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Mr. Speaker -
The Labor - Comm. C. C. has held
hearings on this bill during the interim.

Original sponsor: Labor and Commerce
Committee by request

Offered: 1/22/82
Referred: Rules

1 IN THE HOUSE

2 after negotiation with the professional groups
involved, legal staff and administrators
representative it was decided to ~~address and~~
BY THE LABOR AND
COMMERCE COMMITTEE

3 CS FOR HOUSE BILL NO. 612 (L&C)

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 TWELFTH LEGISLATURE - SECOND SESSION

6 change other sections of the law to be in conformance
with AS 35.15 at the same time thus we have added
or amended AS 36, AS 37 and AS 19.10.170(a)
BILL

7 For an Act entitled: "An Act relating to contracts for architectural, engi-
neering, and land surveying services; and providing
8 for an effective date."

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

10 * Section 1. AS 19.10.170(a) is amended to read:

11 (a) Except as provided in AS 36.30.010 and AS 44.33.300, it shall
12 be the general policy of the department to require the construction of
13 all highways under bid contract. However, subject to the provisions of
14 (b) of this section, when the estimated cost of a construction project
15 is less than \$100,000 or when it appears to be in the best interests of
16 the state, the department may perform the work notwithstanding any
17 other provisions of law.

18 * Sec. 2. AS 35.15.010(a) is amended to read:

19 (a) Except as provided in AS 36.30.010 and AS 44.33.300, it shall
20 be the general policy of the department to require the construction of
21 all public works under bid contract. However, when the estimated cost
22 of a construction project is less than \$100,000, or when it appears to
23 be in the best interests of the state, the department may perform the
24 work, notwithstanding any other provisions of law. A complete record
25 shall be kept by the commissioner or his designee of all transactions
26 entered into under this section including names of employees involved
27 in the transactions.

28 * Sec. 3. AS 36 is amended by adding a new chapter to read:

29 CHAPTER 30. PROFESSIONAL SERVICE CONTRACTS.

1 Sec. 36.30.010. CONTRACTS FOR ARCHITECTURAL, ENGINEERING, AND
2 LAND SURVEYING SERVICES. (a) The state shall select persons or firms
3 for the performance of architectural, engineering, or land surveying
4 services and award contracts for these services at fair and reasonable
5 prices only on the basis of demonstrated competence and qualification
6 for the type of professional services required.

7 (b) In awarding a contract for the services of an architect,
8 engineer, or land surveyor registered under AS 08.48 the state shall
9 select the person or firm best qualified to perform the desired work on
10 the basis of demonstrated competence and professional qualifications.
11 An attempt shall be made to negotiate a contract with the person or
12 firm selected at a price that is fair and reasonable. Before selection
13 and negotiation, the state may not request or consider any statement,
14 bid or estimate of fees or charges for architectural, engineering, or
15 land surveying services for the proposed project or request any other
16 submission or action that would violate AS 08.48 or a regulation adopted
17 under AS 08.48.

18 (c) Subject to the criteria in (b) of this section, a particular
19 procedure for the selection of architects, engineers, or land surveyors
20 or for the award of contracts is not required. The state may publicly
21 rank proposals or offers received in response to a request for services.
22 The state may attempt to negotiate a fair and reasonable price with the
23 contractor best qualified to perform the desired work and to negotiate
24 a fair and reasonable price with other contractors, in order of ranking,
25 if negotiations with the first-ranked contractor are not successful.
26 The state may reject all or part of a proposal.

27 (d) This section does not apply to contracts awarded in an emer-
28 gency if the person responsible for execution of the contract on behalf
29 of the state certifies in writing that an emergency exists.

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(e) In this section "state" includes political subdivisions of the state and agencies of the state and its political subdivisions.

* Sec. 4. AS 36.95.010 is amended by adding a new paragraph to read:

(8) "emergency" means a condition of imminent danger to the public health, safety or welfare or a condition that requires immediate action to prevent harm to a person or property.

* Sec. 5. AS 37.05.230 is amended by adding a new paragraph to read:

(9) requests for and acceptance of bids or other proposals for architectural, engineering, or land surveying services shall comply with AS 36.30.010.

* Sec. 6. AS 37.05.240 is amended by adding a new subsection to read:

(b) A contract for architectural, engineering, or land surveying services shall be awarded in accordance with AS 36.30.010.

* Sec. 7. This Act applies to requests for bids or proposals for architectural, engineering, and land surveying services issued after the effective date of this Act.

* Sec. 8. This Act takes effect immediately in accordance with AS 01.10.070(c).

HB - 612 - Contracting for Architectural, Engineering & Surveying Services.

1. It is the recommendation of CECA that a bill in substance similar to HB 612 be enacted providing for a Competitive Selection Act for Architectural, Engineering and Surveying Services.

1) *This bill*
2. ~~It~~ is in the best interests of the public to obtain these services by ascertaining qualifications and capability for performing public works ~~and negotiating a reasonable fee.~~

3. Competitive bidding for professional services, *by lowest bid* does not provide consumer safeguards. It encourages poor use of public funds since the importance of "value received" is subjugated to "money spent".

4. Principal U.S. Federal agencies, the World Bank, a majority of states, ~~various Alaska State Departments~~ and to a large extent major Alaskan Cities and Boroughs use ~~the~~ *this* professional, ~~negotiation~~ *negotiation* approach. *BRACKS BILL*

5. I have a copy of the State of Washington HB No. 176, adopted during their last session, which I would like to leave with your committee. It is more lengthy than HB 612, as proposed, however, in my opinion it is a very clear document.

HB 612

HOUSE BILL NO. 612 by the Labor & Commerce Committee by request, entitled:

"An Act relating to public contracts for architectural and engineering services."

was read the first time and referred to the Labor & Commerce Committee.

HB 612

The Labor & Commerce Committee has had HOUSE BILL NO. 612 (relating to public contracts for architectural and engineering services) under consideration and a majority of the members of the committee recommend it be replaced with COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 612 (L&C):

"An Act relating to contracts for architectural, engineering, and land surveying services; and providing for an effective date."

and that it do pass. Concurring: Martin (Chairman), Bylsma and Randolph. Not concurring: Gardiner and Rogers have no recommendation.

HB 612 was referred to the Rules Committee for placement on the calendar.

6-18-81

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1-22-82

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State of Alaska



THE LEGISLATURE

HONORING - CAPTAIN EDWARD NELSON, JR.

The Twelfth Alaska Legislature takes great pride in honoring Captain Edward Nelson, Jr., recently nominated by President Reagan for promotion to rear admiral.

Captain Nelson began his illustrious Coast Guard career upon graduation in 1953, from the Coast Guard Academy in New London, Connecticut. He completed advanced flight training in Corpus Christi, Texas, and continued to serve his country in both foreign and domestic ports of call. After spending two years in headquarters in Washington, D.C., as chief of the war plans branch, he came to Alaska as executive officer of the air station in Kodiak. He moved to Juneau in 1978, to assume the position of chief of staff for the Coast Guard's 17th District.

Captain Nelson, in addition to dedicating himself to his country and profession has found the time to involve himself generously in Juneau's civic affairs. A member of the Juneau Rotary Club and the policy advisory council of the University of Alaska, Juneau, Captain Nelson's contributions to the community have earned the admiration of all those who have known him.

On behalf of the Legislature and all Alaskans we congratulate Captain Nelson for this great and well deserved honor and extend our sincere best wishes for the future.

SPEAKER OF THE HOUSE

PRESIDENT OF THE SENATE

Date:

Requested by: Representative Miller

harry

Alaska State Legislature



Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

RECONSIDERATION HAS BEEN ASKED FOR THE ATTACHED
LEGISLATION.

FOLLOWING IS THE LAST LEGISLATIVE ACTION TAKEN FOR
EACH BILL OR RESOLUTION.

HB 473 (5)

1-25-82

HB 473 (cont'd)

Representative Halford moved and asked unanimous consent that COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 473 (Jud) (same title) be adopted in lieu of the original bill. There being no objection, it was so ordered.

CSHB 473 (Jud)

Amendment No. 1 by Clocksin, Buchholdt and Smith:

Page 4, line 10: AS 12.55.015 is amended by adding a new subsection as follows:
"(b) A court, in imposing sentence on a defendant convicted of sexual assault in the first, second, third or fourth degree, may order the defendant to participate in a program of treatment for sex offenders. Participation in such a program may be imposed as a condition of probation, a condition of suspended execution of sentence, or a condition of suspended imposition of sentence."

Re-number accordingly.

Representative Clocksin moved and asked unanimous consent that Amendment No. 1 be adopted.

Representative Barnes objected.

Representative Rogers placed a call on the House.

Representative Rogers lifted the call of the House.

The question being "Shall Amendment No. 1 be adopted?" The roll was taken with the following result:

Yeas: 17 Brown, Buchholdt, Clocksin, Cotten, Duncan, Freeman, Grussendorf, Malone, Miller, Moss, Phillips, Randolph, Rogers, Smith, Sutcliffe, Vaska, Zharoff

Nays: 20 Abood, Adams, Anderson, Barnes, Bettisworth, Bysma, Cato, Chuckwuk, Cuddy, Fanning, Fuller, Halford, Haugen, Hayes, Hurlbert, Martin, Meekins, Metcalfe, Montgomery, O'Connell

Not Voting: 3 Beirne, Carney, Gardiner

And so, Amendment No. 1 was not adopted.

CSHB 473 (Jud) (cont'd)

Amendment No. 2 by Clocksin, Buchholdt and Smith:

Page 6, line 1: AS 33.15.190 is amended by adding a new subsection as follows:

"(b) No prisoner who is imprisoned because of a conviction for first, second, third, or fourth degree sexual assault may be released on parole unless the prisoner has participated in a program for treatment of sex offenders. Parole may be conditioned upon continued participation in a program for treatment of sex offenders after release from imprisonment."

Re-number accordingly

Representative Clocksin moved and asked unanimous consent that Amendment No. 2 be adopted.

Representative Barnes objected.

