAC 95.220

3 AAC 95.230

3 AAC 95.220. SELECTION OF SUCCESSFUL BIDDER. (a) Purchases requiring competitive bids under Secs. 130 - 260 of this chapter will be awarded, if at all, to the lowest responsible bidder, taking into consideration:

- (1) conformity with the specifications;
- (2) terms of delivery;
- (3) compliance with conditions imposed in the invitation to bid;
- (4) responsibility of the bidder;
- (5) price offered; and
- (6) compliance with all requirements specified in Secs. 130 - 260 of this chapter.

(b) The lowest responsible bidder is the bidder who submits the lowest price and who has the financial ability, integrity, trustworthiness, skill, judgment, experience, and the necessary facilities and equipment to satisfactorily complete the contract. (Eff. 7/1/76, Reg. 59)

Authority: AS 18.55.100(a)(4)
AS 18.55.100(a)(9)
AS 18.55.420

3 AAC 95.230. ALASKA BIDDER PREFERENCE. A bid will be awarded to an Alaska bidder if the bid is not more than five percent higher than the lowest non-resident bid. An Alaska bidder is defined as one who:

- (1) holds a current Alaska business license;
- (2) submits a bid under the name appearing on the current Alaskan business license;
- (3) if a corporation, is registered to do business in the state; and
- (4) has maintained a place of business in the state for a period of six months immediately preceding the date of the bid. (Eff. 7/1/76, Reg. 59)

Authority: AS 18.55.100(a)(4)
AS 18.55.420
AS 18.55.460

3 AAC 95.240. TIED BIDS. If two or more bidders are tied, each of whom fully meets the bid conditions and the criteria established in Sec. 220 of this chapter, an award will be made as provided in this section. Tied bids involving Alaska resident bidders with non-resident bidders, after taking into consideration the five percent Alaska bidder preference, will be made first to the Alaska bidder. If a tie should still remain, the tie will be dissolved by a flip of a coin by the Executive Director of ASHA in the presence of the tied bidders or their designated agents or representatives. (Eff. 1/1/76, Reg. 1/1/76)

Authority: AS 18.55.100(a)(4)
AS 18.55.420

3 AAC 95.250. TENTATIVE AND FINAL AWARDS. (a) A tentative award will be made by ASHA within ten days after opening the bids. Notice of the tentative award will be forwarded to each bidder by certified mail, return receipt requested, on the date the tentative award is made.

(b) If no bidder files a petition for a hearing within the appropriate time as set out in Sec. 270 of this chapter, the award shall become final. If a petition is filed within the appropriate time, but an aggrieved bidder does not appear and participate in the hearing, the petition shall not be considered and the tentative award will become final. If an aggrieved bidder fails to file a notice of appeal to the superior court from the decision of the hearing officer under Sec. 290 of this chapter within the appropriate time, the tentative award will become final. (Eff. 1/1/76, Reg. 1/1/76)

Authority: AS 18.55.100(a)(4)
AS 18.55.100(a)(5)
AS 18.55.100(a)(9)
AS 18.55.420

3 AAC 95.260. CONTRACT. (a) After the tentative award is made final, ASHA and the successful bidder will enter into a contract within ten days.

(b) Upon the failure or refusal of the successful bidder to enter into a contract with ASHA that complies with the requirements of the invitation to bid, ASHA will, in its discretion, cancel the award. ASHA will then:

(1) make the award to the next lowest responsible bidder that does not have any, direct or indirect, financial relationship with the original lowest bidder;

(2) reject all bids; or

(3) submit a new invitation to bid.

(Eff. 1/1/76, Reg. 18.55.100)

Authority: AS 18.55.100(a)(4)
AS 18.55.100(a)(5)
AS 18.55.100(a)(9)
AS 18.55.420

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

January 19, 1977

Dear Member of the Regulation Review Committee:

The Board of Pharmacy has adopted regulations relating to the compounding and dispensing of drugs in hospital pharmacies and drug rooms. The salient points of these regulations will be summarized below and possible deviations from legislative intent noted and discussed.