Representative Clocksin moved to withdraw Amendment No. 2. There being no objection, it was so ordered.

HB 573

1-22-82

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HOUSE JOURNAL
SUPPLEMENT

January 22, 1982

No. 4

HB
573

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill No. 573 (No. 2)
Title "An Act relating to the crime of tampering with a witness"
Requested by Representative Halford Date January 8, 1982

II. FISCAL DETAIL
Agency Affected Health and Social Services
Program Category Affected Adult Correction Information & Supervision
BRU, Program, or Subprogram(s) Affected Adult Confinement
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

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

The Division of Adult Corrections anticipates no fiscal impact if H.B. 573 were to be enacted.

IV. DATE January 11, 1982 PREPARED BY Roger C. Lange
AGENCY DIVISION OF ADULT CORRECTIONS, 1982
Original: Legislative Finance PHONE 483-3110
cc: Budget and Management
Prime Sponsor (if a Legislator Named)
31-001 (Rev. 12/81)

*James C. Clark, Acting Director
Division of Management & Budget*

HB 573

HOUSE BILL NO. 573 (relating to the crime of tampering with a witness) was read the second time.

Representative Halford moved and asked unanimous consent that HB 573 be considered engrossed, advanced to third reading and placed on final passage.

Representative Rogers objected, and withdrew his objection. There being no further objection, it was so ordered.

HB 573 was read the third time.

The question being: "Shall HB 573 pass the House?" The roll was taken with the following result:

- Yeas: 37 Abood, Adams, Anderson, Barnes, Bettisworth, Brown, Buchholdt, Bylema, Cato, Chuckwuk, Clocksin, Cotten, Cuddy, Duncan, Fanning, Freeman, Fuller, Grussendorf, Halford, Haugen, Hayes, Hurlbert, Malone, Martin, Meekins, Metcalfe, Miller, Montgomery, Moss, O'Connell, Phillips, Randolph, Rogers, Smith, Sutcliffe, Vaska, Zharoff
- Nays: 0
- Not Voting: 3 Beirne, Carney, Gardiner

And so, HB 573 passed the House.

Representative Duncan gave notice of reconsideration of his vote on HB 573.

1-25-82

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HOUSE JOURNAL

HB 575 4
 1-25-82
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HB 575

HOUSE BILL NO. 575 (relating to culpable mental states prescribed as elements of criminal assaults) was read the second time.

Representative Halford moved and asked unanimous consent that COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 575 (Jud) (same title) be adopted in lieu of the original bill.

Representative Brown objected, and withdrew his objection. There being no further objection, CSHB 575 (Jud) was adopted.

CSHB 575 (Jud)

Representative Halford moved and asked unanimous consent that CSHB 575 (Jud) be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

CSHB 575 (Jud) was read the third time.

The question being: "Shall CSHB 575 (Jud) pass the House?"
 The roll was taken with the following result:

Yeas:	32	Abood, Adams, Anderson, Barnes, Bettisworth, Brown, Buchholdt, Bylsma, Cato, Chuckwuk, Cotten, Cuddy, Fanning, Freeman, Fuller, Grussendorf, Halford, Haugen, Hayes, Hurlbert, Malone, Martin, Meekins, Metcalfe, Miller, Montgomery, Moss, O'Connell, Phillips, Randolph, Sutcliffe, Zharoff
Nays:	4	Clocksia, Gardiner, Rogers, Smith
Not Voting:	4	Beirne, Carney, Duncan, Vaska

And so, CSHB 575 (Jud) passed the House.

Representative Duncan gave notice of reconsideration of his vote on CSHB 575 (Jud).

HB
577

HB 577
1-22-82
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FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 577 (No. 2)
Title An Act Repealing Provisions - Use of Force - Arrest
Requested by House Judiciary Committee Date 1/18/82

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

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

HB 577 repeals certain provisions of AS 11.81.400 relating to justification of the use of force in resisting arrest. This bill will have no fiscal impact on the Alaska Court system.

IV. DATE 1/12/82 PREPARED BY Richard P. Barrier
AGENCY Alaska Court System
Original: Legislative Finance PHONE 264-0543
cc: Budget and Management
Prime Sponsor (First Legislator Named)

HB 577

HOUSE BILL NO. 577 (repealing provisions relating to justification of the use of force in resisting or interfering with arrest) was read the second time.

Representative Halford moved and asked unanimous consent that HB 577 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

HB 577 was read the third time.

The question being: "shall HB 577 pass the House?" The roll was taken with the following result:

- Yeas: 27 Aboud, Adams, Anderson, Barnes, Bettisworth, Buchholdt, Bylsma, Cato, Chuckwuk, Cuddy, Fanning, Freeman, Fuller, Grussendorf, Halford, Haugen, Hayes, Hurlbert, Malone, Martin, Meekins, Metcalfe, Montgomery, O'Connell, Phillips, Smith, Sutcliffe
- Nays: 11 Brown, Clocksin, Cotten, Duncan, Gardiner, Miller, Moss, Randolph, Rogers, Vaska, Zharoff
- Not Voting: 2 Beirne, Carney

And so, HB 577 passed the House.

Representative Cotten gave notice of reconsideration of his vote on HB 577.

1-25-82
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Members of the Labor and Commerce Committee

Mr. Chairman:

My name is Charles Tryck and I am here tonight as a representative of the Consulting Engineers Council of Alaska, an affiliate of the American Consulting Engineers Council, to comment on HOUSE BILLS 600 & 612.

I have been authorized by CECA to speak in support of the two proposed bills. My testimony will be short as it is our intention to submit a written brief during the period of these hearings.

HB 600 - Limitation of Liability.

1. The public has been allowed to maintain the image that the engineering profession is one which deals with an exact science. The public expects 100% success and, unfortunately, the design professional with his salesman hat on usually supports that expectation. Thus, when seemingly realistic expectations are not satisfied - when the announced or anticipated expertise does not materialize - when a design defect abruptly appears - when a design omission causes a sudden, unexplainable, significant extra cost - annoyance, resentment and financial burden is the result. Litigation is the natural, if sometimes unnecessary and ill founded, offspring of such an antagonistic atmosphere.
2. No design professional avows that he is perfect, nor should the law expect him to be. He is expected to perform in accordance with normally accepted standards of his profession.

3. It is expected that the professional will exercise his best judgment and care in preparing designs and selecting materials, and that he will perform in accordance with generally accepted standards within his community. But by the very nature of the business, construction practices, techniques, and materials are constantly undergoing change, improvement, and modification. It is the design professional's job not just to follow the old tried and true formulas, but to use creative judgment and thought in developing innovations and applying new ideas. Originally, professional liability insurance was designed to provide for those few occasions when an honest error was made, or when, despite the most careful research and study, a new idea did not work out as well as expected.

4. In recent years, the situation has changed considerably. There is a growing tendency to sue for damages whenever the unexpected occurs, or because of dissatisfaction. The result has been that design professionals are being sued with increasing frequency -- not only for legitimate reasons, but because of the legal ploy of suing anyone connected with a project in hopes that someone will be made to pay. This trend has received impetus from judgments rendered by lay juries and judges who have been bewildered by the technical facts and have felt sympathy for someone claiming injury. Thus, the design professional in private practice today finds himself faced with the possibility of having to answer extravagant, and often unfounded, claims for errors, omissions, or professional negligence. Frequently these claims result from construction or materials failures over which he has little or no control.

5. In a number of recent contracts governmental units have asked the engineer to indemnify and hold them harmless against any losses, expenses, etc. arising out of the performance of the agreement even through the loss may have been largely caused by actions of the governmental unit - the specific wording used in one instance follows:

"is not the result of the sole negligence of the municipality".

Such a "hold harmless" clause is not insurable since it is holding the engineer responsible for acts over which he has no jurisdiction.

6. The "limitation of liability" is an attempt to create a more favorable environment for a harmonious relationship between the client and the engineer. The limitation of liability is a technique which is now used and recognized by many claims susceptible businesses and industries such as maritime ship-owners, SEC lawyers, financial analysts, international airlines, interstate truckers, parking-lot operators, and hotels. This concept implies a belief that a person acting in good faith on behalf of another will be responsible in reasonable measure to that second person, but should not be jeopardized by enormous penalties when unexpected contingencies occur. Limitation of liability, as espoused by design professionals, would establish a reasonable assumption of liability on their part in proportion to their fee. It would have the effect of bringing some types of claims for damages back into a reasonable perspective so that the issues involved could be faced on a more realistic and less expensive basis, and still be equitable to all parties concerned.

7. Consultants, as well as clients, must appreciate each other's point of view. If development is to proceed and if the scarce resources devoted to the purpose are to be allocated in the best possible way, the risks must be shared equitably and reasonably by all concerned. Consultants should not attempt to avoid all responsibility, and clients should not seek a guarantee against all possible calamities.

Our organization, CECA, feels, as proposed in HB 600, that a "limitation of liability" reasonably applied, will work to the benefit of all parties.

HB 612

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"An Act relating to public contracts for architectural and engineering services."

was read the first time and referred to the Labor & Commerce Committee.

HB 612

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"An Act relating to contracts for architectural, engineering, and land surveying services; and providing for an effective date."

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6-18-81

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HB - 612 - Contracting for Architectural, Engineering & Surveying Services.

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2. It is in the best interests of the public to obtain these services by ascertaining qualifications and capability for performing public works and negotiating a reasonable fee.
3. Competitive bidding for professional services does not provide consumer safeguards. It encourages poor use of public funds since the importance of "value received" is subjugated to "money spent".
4. Principal U.S. Federal agencies, the World Bank, a majority of states, various Alaska State Departments and to a large extent major Alaskan Cities and Boroughs use the professional negotiation approach. *10/1/68 S. Bill*
5. I have a copy of the State of Washington HB No. 176, adopted during their last session, which I would like to leave with your committee. It is more lengthy than HB 612, as proposed, however, in my opinion it is a very clear document.

COMMON SENSE FOR ALASKA

**CITIZEN'S REVIEW
STATE OF ALASKA — EXECUTIVE BRANCH
PROFESSIONAL SERVICE CONTRACTS
JULY 1, 1980 — DECEMBER 31, 1980**

**Prepared by the
Research Committee of
Common Sense for Alaska**

CITIZENS' REVIEW OF PROFESSIONAL SERVICE CONTRACTS

STATE OF ALASKA: EXECUTIVE BRANCH

JULY 1, 1980 - DECEMBER 31, 1980

A Report By

COMMON SENSE FOR ALASKA

Prepared by the Research Committee

December 1981

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INTRODUCTION

Contracting for professional services without competitive bidding is generally regarded as a legitimate ministerial tool of government and should be utilized for legitimate public purposes wherever and whenever appropriate, so long as duly authorized funds are available. When professional services are available in the private sector to augment necessary government functions, they should generally be utilized in lieu of creating new agencies or adding employees to the government payroll. However, their use should be carefully, uniformly and fairly managed under cogent, effective and well-publicized policies in order to guard against abuse.

In December of 1980 the Board of Directors of Common Sense initiated an investigation of the procedures and practices used by the executive branch of the State of Alaska in awarding professional service contracts. Mr. Joe LaRocca, a news reporter and writer who has monitored government and public affairs in Alaska for 15 years, was contracted to collect and evaluate those professional service contracts awarded from July 1, 1980, to December 31, 1980. The Common Sense Research Committee was assigned the task of reviewing those contracts and determining to what extent the various agencies and departments were complying with the established internal policies.

The principle subject of this report is to relate the findings of Mr. LaRocca and the Common Sense Research Committee, and to emphasize the substantial work done on this subject by

Page two

former State Ombudsman Frank Flavin and his staff, and Gerry Wilkerson and his staff in the Division of Legislative Audit.

BACKGROUND

Until 1957, the Alaska statutes required all purchasing and contracting for goods and services by the executive branch to follow established competitive bidding procedures (AS 37.05). According to the prevailing attorney general's ruling, the purpose of Chapter .05

"Was not only to protect the state and the public from uneconomic contracts let because of failure to request competitive bids and because of possible favoritism, but also to insure that contractors would be insured a certain amount of 'fair play' in dealing with the state government and in competing with one another for state contracts."

But in 1957, the territorial legislature exempted contracts for professional services from competitive bid requirements because they were perceived to be unrealistic in view of the small uncompetitive corps of professional services providers in Alaska's private sector at that time. In many cases there were only one or a few and sometimes no providers of certain types of professional services. Thus, competitive bidding requirements were considered superfluous.

After the legislative exemption was enacted in 1957, the Department of Administration, which is charged with the responsibility for overseeing all state purchasing and contracting by the executive branch, established a set of internal policies controlling the awarding and administering of contracts for professional services. All departments and agencies are supposed to adhere to these policies except for the Department

Page four

of Transportation and Public Facilities which as been statutorily endowed with separate and autonomous contracting authority with certain specific exceptions according to a March 23, 1979, attorney general's opinion. These internal policies are not regulations adopted under provisions of the state's Administrative Procedures Act; therefore, it has been agreed that they do not have the force and effect of law. However, it must be noted that by statute AS 37.05.220, the Department of Administration has been designated the state's purchasing agent and DOA has written these policies in mandatory terms. The argument here is that the legislature made DOA the state purchasing agent and agencies other than DOA are without authority to adopt their own policies; therefore, if agencies are not following DOA standards, they are acting without authority.

The division currently responsible for the monitoring of non-competitive contracts for professional services is the pre-audit section of the Division of Finance in the Department of Administration. Under its provisions, the department monitors various agencies within the executive branch which desire to seek and procure services. The department retains oversight and final approval powers over all contracts.

The policies for professional service contracts are contained in the State Administrative Manual issued by the Department of Administration and supplemental provisions are contained in another manual entitled Choosing and Using Contractors. The latter text was developed by a consultant as the manual for state-sponsored seminars conducted for administrators in 1980 on the proper use of contractors. Additionally, in 1981, the Division of General Services and Supply compiled a computerized listing of potential contractors by areas of specialization.

FINDINGS

The provisions contained in the Administrative Manual and the supplemental text, Choosing and Using Contractors, are myriad, detailed, often complicated and deal with every aspect of professional service contract administration. Unfortunately, Common Sense has found that the manual provisions are widely ignored, abused and breached by most executive agencies, including the Department of Administration, which is supposed to enforce them. Common Sense found that none of the thirteen agencies (Public Safety and Military Affairs were not examined) which negotiate, award and minister professional service contracts is free of these abuses, although some indulge in them more often than others.

Substantial work has been done by former State Ombudsman Frank Flavin and his staff, and Gerry Wilkerson and his staff in the Division of Legislative Audit on professional service contracting procedures. Both have repeatedly called attention to some of these abuses in written and oral reports to the legislature, and a few have been exposed by the news media. But, it appears that the vast bulk of abuses have remained hidden from public view. They are buried in the bureaucratic maze of state government. Moreover, the opportunities for abuse while virtually non-existent in 1957 have grown tremendously in recent years as a result of the enormous growth of the state budget.

In the first half of 1980, from January 1 to June 30,

various agencies of the state's 15 cabinet-level departments (including the Governor's office) awarded non-competitive contracts for professional services for fees totalling some \$25.8 million.

In the succeeding six-month period (the period covered by this report), fees for these types of contracts totalled \$88.5 million according to the state's figures. This sum represents an increase of more than 200%.

The principal reason for the widespread abuses of the policies is that they are not enforced. Since they are viewed as only guidelines and not regulations, there is no enforcement. Since it is believed that the policies do not have the force and effect of law, there is no incentive for administrators to heed them. In a special report issued last March, then Ombudsman Frank Flavin noted that

"some agencies fail to comply with correct procedures because of ignorance, poor planning, favoritism, or conscious disregard. In other words, some agencies follow appropriate procedures only when it is convenient. They are, after all, only guidelines with no penalty for their violation. While some agencies conscientiously follow in-house restrictions, others attempt to out-manuever Department of Administration oversight [sic] and provide only after-the-fact rationalization as to why their project [contract] was a special case. Because the policy guidelines in the Administrative Manual lack the force of law, in practice they have often been reduced to 'idealistic tools' by agencies which pay lip service to their existence while rejecting their substance and spirit. The Department of Administration's pre-audit, to insure compliance with procedural safeguards, then becomes manipulated into a post-audit rubber stamp. . . wholly dependent upon information submitted by the contracting agency."

And in a 1978 report to the legislature, Gerry Wilkerson

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of the Division of Legislative Audit asserted that

"without public competition for professional services, departments cannot be sure of obtaining contracts in the state's best interest or that all interested parties are given the opportunity to compete for state contracts. However, when unique circumstances make requesting proposals for professional services inappropriate, waiver procedures should be developed to allow alternatives in obtaining services."

Both the Ombudsman and Legislative Auditor have strongly urged the revision and adoption of the policies as regulations under the Administrative Procedures Act so that violations of them would be subject to penalties under statutory authority.

Following the 1979 legislative audit report, then Attorney General Avrum Gross told the Commissioner of the Department of Administration in a memo that the contracting policies represent

"an excellent effort to systematize the state's professional service contracts. It should be fairly simple to rewrite it in regulatory form. . . or it could be codified by reference alone. . . It seems to me that the important thing is that public notice be made, an opportunity [for the public] to comment be given, and a regulation adopted."

The attorney general's advice was never followed. The ensuing year, in March 1979, then Deputy Attorney General Will Condon suggested in a meeting with Department of Administration officials that the policies be adopted as regulations in order to "give the [Administrative] manual provisions the force of law," and once adopted could "be used to discipline . . . those responsible officials who enter into contracts which are improper," according to minutes of the meeting

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logged by one of the DOA officials. However, Condon's advice was also ignored.

In his March 1981 Special Report, Ombudsman Flavin noted that

"Despite these repeated recommendations and attempts, professional service contracting is today governed only by policy guidelines rather than Administrative Procedures Act regulations."

Common Sense has found the situation concerning the professional service contracting provisions remains the same today. The policies have not been incorporated into the administrative code pursuant to the Administrative Procedures Act; therefore, they still lack the force of law and, more importantly, they are still being abused.

PROFESSIONAL SERVICE CONTRACTS MANUAL

The provisions contained in the State Administrative Manual and its supplement, Choosing and Using Contractors, fills some 200 pages. They are concerned primarily with the basic procedures and practices involved in the initial stage of contracting for professional services, when the crucial decision to choose a contractor is made.

The policies require any agency wishing to contract for professional services whose estimated cost may exceed \$2,500 to submit a request to the Department of Administration for "Authority to Negotiate" [ATN] with at least three sources of the services sought. The ATN form prescribed by the DOA for filing the request states on its face that "This form must be executed prior to entering negotiations regarding Professional Service Contracts when the contract amount is in excess of \$2,500 in an annual period." [Emphasis added]. The form also states that "Agencies SHOULD list at least three choices (with which to negotiate) or explain why it is not possible." [Emphasis added]. The manual does not preclude negotiating with others as long as the agency negotiates with at least three.

It further states that after a proposed contract has been negotiated with one of the sources, it "must be forwarded to the Department of Administration after contractor and Departmental [agency] signatures have been affixed but prior to execution or effective date, for final approval." [Emphasis added].

In certain cases, the policies permit the agencies to forego the listing of three choices with which to negotiate on the ATN form if a decision had been made instead to solicit formal proposals from three or more sources via a written "Request for Proposals" [RFP]; or, if the agency elects instead to advertise for proposals in the classified legal ad sections of newspapers. But it must be noted that an ATN must be submitted to and approved by the Department of Administration before RFP's are released, before newspaper advertising and before negotiations commence with any prospective contractor (Section 8140, Administrative Manual).

Note, however, that the agency has virtually absolute discretion to choose any one of the proposals in awarding the contract. Though its choice may ostensibly be indicated or dictated by the policies in the State Administrative Manual, the agency need not adhere to them when awarding the contract, and often does not, citing the need for "administrative flexibility."