Summary

12 AAC 52.100 - 12 AAC 52.140 develop a procedure whereby "non-controlled legend drugs," meaning drugs bearing on the label the legend "TO BE DISPENSED ONLY ON OR BY THE PRESCRIPTION OF A PHYSICIAN," may be prepared and packaged in advance by the pharmacist, and then dispensed by emergency room personnel on the hospital's staff on the written or telephonic instructions of a physician.

Comment

The authority for these regulations is apparently AS 08.80.390(a), which reads as follows:

"A hospital, clinic, nursing home, infirmary or related facility which dispenses drugs for outpatient treatment shall have a licensed pharmacist in charge of the dispensary, except that prescriptions may be compounded and dispensed by or under the supervision of the prescribing physician." (Underlining supplied)

The aforementioned is apparently an exception to the general rule established by AS 08.80.340, which reads:

"No person except a licensed physician or a licensed intern pharmacist under the direct supervision of a licensed pharmacist may compound and dispense the prescription of a physician. However, this section does not limit the authority of a licensed medical doctor to compound and dispense medicinal preparations."

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In short, the Board of Pharmacy is interpreting the language of AS 08.80.390(a), "under the supervision of the prescribing physician," to mean that written or telephonic instructions are sufficient to constitute supervision, and that the physician need not be physically present, at least where the drugs have been compounded and packaged beforehand by a licensed pharmacist. Is this what the Legislature intended?

ARCC

Attachment "H"

Register 60, Jan, 1976 ~~Continued~~ 12 AAC 52.100
~~Economic Development~~ 12 AAC 52.120

ARTICLE 12. PROFESSIONAL AND VOCATIONAL REGULATIONS

CHAPTER 52. BOARD OF PHARMACY

ARTICLE 2. HOSPITAL PHARMACIES

Section

- 100. Preparation of list of non-controlled legend drugs.
- 110. Prepackaging non-controlled legend drugs.
- 120. Labeling prepackaged non-controlled legend drugs.
- 130. Supervision of prescribing physician; procedure for delivery to patient of prepackaged, non-controlled legend drugs.
- 140. Pharmacist in charge of hospital pharmacy, or hospital drug room.

12 AAC 52.100. PREPARATION OF LIST OF NON-CONTROLLED LEGEND DRUGS. The licensed pharmacist or licensed consultant pharmacist in charge of the hospital pharmacy or drug room, in consultation with the hospital's medical staff, shall prepare a list of non-controlled legend drugs which may be delivered to outpatients receiving emergency treatment when a licensed pharmacist is not on duty and the prescribing physician is not present. (Eff. 12/17/76, Reg. 63)

Authority: AS 08.80.030 (4) (8) and
AS 08.80.390 1

12 AAC 52.110. PREPACKAGING NON-CONTROLLED LEGEND DRUGS. Licensed pharmacists may prepackage non-controlled legend drugs identified on the list prepared under sec. 100 of this chapter. There shall be no more than six doses of the drug in each prepackaged container. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030 (4) (8) and
AS 08.80.390 1

12 AAC 52.120. LABELING PREPACKAGED NON-CONTROLLED LEGEND DRUGS. (a) Drugs prepackaged under sec. 110 of this chapter shall be labeled by the pharmacist at the time of packaging.

(b) The prescription label or unit dose package label must contain:

- (1) a blank space for the name of the patient;
- (2) a blank space for the name of the prescribing physician;
- (3) the name of the drug;
- (4) the strength of the drug;
- (5) the expiration date of the drug, if applicable;
- (6) the lot number of the drug;
- (7) the date of prepackaging;
- (8) a blank space for the date of delivery to patient;
- (9) a prescription number;
- (10) initials of the pharmacist who prepackaged the drug;

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- (11) the name and address of the hospital;
- (12) directions to the patient or, if not predetermined, a blank space for special instructions of the prescribing physician; and
- (13) a blank space for the name or initials of the person delivering the drug. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030^{and}(4), (8);
AS 08.80.390

12 AAC 52.130. SUPERVISION OF PRESCRIBING PHYSICIAN; PROCEDURE FOR THE DELIVERY TO PATIENT OF PREPACKAGED, NON-CONTROLLED LEGEND DRUGS. (a) If a licensed pharmacist is not on duty, emergency room personnel may deliver non-controlled legend drugs, prepackaged in accordance with sec. 100-120 of this chapter, to a person receiving emergency out-patient treatment on receiving an order from a licensed physician. The physician's order may be by written or telephonic communication. No more than one prepackaged container of the same drug may be delivered to a person receiving emergency out-patient treatment, unless more than one package is required to sustain the patient until the first available pharmacist is on duty in the community.