While the DOA theoretically has the authority to overrule the agency's choice, that does not seem to happen in practice. The standard procedure, as noted by the Ombudsman, is for DOA to rubber-stamp the agency's choice without question, even in the face of obvious violations of the policies.

VIOLATIONS

For this report, 1,000 professional service contracts and contract amendments awarded by the executive branch between July 1 and December 1, 1980, were examined to gauge compliance or non-compliance with the pertinent policies. The detailed and specific findings are documented in the accompanying chart.

This report shows that the single most frequent abuse, by far, is the improper award of "sole source" contracts and major contract amendments without the requisite justification. While the policies provide for the legitimate award of sole source contracts and amendments under circumstances where a bona fide showing can be made that only a single practicable source for the services sought truly exists, in many cases sole source contracts are awarded for which no justification or explanation is provided by the contracting agency; while in many others, clearly or arguably inadequate rationalizations are proffered to attempt to justify them. In either case, the inadequacy or alleged inadequacy is irrelevant, since no punitive measures are prescribed or imposed.

Another frequent violation of the manual occurs when the Department of Administration official signs final approval of the contract after its execution or effective date. Some contracts which were approved after effective dates do include a "disclaimer" which states, "This contract has no effect except as an offer by the contractor until it is approved by the Department of Administration." But there is no "disclaimer

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clause" provided for in the policy manual. Section 8108 of the manual states, "all contracts must be approved by the Department of Administration before the commencement of work except when there is an emergency and such work is necessary to protect life and property." Even the unauthorized "disclaimer" appears meaningless when pay schedules and performance deadlines written into the contract proceed by many weeks or months the final approval signature. The impression being the final approval signature is merely a rubber stamp to an independent agency action. It must be noted that the Common Sense Research Committee counted those contracts which were signed by DOA after the contract's effective date, but did include the above mentioned "disclaimer clause" as a correct and complying contract. If the disclaimer clause had not been taken into consideration, some departments would have shown 100% non-compliance with the manual provisions.

Additional obvious violations by the agencies include: failure to forward a copy of the contract to the Department of Administration for inclusion in the Contractor's Index, substantially amending contracts without following through the process to acquire necessary authorizations, and unfairly "pyramidding" qualifications of one company or person who has worked with a state program without reviewing the current level of service available from other providers in the free market. Section 8152 of the manual covers the situation of continuing contracts, and notes that the "RFP specifically indicates that it is the intention of the State to negotiate with the same firm for work to be done in ensuing phases or years." Numerous contracts were awarded to specific firms or persons with the only justification being that the contractor had done similar work before. This procedure indefinitely locks a specific contractor into generic contract work for which there are many other qualified sources.

COMMON SENSE FOR ALASKA — CITIZENS' REVIEW
STATE OF ALASKA — EXECUTIVE BRANCH
PROFESSIONAL SERVICE CONTRACTS
JULY 1, 1980 — DEC. 31, 1980

DEPARTMENT	TOTAL NUMBER OF CONTRACTS AND AMENDMENTS IN CONTRACTOR'S INDEX	TOTAL DOLLARS OF CONTRACTS AND AMENDMENTS IN CONTRACTOR'S INDEX	TOTAL NUMBER OF IN CONTRACTOR'S INDEX	TOTAL DOLLAR AMOUNT NOT IN CONTRACTOR'S INDEX	TOTAL NUMBER OF CONTRACTS AND AMENDMENTS REVIEWED	TOTAL DOLLARS OF CONTRACTS AND AMENDMENTS REVIEWED	NUMBER OF CONTRACTS AND AMENDMENTS COMPLYING WITH GUIDELINES	TOTAL DOLLAR AMOUNT OF CONTRACTS AND AMENDMENTS COMPLYING WITH GUIDELINES	NUMBER OF NON-COMPLYING CONTRACTS AND AMENDMENTS	TOTAL DOLLARS OF NON-COMPLYING CONTRACTS AND AMENDMENTS	PERCENTAGE OF THE NUMBER OF NON-COMPLYING CONTRACTS AND AMENDMENTS
OFFICE OF THE GOVERNOR	70	11,173,898.00	0	0	59	10,931,531.00	27	1,075,690.00	32	9,855,841.00	54%
ADMINISTRATION	52	4,858,903.00	0	0	50	4,694,032.00	31	4,160,966.00	19	533,066.00	38%
LAW	30	3,013,417.00	4	1,602,500.00	33	4,577,252.00	8	2,773,772.00	25	2,198,480.00	75%
EDUCATION	105	1,890,110.00	2	37,500.00	95	1,695,972.00	60	517,248.00	35	1,178,724.00	36%
HEALTH & SOCIAL SERVICES	168	16,815,249.00	22	2,534,936.00	172	15,903,736.00	142	13,234,898.00	30	2,668,838.00	17%
LABOR	19	423,582.00	0	0	18	420,582.00	5	114,455.00	13	306,127.00	72%
COMMERCE & ECONOMIC DEVELOPMENT	185	15,923,358.00	0	0	160	9,069,379.00	151	8,379,159.00	9	690,220.00	5%
NATURAL RESOURCES	221	15,822,921.00	19	870,411.00	240	16,568,332.00	206	14,733,421.00	34	1,834,911.00	14%
FISH AND GAME	43	819,691.00*	0	0	43	819,891.00	37	748,490.00	6	71,401.00	13%
ENVIRONMENTAL CONSERVATION	21	605,110.00	0	0	21	605,110.00	13	251,375.00	8	353,735.00	38%
COMMUNITY AND REGIONAL AFFAIRS	53	9,538,908.00	3	173,422.00	55	9,462,330.00	41	7,944,302.00	14	1,518,028.00	25%
REVENUE	34	1,920,284.00	1	10,000.00	32	1,842,484.00	18	1,551,484.00	14	291,000.00	43%
TRANSPORTATION	29	3,214,042.00	0	0	22	2,761,165.00	15	1,600,958.00	7	1,160,207.00	31%
TOTAL	1030	86,019,673.00	51	5,228,771.00	1000	79,351,796.00	754	56,691,218.00	246	22,660,578.00	24% average

*A \$5,000.00 error found in the C.I. has been corrected.

RECOMMENDATIONS

Common Sense urges the Department of Administration to adopt rules and regulations with the full force of law to govern the contracting for professional services by the state agencies. Were the procedures and suggestions contained in the Administrative Manual and Choosing and Using Contractors strictly observed, the vast number of violations and abuses would be eliminated. It is essential, especially in these times of increased state spending, that the state government conduct its business in the most fair and professional manner possible. The policies need regulatory implementation pursuant to the Administrative Procedures Act (AS 44.62).

Secondly, Common Sense would recommend to the Legislative Budget and Audit Committee that a formal audit be conducted to review the professional service contracts awarded by the executive branch from June 30, 1980 through December 31, 1980. Citizens' review revealed numerous abuses which should be validated by a professional auditor. A spot check should be conducted to insure that all firms listed on the ATN were really contacted and actually negotiated with. In addition, the auditor should verify when the work actually began on those contracts that were signed by DOA after the effective date of the contract, but included a "disclaimer." The auditor also should specifically investigate "pyramidding" tendencies by some agencies who appear to be automatically awarding state contracts to the same contractors without

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following the provisions in the manual.

Finally, Common Sense believes that the legislature should address the problem of professional service contracting violations. Only through legislation can the enforcement of the contracting provisions be given penal teeth. This can be accomplished by adding specific language to ethics legislation or through the criminal code. There must be appropriate penal sanctions for violating or ignoring professional service contract provisions.

COMMON SENSE FOR ALASKA: RESEARCH COMMITTEE

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DRAFT

Policy Memorandum 02

January 27, 1982

STANDARDS FOR ISSUANCE
OF CERTIFICATE OF SUBSTANTIAL COMPLIANCE
FOR UNTIMELY RECORDING OF A DOCUMENT

Alaska Statute 30.05.185(b) states:

(b) The failure on the part of a mining lessee or a locator to comply strictly with Sections 185-280 of this chapter and regulations adopted under it does not invalidate his rights if it appears to the satisfaction of the commissioner that the locator complied as nearly as possible under the circumstances of the case, and that no conflicting rights are asserted by any other person.

Unless otherwise provided, the usages and interpretations applicable to the mining laws of the United States as supplemented by state law apply to Sections 185-280 of this chapter. (Emphasis added.)

The applicable regulation, 11 AAC 86.125, generally follows the language of the statute:

11 AAC 86.125. FAILURE TO COMPLY. (a) The failure on

the part of a mining lessee or locator to comply strictly with the provisions of this chapter and the applicable statutes does not invalidate his rights if it appears to the satisfaction of the director that the locator or lessee complied as nearly as possible under the circumstances and that no conflicting rights are asserted by any other person. Upon application, the director or his authorized representative, with the concurrence of the commissioner, may issue a certificate of substantial compliance which states the specific failure on the part of the lessee or locator and the relief granted. The certificate does not cure any defect not specifically referred to in the certificate. The certificate, when granted, must be recorded in the recording district where the located or leased land is located.

(b) An application for a certificate of substantial compliance shall state the specific failure to comply, the reasons for the failure, and any other information the director may determine is necessary to determine the circumstances of the case.

Guidelines

The Division of Minerals and Energy Management's (DMEM)

position is that the language of AS 38.05.185(b), "complied as nearly as possible under the circumstances of the case" imposes a high standard and that certificates are to be issued only in cases where inequity, extreme hardship or force majeure are involved. Examples of such situations would be:

- 1) The locator is able to document the fact that he was misinformed and misled to his detriment by State of Alaska mining publications or DMEM minerals section personnel.
- 2) A disruption of mail service for an unforeseeable period of time or a documented unforeseeable delay in delivery of mail.
- 3) Evidence showing that a document was lost in the mail.

If the failure to timely record is caused by ignorance of state law and regulations or negligence on the part of the petitioner, a certificate will not be issued. Examples of such situations would be:

- 1) Failure to distinguish between State and Federal recording and filing laws and regulations.
- 2) Non-compliance with regulations or procedures

established by the Recorder's Office resulting in the recorder refusing to record the affidavit.

- 3) Misunderstanding among co-locators as to who was to record a document.
- 4) A reasonably foreseeable delay in the mail.
- 5) Document recorded or filed at a wrong office.
- 6) Locator out of the state or ill.
- 7) Request for a certificate of substantial compliance not timely filed with DMEM.

In addition, the "conflicting rights" language of AS 38.05.185(b) is interpreted to mean those rights asserted by any other person between the time of the non-compliance on the part of the petitioner and the time of recording the certificate. If DMEM is on notice of these "intervening conflicting rights," a certificate cannot be issued. When the rights are asserted prior to the non-compliance, (i.e., overstaking), a certificate may be issued as it would only maintain the status quo and would not deprive the non-petitioning party of any rights.

Furthermore, the certificate will state that it is null and

void if any "conflicting rights" were establishing between the period of non-compliance (abandonment) and the time of the recording of the certificate. This is necessary because rights may have been established of which DMEM will not be aware because of the 90 day period from the time of staking to the time of recording.

A request for a certificate of substantial compliance must be accompanied by documentation showing that the locator complied as nearly as possible under the circumstances and that the facts justify issuance under these guideline.

While these guidelines lay out the standards for the issuance of certificates of substantial compliance which are adhered to by the Division of Minerals and Energy Management (DMEM), it is recognized by the Department that the circumstances resulting in untimely filing of a document can widely vary and the authority of the commissioner to issue such certificates under AS 38.05.185(b) is broad. Hence in certain cases where no conflicting rights are asserted and where the non-issuance of a certificate would divest the holder of a mining claim of substantial value due to minor negligence by the claim holder, the commissioner may reverse a decision of DMEM on appeal and issue a certificate of substantial compliance.



APPENDIX A
GENERAL CONDITIONS
FOR
PROFESSIONAL AND SPECIALTY SERVICES

(DATE OF ADDITIONAL PROVISIONS: _____)

INDEX

<u>ARTICLE NUMBER</u>	<u>TITLE</u>
A1	DEFINITIONS
A2	INFORMATION AND SERVICES FROM OTHERS
A3	HOLD HARMLESS
A4	INSURANCE
A5	OCCUPATIONAL SAFETY AND HEALTH
A6	EQUAL EMPLOYMENT OPPORTUNITY
A7	PAYMENTS TO THE CONTRACTOR
A8	CHANCES
A9	AUDITS AND RECORDS
A10	INSPECTIONS BY CONTRACTING AGENCY
A11	TERMINATION OR SUSPENSION
A12	OFFICIALS NOT TO BENEFIT
A13	INDEPENDENT CONTRACTOR
A14	PROSELYTIZING
A15	COVENANT AGAINST CONTINGENT FEES
A16	PREDOMINANCE OF DOCUMENTS
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A18	OWNERSHIP OF WORK PRODUCT
A19	SUCCESSORS AND ASSIGNS
A20	CLAIMS AND DISPUTES
A21	EXTENT OF AGREEMENT
A22	TAXES
A23	GOVERNING LAW
A24	ADDITIONAL PROVISIONS

A1.9 ADDITIONAL SERVICES - IDENTIFIED WORK IN THIS AGREEMENT, WHICH IS DISTINCT FROM THAT COVERED BY THE PRIME COMPENSATION.

A1.10 EXTRA SERVICES - SERVICES OR ACTIONS REQUIRED OF THE CONTRACTOR ABOVE AND BEYOND PROVISIONS OF THIS AGREEMENT.

A1.11 CHANGE - A REVISION IN THE SCOPE, COMPLEXITY, CHARACTER, OR DURATION OF THE SERVICES OR PROVISIONS OF THIS AGREEMENT.

A1.12 AMENDMENT - A WRITTEN CHANGE TO THIS AGREEMENT.

A1.13 PRIME COMPENSATION - THE AMOUNT PAID TO THE CONTRACTOR FOR BASIC SERVICES AS SET FORTH IN THIS AGREEMENT.

A1.14 BUSINESS OFFICE LOCATION - THE STREET ADDRESS OF THE FACILITY WHERE ORIGINAL CONTRACT RECORDS, INCLUDING ACCOUNTING RECORDS, ARE MAINTAINED.

A1.15 PROJECT OFFICE LOCATION - THE STREET ADDRESS OF THE FACILITY WHERE THE PROJECT MANAGER(S) WORKS AND THE SERVICES REQUIRED UNDER THIS AGREEMENT ARE PERFORMED OR ADMINISTERED.

A1.16 FUNDING AGENCY(S) - THE AGENCY(S) OF THE FEDERAL, STATE OR LOCAL GOVERNMENT WHICH FURNISHES FUNDS FOR THE CONTRACTOR'S COMPENSATION UNDER THIS AGREEMENT.

ARTICLE A1

DEFINITIONS

A1.1 CONTRACTOR - THE FIRM (PERSON OR ANY BUSINESS COMBINATION) PROVIDING SERVICES.

A1.2 SUBCONTRACTOR - CONTRACTOR ENGAGED TO PROVIDE A PORTION OF THE SERVICES BY SUBCONTRACT WITH THE FIRM WHICH IS A PARTY TO THIS AGREEMENT.

A1.3 CONTRACTING OFFICER - THE INDIVIDUAL OR A DULY APPOINTED SUCCESSOR DESIGNATED AS THE OFFICIAL REPRESENTATIVE TO ADMINISTER CONTRACTS FOR THE CONTRACTING AGENCY.

A1.4 CONTRACTING AGENCY'S PROJECT MANAGER - CONTRACTING AGENCY'S REPRESENTATIVE IN CHARGE OF THE PROJECT(S) AND THE CONTRACTOR'S PRIMARY POINT OF CONTACT WITH THE CONTRACTING AGENCY.

A1.5 CONTRACTOR'S PROJECT MANAGER - THE CONTRACTOR'S REPRESENTATIVE IN CHARGE OF THE PROJECT(S) DIRECTLY RESPONSIBLE FOR THE REQUIRED SERVICES.

A1.6 APPEALS OFFICER - THE DESIGNATED INDIVIDUAL OR A DULY APPOINTED SUCCESSOR WHOSE DECISIONS CONSTITUTE THE EXHAUSTION OF CONTRACTUAL AND ADMINISTRATIVE ALTERNATIVES FOR RESOLUTION OF CLAIMS AND DISPUTES.

A1.7 SCOPE OF WORK - BASIC AND ADDITIONAL SERVICES REQUIRED OF THE CONTRACTOR BY THIS AGREEMENT.

A1.8 BASIC SERVICES - IDENTIFIED WORK IN THIS AGREEMENT FOR WHICH THE CONTRACTOR WILL RECEIVE PRIME COMPENSATION.

ARTICLE A2

INFORMATION AND SERVICES FROM OTHERS

A2.1 THE CONTRACTING AGENCY MAY, AT ITS ELECTION OR IN RESPONSE TO A REQUEST FROM THE CONTRACTOR, FURNISH INFORMATION OR SERVICES FROM OTHER CONTRACTORS. IF, IN THE CONTRACTOR'S OPINION, SUCH INFORMATION OR SERVICES ARE INADEQUATE, THE CONTRACTOR MUST NOTIFY THE CONTRACTING AGENCY OF THE SPECIFIC SERVICE OR MATERIAL DEEMED INADEQUATE AND THE EXTENT OF THE INADEQUACY PRIOR TO USE IN THE PERFORMANCE OF THIS AGREEMENT. THE CONTRACTING AGENCY WILL THEN EVALUATE AND RESOLVE THE MATTER IN WRITING. UNLESS SO NOTIFIED BY THE CONTRACTOR, THE CONTRACTING AGENCY MAY ASSUME THE INFORMATION OR SERVICES PROVIDED ARE ADEQUATE.

ARTICLE A3

HOLD HARMLESS

A3.1 THE CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CONTRACTING AGENCY FROM AND AGAINST ANY CLAIM, ACTION OR DEMAND ARISING IN WHOLE OR IN PART FROM ANY NEGLIGENT ERROR OR OMISSION OF THE CONTRACTOR UNDER THIS AGREEMENT; HOWEVER, THE CONTRACTOR SHALL NOT BE REQUIRED TO INDEMNIFY THE CONTRACTING AGENCY FOR CLAIMS OR ACTIONS CAUSED BY THE NEGLIGENCE OF THE CONTRACTING AGENCY. "CONTRACTOR" AND "CONTRACTING AGENCY" AS USED WITHIN THIS ARTICLE INCLUDE THE EMPLOYEES, AGENTS AND OTHER CONTRACTORS WHO ARE DIRECTLY RESPONSIBLE, RESPECTIVELY, TO EACH.

ARTICLE A4

INSURANCE

A4.1 THE CONTRACTOR SHALL NOT COMMENCE WORK UNDER THIS AGREEMENT UNTIL ALL REQUIRED INSURANCE HAS BEEN OBTAINED AND REVIEWED BY THE CONTRACTING AGENCY; NOR SHALL THE CONTRACTOR ALLOW ANY SUBCONTRACTOR TO COMMENCE WORK UNTIL ADEQUATE INSURANCE HAS BEEN OBTAINED BY THAT SUBCONTRACTOR. THE CONTRACTOR SHALL FURNISH CERTIFICATES OF INSURANCE IN EVIDENCE OF THE REQUIREMENTS OF ARTICLE 4, INSURANCE LIMITS, AND PARAGRAPHS A4.2 AND A4.3, BELOW. ALL CERTIFICATES MUST PROVIDE A 30 DAY PRIOR NOTICE TO THE CONTRACTING AGENCY OF CANCELLATION, NONRENEWAL OR MATERIAL ALTERATION OF SUCH INSURANCE. FAILURE TO FURNISH SATISFACTORY EVIDENCE OF INSURANCE OR LAPSE OF COVERAGE IS GROUND FOR TERMINATION OF THIS AGREEMENT.