(b) ~~so doing~~ When delivering drugs under this section, the person shall

(1) complete the label affixed to the container with all required information except that the name and strength of the drug may be deleted on order of the prescribing physician; and

(2) prepare a record of delivery which shall include all of the information listed in sec. 120 of this chapter.

(c) The record prepared under (b) ^{of this section} (2) shall be given to the pharmacist in charge of the hospital pharmacy at the beginning of the pharmacist's next duty day.

(d) ~~Nothing in this section shall be construed so as to~~ ^{This section does not} authorize other than emergency room personnel on the hospital's staff to deliver non-controlled legend drugs to out-patients receiving emergency treatment.

(e) ~~Nothing in this section shall be construed so as to~~ ^{This section does not} authorize the delivering of controlled legend drugs by any person not authorized by law to dispense controlled legend drugs. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030^{and}(4), (8);
AS 08.80.390

12 AAC 52.140. PHARMACIST IN CHARGE OF HOSPITAL PHARMACY.

(a) The pharmacist in charge of the hospital pharmacy shall within a reasonable time record all drugs delivered to out-

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patients under sec. 130 of this chapter in the pharmacy record book maintained for the recording of all medication delivered from the emergency room under this chapter.

(b) The entry ~~so~~ made, ^{under (a) of this section must} ~~shall~~ include logging the prescription number and all information required by the record of delivery prepared under sec. 130 (b) (2) of this chapter and ~~shall~~ ^{must} be shown as a completed prescription.

(c) The pharmacist in charge of the hospital pharmacy shall determine what constitutes an adequate supply of pre-packaged, non-controlled legend drugs for use under the provisions of this article. (Eff. 12/17/76, Reg. 60)

Authority: AS 08.80.030 (4) and (8)
AS 08.80.390

ARTICLE 3. GENERAL PROVISIONS

12 AAC 52.900. DEFINITIONS. In this chapter unless the context otherwise requires

(3) "completed prescription" means the prescribed drug has been delivered to the patient, on a physician's order, that all blank spaces on the label have been filled in, and a record of ~~so~~ doing has been given to the pharmacist so he may file the prescription as required by law;

(4) "deliver to patient" means completing the blank spaces on the label of the prepackaged drug and actually handing the package to the patient, or the patient's representative;

(5) "dose" means the amount of medication that is to be given at one specific time, as determined by the physician;

(6) "emergency room personnel" means those employees of the hospital who are designated by the administrator of the hospital, or by the personnel committee of the hospital, to be employed in the emergency room of the hospital for the purpose of administering emergency treatment to patients;

(7) "non-controlled legend drug" means any drug that bears ~~the legend on the label~~ "TO BE DISPENSED ONLY ON OR BY THE PRESCRIPTION OF A PHYSICIAN", but not drugs that have been classified as CONTROLLED SUBSTANCES under the Federal Controlled Substances Act of 1970 (21 USC § 801 et seq.);

(8) "pharmacy record book" means a book kept for the sole purpose of logging all information pertinent to the delivery of non-controlled legend drugs under sec. 100-140 of this chapter;

(9) "physician's order" means an order given to the emergency room personnel by a physician licensed to practice in Alaska or recognized by the hospital as a physician who may practice medicine in the hospital;

(10) "prepackage" means placing in a container that meets federal and state qualifications as a legal container, not more than six doses of a non-controlled legend drug and affixing a label to the container that includes all of the in-

Publisher:
Paragraphs
(1) and (2)
remain
unchanged.

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formation required under section 120 of this chapter;
(11) "present" means physically present in the
emergency room of the hospital with the patient. (Eff.
12/17/76, Reg. 60)

Authority: AS 08.80.030 (4)
AS 08.80.390