A4.2 THE CONTRACTOR SHALL PURCHASE AND MAINTAIN AND SHALL REQUIRE SUBCONTRACTORS TO PURCHASE AND MAINTAIN SUCH INSURANCE AS WILL PROTECT THE CONTRACTOR FROM CLAIMS FOR DAMAGES BECAUSE OF BODILY INJURY, INCLUDING DEATH, TO ITS EMPLOYEES AND ALL OTHERS AND FOR DAMAGES TO PROPERTY, ANY OR ALL OF WHICH MAY ARISE OUT OF OR RESULT FROM THE CONTRACTOR'S PERFORMANCE UNDER THIS AGREEMENT WHETHER SUCH PERFORMANCE BE BY IT OR BY ANY SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY EITHER. CONTRACTOR SHALL PROVIDE AT LEAST THE FOLLOWING:

A4.2.1 WORKER'S COMPENSATION INSURANCE FOR ALL STATES IN WHICH EMPLOYEES ARE ENGAGED IN WORK UNDER THIS AGREEMENT WITH ALL STATES ENDORSEMENT.

A4.2.2 EMPLOYER'S LIABILITY PROTECTION INCLUDING ALL STATES ENDORSEMENT.

A4.2.3 COMPREHENSIVE GENERAL LIABILITY COVERAGE FOR PREMISES/OPERATIONS, INDEPENDENT CONTRACTORS, PRODUCTS/COMPLETED OPERATIONS, BLANKET CONTRACTUAL, AND PERSONAL INJURY.

A4.2.4 COMPREHENSIVE AUTOMOBILE LIABILITY COVERAGE FOR ALL OWNED, NON-OWNED AND HIRED VEHICLES.

A4.3 THE CONTRACTOR SHALL PURCHASE AND MAINTAIN AND SHALL REQUIRE QUALIFIED SUBCONTRACTORS LISTED IN ARTICLE 8 TO PURCHASE AND MAINTAIN PROFESSIONAL LIABILITY INSURANCE WITH COVERAGE PROVIDING FOR ALL NEGLIGENT ERRORS OR OMISSIONS WHICH THE CONTRACTOR, SUBCONTRACTORS OR THEIR EMPLOYEES MAY MAKE.

A4.3.1 COVERAGE SHALL BE MAINTAINED FOR THE DURATION OF THIS AGREEMENT PLUS 1 YEAR FOLLOWING THE DATE OF FINAL PAYMENT. FAILURE TO COMPLY WITH THIS PROVISION MAY PRECLUDE OTHER AGREEMENTS BETWEEN THE CONTRACTOR AND THE CONTRACTING AGENCY.

ARTICLE A5

OCCUPATIONAL SAFETY AND HEALTH

A5.1 THE CONTRACTOR AND ITS SUBCONTRACTORS SHALL OBSERVE AND COMPLY WITH THE FEDERAL OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 AND WITH ALL SAFETY AND HEALTH STANDARDS PROMULGATED BY THE SECRETARY OF LABOR UNDER AUTHORITY THEREOF AND WITH ALL STATE OF ALASKA OCCUPATIONAL SAFETY AND HEALTH LAWS AND REGULATIONS.

ARTICLE A6

EQUAL EMPLOYMENT OPPORTUNITY

A6.1 THE CONTRACTOR MAY NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE, PHYSICAL HANDICAP, SEX, OR MARITAL STATUS, CHANGE IN MARITAL STATUS, PREGNANCY OR PARENTHOOD WHEN THE REASONABLE DEMANDS OF THE POSITION DO NOT REQUIRE DISTINCTION ON SUCH BASIS. THE CONTRACTOR SHALL TAKE AFFIRMATIVE ACTION TO INSURE THAT THE APPLICANTS ARE EMPLOYED AND THAT EMPLOYEES ARE TREATED DURING EMPLOYMENT WITHOUT REGARD TO THEIR RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE, SEX, OR MARITAL STATUS. THIS ACTION MUST INCLUDE, BUT NEED NOT BE LIMITED TO, THE FOLLOWING: EMPLOYMENT, UPGRADING, DEMOTION, TRANSFER, RECRUITMENT OR RECRUITMENT ADVERTISING, LAYOFF OR TERMINATION, RATES OF PAY OR OTHER FORMS OF COMPENSATION, AND SELECTION FOR TRAINING INCLUDING APPRENTICESHIP. THE CONTRACTOR SHALL POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES SETTING OUT THE PROVISIONS OF THIS PARAGRAPH.

A6.2 THE CONTRACTOR SHALL STATE, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES TO WORK IN PERFORMANCE OF THIS AGREEMENT, THAT IT IS AN EQUAL OPPORTUNITY EMPLOYER AND THAT ALL QUALIFIED APPLICANTS WILL RECEIVE CONSIDERATION FOR EMPLOYMENT WITHOUT REGARD TO RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE, PHYSICAL HANDICAP, SEX, OR MARITAL STATUS.

A6.3 THE CONTRACTOR SHALL SEND TO EACH LABOR UNION OR REPRESENTATIVE OF WORKERS WITH WHICH THE CONTRACTOR HAS A COLLECTIVE BARGAINING AGREEMENT OR OTHER CONTRACT OR UNDERSTANDING A NOTICE ADVISING THE LABOR UNION OR WORKERS' REPRESENTATIVE OF THE CONTRACTOR'S COMMITMENTS UNDER THIS ARTICLE AND POST COPIES OF THE NOTICE IN CONSPICUOUS PLACES AVAILABLE TO ALL EMPLOYEES AND APPLICANTS FOR EMPLOYMENT.

A6.4 IN THE EVENT THE CONTRACTOR SUBCONTRACTS ANY PART OF THE SERVICES TO BE PERFORMED UNDER THIS AGREEMENT, THE CONTRACTOR AGREES TO MAKE GOOD FAITH EFFORTS TO UTILIZE FEMALE AND MINORITY BUSINESS ENTERPRISES. THE CONTRACTOR FURTHER AGREES TO MAKE DIRECT CONTACT WITH POTENTIAL FEMALE AND MINORITY BUSINESS SUBCONTRACTORS, TO AFFIRMATIVELY SOLICIT THEIR INTEREST, CAPABILITY AND PRICES AND TO FURNISH THE CONTRACTING AGENCY DOCUMENTATION OF THE RESULTS OF ALL SUCH DIRECT CONTACTS.

A6.5 THE CONTRACTOR SHALL MAKE, KEEP AND PRESERVE SUCH RECORDS NECESSARY TO DETERMINE COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS AND SHALL FURNISH REQUIRED INFORMATION AND REPORTS. ALL RECORDS MUST BE RETAINED AND MADE AVAILABLE IN ACCORDANCE WITH ARTICLE A9, AUDITS AND RECORDS.

A6.6 THE CONTRACTOR SHALL INCLUDE THE PROVISIONS OF THIS ARTICLE IN EVERY CONTRACT, AND SHALL REQUIRE THE INCLUSION OF THESE PROVISIONS IN EVERY CONTRACT ENTERED INTO BY ANY OF ITS SUBCONTRACTORS, SO THAT THESE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR.

ARTICLE A7

PAYMENTS TO THE CONTRACTOR

A7.1 PAYMENTS SHALL BE MADE IN PROPORTION TO SERVICES PERFORMED AS DETERMINED BY THE CONTRACTOR'S INVOICES AND AS APPROVED BY THE CONTRACTING AGENCY, UNTIL ALL SERVICES AUTHORIZED ARE COMPLETE AND ACCEPTED BY THE CONTRACTING AGENCY. THE SUM OF PAYMENTS SHALL NOT EXCEED THE ALLOWABLE COMPENSATION STATED IN THE NOTICE(S) TO PROCEED AND NO PAYMENT SHALL BE MADE IN EXCESS OF THE MAXIMUM ALLOWABLE TOTAL FOR THIS AGREEMENT.

A7.2 THE CONTRACTING AGENCY WILL NOT PAY THE CONTRACTOR FOR SERVICES OR ASSOCIATED REIMBURSABLE COSTS PERFORMED OUTSIDE THOSE WHICH ARE AUTHORIZED BY A NOTICE TO PROCEED.

A7.3 CONTRACTOR'S INVOICES SHALL BE SUBMITTED MONTHLY IN A FORMAT APPROVED BY THE CONTRACTING AGENCY FOR MONTHS DURING WHICH SERVICES ARE PERFORMED.

A7.4 IN THE EVENT ITEMS ON AN INVOICE ARE DISPUTED, PAYMENT OF THOSE ITEMS WILL BE HELD UNTIL THE DISPUTE IS RESOLVED. ALL UNDISPUTED ITEMS WILL NOT BE HELD WITH THE DISPUTED ITEMS.

A7.5 THE CONTRACTOR SHALL SUBMIT A FINAL INVOICE AND REQUIRED DOCUMENTATION WITHIN 90 DAYS AFTER FINAL ACCEPTANCE OF SERVICES BY THE CONTRACTING AGENCY. THE CONTRACTING AGENCY WILL NOT BE HELD LIABLE FOR PAYMENT OF INVOICES SUBMITTED AFTER THIS TIME UNLESS PRIOR WRITTEN APPROVAL HAS BEEN GIVEN. SATISFACTORY COMPLIANCE WITH ARTICLE A22, TAXES, IS A CONDITION PRECEDENT TO FINAL PAYMENT.

ARTICLE A8

CHANGES

A8.1 CHANGES IN THE SCOPE OF WORK OR OF SERVICES TO BE PERFORMED BY THE CONTRACTOR MAY BE MADE BY WRITTEN AMENDMENT ONLY. IF SUCH CHANGES CAUSE AN INCREASE OR A DECREASE IN THE CONTRACTOR'S COST OR TIME REQUIRED FOR PERFORMANCE OF THIS AGREEMENT, AN EQUITABLE ADJUSTMENT SHALL BE MADE AND SPECIFIED IN THE AMENDMENT. THE CONTRACTOR SHALL NOT PERFORM ANY EXTRA SERVICES PRIOR TO RECEIVING A FULLY EXECUTED COPY OF AN AMENDMENT AND A NOTICE TO PROCEED, EXCEPT AS MAY BE REQUIRED UNDER THE PROVISIONS OF ARTICLE A20, CLAIMS AND DISPUTES.

A8.2 IF AT ANY TIME THE CONTRACTING AGENCY THROUGH ITS AUTHORIZED REPRESENTATIVES, EITHER VERBALLY OR IN WRITING, REQUESTS OR ISSUES INSTRUCTIONS FOR EXTRA SERVICES OR OTHERWISE DIRECTS ACTIONS WHICH CONFLICT WITH ANY PROVISIONS OF THIS AGREEMENT, THE CONTRACTOR SHALL, WITHIN 30 DAYS OF RECEIPT AND PRIOR TO PURSUING SUCH INSTRUCTIONS, SO NOTIFY THE CONTRACTING AGENCY IN WRITING, AND TO THE EXTENT POSSIBLE, DESCRIBE THE SCOPE AND ESTIMATED COST OF ANY EXTRA SERVICES. THE CONTRACTING AGENCY WILL THEN EVALUATE AND, IF APPROPRIATE, NEGOTIATE AN AMENDMENT. UNLESS SO NOTIFIED BY THE CONTRACTOR, THE CONTRACTING AGENCY MAY ASSUME SUCH INSTRUCTIONS HAVE NOT CHANGED ANY PROVISIONS OF THIS AGREEMENT NOR REQUIRE ADDITIONAL COMPENSATION. NO ADDITIONAL PAYMENTS SHALL BE MADE TO THE CONTRACTOR WITHOUT SUCH NOTICE.

ARTICLE A9

AUDITS AND RECORDS

A9.1 THE CONTRACTOR SHALL MAINTAIN RECORDS OF PERFORMANCES, COMMUNICATIONS, DOCUMENTS, CORRESPONDENCE AND COSTS PERTINENT TO THIS AGREEMENT AND THE CONTRACTING OR FUNDING AGENCY'S AUTHORIZED REPRESENTATIVES SHALL HAVE THE RIGHT TO EXAMINE SUCH RECORDS AND ACCOUNTING PROCEDURES AND PRACTICES.

A9.2 THE CONTRACTING OR FUNDING AGENCY'S AUTHORIZED REPRESENTATIVES SHALL HAVE THE RIGHT TO EXAMINE ALL BOOKS, RECORDS, DOCUMENTS AND OTHER DATA OF THE CONTRACTOR RELATED TO THE NEGOTIATION, PRICING AND PERFORMANCE OF THIS AGREEMENT AND ANY CHANGE OR MODIFICATION FOR THE PURPOSE OF EVALUATING THE ACCURACY,

COMPLETENESS AND CURRENCY OF THE DATA SUBMITTED. THE RIGHT OF EXAMINATION SHALL EXTEND TO ALL DOCUMENTS NECESSARY TO PERMIT ADEQUATE EVALUATION OF THE DATA, COMPUTATIONS AND PROJECTIONS USED.

A9.3 THE MATERIALS DESCRIBED IN THIS ARTICLE SHALL BE MADE AVAILABLE AT THE BUSINESS OFFICE OF THE CONTRACTOR AT ALL REASONABLE TIMES FOR INSPECTION, AUDIT OR REPRODUCTION, FOR A MINIMUM OF 3 YEARS FROM THE DATE OF FINAL PAYMENT UNDER THIS AGREEMENT AND FOR SUCH LONGER PERIOD, IF ANY, AS MAY BE REQUIRED BY APPLICABLE STATUTE OR OTHER PROVISIONS OF THIS AGREEMENT.

A9.3.1 IF THIS AGREEMENT IS COMPLETELY OR PARTIALLY TERMINATED, RECORDS RELATING TO THE SERVICES TERMINATED SHALL BE MADE AVAILABLE FOR A MINIMUM OF 3 YEARS FROM THE DATE OF ANY RESULTING FINAL SETTLEMENT.

A9.3.2 RECORDS WHICH RELATE TO APPEALS UNDER ARTICLE A20, CLAIMS AND DISPUTES, OR LITIGATION OR THE SETTLEMENT OF CLAIMS ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT SHALL BE MADE AVAILABLE UNTIL SUCH APPEALS, LITIGATION OR CLAIMS HAVE BEEN CONCLUDED.

ARTICLE A10

INSPECTIONS BY CONTRACTING AGENCY

A10.1 THE CONTRACTING AGENCY HAS THE RIGHT TO INSPECT, IN THE MANNER AND AT REASONABLE TIMES IT CONSIDERS APPROPRIATE DURING THE PERIOD OF THIS AGREEMENT, ALL FACILITIES AND ACTIVITIES OF THE CONTRACTOR AS MAY BE ENGAGED IN THE PERFORMANCE OF THIS AGREEMENT.

ARTICLE A11

TERMINATION OR SUSPENSION

A11.1 THIS AGREEMENT MAY BE TERMINATED BY EITHER PARTY UPON 10 DAYS WRITTEN NOTICE IF THE OTHER PARTY FAILS SUBSTANTIALLY TO PERFORM IN ACCORDANCE WITH ITS TERMS THROUGH NO FAULT OF THE PARTY INITIATING THE TERMINATION (DEFAULT TERMINATION). IF THE CONTRACTING AGENCY TERMINATES THIS AGREEMENT, THE CONTRACTING AGENCY WILL PAY THE CONTRACTOR A SUM EQUAL TO THE PERCENTAGE OF WORK COMPLETED THAT CAN BE SUBSTANTIATED IN WHOLE OR IN PART EITHER BY THE CONTRACTOR TO THE SATISFACTION OF THE CONTRACTING AGENCY OR BY THE CONTRACTING AGENCY. IF THE CONTRACTING AGENCY BECOMES AWARE OF ANY NONCONFORMANCE WITH THIS AGREEMENT BY THE CONTRACTOR, THE CONTRACTING AGENCY WILL GIVE PROMPT WRITTEN NOTICE THEREOF TO THE CONTRACTOR. SHOULD THE CONTRACTOR'S SERVICES REMAIN IN NONCONFORMANCE, THE PERCENTAGE OF TOTAL COMPENSATION ATTRIBUTABLE TO THE NONCONFORMING WORK MAY BE WITHHELD.

A11.2 THE CONTRACTING AGENCY MAY AT ANY TIME TERMINATE (CONVENIENCE TERMINATION) OR SUSPEND THIS AGREEMENT FOR ITS NEEDS OR CONVENIENCE. IN THE EVENT OF A CONVENIENCE TERMINATION OR SUSPENSION FOR MORE THAN 3 MONTHS, THE CONTRACTOR WILL BE COMPENSATED FOR AUTHORIZED SERVICES AND AUTHORIZED EXPENDITURES PERFORMED TO THE DATE OF RECEIPT OF WRITTEN NOTICE OF TERMINATION OR SUSPENSION PLUS REASONABLE EXPENSES. NO FEE OR OTHER COMPENSATION FOR THE UNCOMPLETED PORTION OF THE SERVICES WILL BE PAID EXCEPT FOR ALREADY INCURRED INDIRECT COSTS WHICH THE CONTRACTOR CAN ESTABLISH AND WHICH WOULD HAVE BEEN COMPENSATED FOR OVER THE LIFE OF THIS AGREEMENT, BUT BECAUSE OF THE TERMINATION OR SUSPENSION WOULD HAVE TO BE ABSORBED BY THE CONTRACTOR WITHOUT FURTHER COMPENSATION.

A11.3 IF FEDERAL FUNDS SUPPORT THIS AGREEMENT, SETTLEMENT FOR DEFAULT OR CONVENIENCE TERMINATION MUST BE APPROVED BY THE FUNDING AGENCY AND SHALL BE IN BASIC CONFORMANCE WITH 41 CFR, SUBPARTS 1-8.604 OR 1-8.203 AND 1-8.213.

A11.4 IN THE EVENT OF TERMINATION OR SUSPENSION, THE CONTRACTOR SHALL DELIVER ALL WORK PRODUCTS, REPORTS, ESTIMATES, SCHEDULES AND OTHER DOCUMENTS AND DATA PREPARED PURSUANT TO THIS AGREEMENT TO THE CONTRACTING AGENCY.

ARTICLE A12

OFFICIALS NOT TO BENEFIT

A12.1 NO MEMBER OF OR DELEGATE TO CONGRESS, UNITED STATES COMMISSIONER OR OTHER OFFICIALS OF THE FEDERAL, STATE OR LOCAL GOVERNMENT SHALL BE ADMITTED TO ANY SHARE OR PART OF THIS AGREEMENT OR ANY BENEFIT TO ARISE THEREFROM.

ARTICLE A13

INDEPENDENT CONTRACTOR

A13.1 THE CONTRACTOR AND ITS AGENTS AND EMPLOYEES SHALL ACT IN AN INDEPENDENT CAPACITY AND NOT AS OFFICERS OR AGENTS OF THE CONTRACTING AGENCY IN THE PERFORMANCE OF THIS AGREEMENT EXCEPT THAT THE CONTRACTOR MAY FUNCTION AS THE CONTRACTING AGENCY'S AGENT AS MAY BE SPECIFICALLY SET FORTH IN THIS AGREEMENT.

A13.2 THIS AGREEMENT WILL BE DECLARED NULL AND VOID SHOULD THE CONTRACTING AGENCY DETERMINE THAT BY INTERNAL REVENUE SERVICE DEFINITIONS THE CONTRACTOR IS AN EMPLOYEE OF THE CONTRACTING AGENCY.

ARTICLE A14

PROSELYTIZING

A14.1 THE CONTRACTOR AGREES THAT IT WILL NOT ENGAGE ON A FULL OR PART TIME BASIS, DURING THE PERIOD OF THIS AGREEMENT, ANY PERSON OR PERSONS WHO ARE OR HAVE BEEN EMPLOYED BY THE CONTRACTING AGENCY DURING THE PERIOD OF THIS AGREEMENT OR DURING THE 90 DAYS IMMEDIATELY PRECEDING THE DATE OF THIS AGREEMENT EXCEPT THOSE WHO HAVE BEEN REGULARLY RETIRED OR APPROVED IN WRITING BY THE CONTRACTING AGENCY.

ARTICLE A15

COVENANT AGAINST CONTINGENT FEES

A15.1 THE CONTRACTOR SHALL COMPLY WITH THE CONE-LAND "ANTI-KICKBACK" ACT (18 USC 874) AS SUPPLEMENTED IN FEDERAL DEPARTMENT OF LABOR REGULATIONS (29 CFR, PART 3), WHICH ARE INCORPORATED BY REFERENCE AND MADE A PART OF THIS AGREEMENT.

A15.2 THE CONTRACTOR WARRANTS THAT IT HAS NOT EMPLOYED OR RETAINED ANY ORGANIZATION OR PERSON, OTHER THAN A HONA FIDE EMPLOYEE, TO SOLICIT OR SECURE THIS AGREEMENT AND THAT IT HAS NOT PAID OR AGREED TO PAY ANY ORGANIZATION OR PERSON, OTHER THAN A HONA FIDE EMPLOYEE, ANY FEE, COMMISSION, PERCENTAGE, BROKERAGE FEE, GIFT OR OTHER CONSIDERATION CONTINGENT UPON OR RESULTING FROM THE AWARD OR MAKING OF THIS AGREEMENT. FOR BREACH OR VIOLATION OF THIS WARRANTY, THE CONTRACTING AGENCY HAS THE RIGHT TO ANNUL THIS AGREEMENT WITHOUT LIABILITY OR, IN ITS DISCRETION, TO DEDUCT FROM THE ALLOWABLE COMPENSATION THE FULL AMOUNT OF SUCH COMMISSION, PERCENTAGE, BROKERAGE OR CONTINGENT FEE.

A15.3 THE CONTRACTING AGENCY WARRANTS THAT THE CONTRACTOR OR THE CONTRACTOR'S REPRESENTATIVE HAS NOT BEEN REQUIRED, DIRECTLY OR INDIRECTLY AS AN EXPRESS OR IMPLIED CONDITION IN OBTAINING OR CARRYING OUT THIS AGREEMENT, TO EMPLOY OR RETAIN, OR AGREE TO EMPLOY OR RETAIN, ANY ORGANIZATION OR PERSON OR TO MAKE A CONTRIBUTION, DONATION OR CONSIDERATION OF ANY KIND.

ARTICLE A16

PREDOMINANCE OF DOCUMENTS

A16.1 COMPONENTS OF THIS AGREEMENT SHALL STAND AND PREVAIL IN THE FOLLOWING ORDER: AGREEMENT OVER GENERAL CONDITIONS; GENERAL CONDITIONS OVER STATEMENT OF SERVICES; STATEMENT OF SERVICES OVER BASIS OF COMPENSATION; BASIS OF COMPENSATION OVER ANY APPENDICES BEYOND APPENDIX C.

A16.2 IF A REQUEST FOR PROPOSAL (RFP) AND/OR A PROPOSAL ARE APPENDED TO THIS AGREEMENT, THE COMPONENTS DESCRIBED IN PARAGRAPH A16.1 SHALL STAND AND PREVAIL OVER THE PROPOSAL AND THE PROPOSAL OVER THE RFP.

ARTICLE A17

ENDORSEMENT ON DOCUMENTS

A17.1 ENDORSEMENTS AND PROFESSIONAL SEALS, IF APPLICABLE, MUST BE INCLUDED ON ALL FINAL DRAWINGS, SPECIFICATIONS, COST ESTIMATES AND REPORTS PREPARED BY THE CONTRACTOR. PRELIMINARY COPIES OF SUCH DOCUMENTS SUBMITTED FOR REVIEW MUST HAVE SEALS AFFIXED WITHOUT ENDORSEMENT (SIGNATURE).

ARTICLE A18

OWNERSHIP OF WORK PRODUCTS

A18.1 WORK PRODUCTS PRODUCED UNDER THIS AGREEMENT, EXCEPT ITEMS WHICH HAVE PRE-EXISTING COPYRIGHTS, ARE THE PROPERTY OF THE CONTRACTING AGENCY. PAYMENTS TO THE CONTRACTOR FOR SERVICES HEREUNDER INCLUDE FULL COMPENSATION FOR ALL WORK PRODUCTS PRODUCED BY THE CONTRACTOR AND ITS SUBCONTRACTORS.

A18.2 SHOULD THE CONTRACTING AGENCY ELECT TO REUSE WORK PRODUCTS PROVIDED UNDER THIS AGREEMENT FOR OTHER THAN THE ORIGINAL PROJECT AND/OR PURPOSE, THE CONTRACTING AGENCY WILL INDEMNIFY THE CONTRACTOR AND ITS SUBCONTRACTORS AGAINST ANY RESPONSIBILITIES OR LIABILITIES ARISING FROM SUCH REUSE. ADDITIONALLY, ANY REUSE OF DESIGN DRAWINGS OR SPECIFICATIONS PROVIDED UNDER THIS AGREEMENT MUST BE LIMITED TO CONCEPTUAL OR PRELIMINARY USE FOR ADAPTATION AND THE ORIGINAL CONTRACTOR'S OR SUBCONTRACTOR'S SIGNATURE, PROFESSIONAL SEALS AND DATES REMOVED. SUCH REUSE OF DRAWINGS AND SPECIFICATIONS, WHICH REQUIRE PROFESSIONAL SIGNATURE AND SEAL, WILL BE SIGNED, SEALED AND DATED BY THE PROFESSIONAL WHO IS IN DIRECT SUPERVISORY CONTROL AND RESPONSIBLE FOR THE ADAPTATION.

A18.3 SHOULD THE CONTRACTING AGENCY ELECT TO REUSE WORK PRODUCTS PROVIDED UNDER THIS AGREEMENT, NO ROYALTY FOR REUSE MAY BE PAID TO THE CONTRACTOR OR ITS SUBCONTRACTORS.

ARTICLE A19

SUCCESSORS AND ASSIGNS

A19.1 THE CONTRACTOR BINDS ITSELF, ITS PARTNERS, ITS SUBCONTRACTORS, ASSIGNS AND LEGAL REPRESENTATIVES TO THIS AGREEMENT AND TO THE SUCCESSORS, ASSIGNS AND LEGAL REPRESENTATIVES OF THE CONTRACTING AGENCY WITH RESPECT TO ALL COVENANTS OF THIS AGREEMENT. THE CONTRACTOR SHALL NOT ASSIGN, SUBLET OR TRANSFER ANY INTEREST IN THIS AGREEMENT WITHOUT THE PRIOR WRITTEN CONSENT OF THE CONTRACTING AGENCY.

ARTICLE A20

CLAIMS AND DISPUTES

A20.1 IF THE CONTRACTOR BECOMES AWARE, OR REASONABLY SHOULD HAVE BECOME AWARE, OF ANY ACT OR OCCURRENCE WHICH MAY FORM THE BASIS OF A CLAIM, THE CONTRACTOR SHALL IMMEDIATELY INFORM THE CONTRACTING AGENCY'S PROJECT MANAGER. IF THE MATTER CANNOT BE RESOLVED WITHIN 7 DAYS, THE CONTRACTOR SHALL, WITHIN THE NEXT 14 DAYS, SUBMIT WRITTEN NOTICE OF THE FACTS WHICH MAY FORM THE BASIS OF THE CLAIM. IN ADDITION, ALL CLAIMS BY THE CONTRACTOR FOR ADDITIONAL COMPENSATION OR AN EXTENSION OF THE TIME FOR PERFORMANCE OR ANY DISPUTE REGARDING A QUESTION OF FACT OR INTERPRETATION OF THIS AGREEMENT SHALL BE PRESENTED IN WRITING BY THE CONTRACTOR TO THE CONTRACTING AGENCY'S PROJECT MANAGER WITHIN THE NEXT 60 DAYS UNLESS THE PROJECT MANAGER AGREES IN WRITING TO AN EXTENSION OF TIME FOR GOOD CAUSE SHOWN. GOOD CAUSE SHOWN INCLUDES TIME FOR THE CONTRACTOR TO PREPARE THE CLAIM AND THE CONTRACTING AGENCY'S PROJECT MANAGER WILL GRANT AN EXTENSION OF NOT MORE THAN 60 DAYS FOR PREPARATION OF THE CLAIM. THE CONTRACTOR AGREES THAT UNLESS THESE WRITTEN NOTICES ARE PROVIDED, THE CONTRACTOR SHALL HAVE NO ENTITLEMENT TO ADDITIONAL TIME OR COMPENSATION FOR SUCH ACT, EVENT OR CONDITION. THE CONTRACTOR SHALL IN ANY CASE CONTINUE DILIGENT PERFORMANCE UNDER THIS AGREEMENT. THE CONTRACTING AGENCY SHALL HAVE THE RIGHT TO REQUIRE THE CONTRACTOR TO EXPEDITIOUSLY ACCOMPLISH DISPUTED SERVICES PENDING FUTURE RESOLUTION OF THE CONTRACTOR'S CLAIM.

A20.2 IN PRESENTING THE CLAIM, THE CONTRACTOR SHALL SPECIFICALLY INCLUDE, TO THE EXTENT THEN POSSIBLE, THE FOLLOWING:

A20.2.1 THE PROVISIONS OF THIS AGREEMENT WHICH APPLY TO THE CLAIM AND UNDER WHICH IT IS MADE.

A20.2.2 THE SPECIFIC RELIEF REQUESTED INCLUDING ANY ADDITIONAL COMPENSATION CLAIMED AND THE BASIS UPON WHICH IT WAS CALCULATED AND/OR THE ADDITIONAL TIME REQUESTED AND THE BASIS UPON WHICH IT WAS CALCULATED.

A20.3 THE CLAIM WILL BE ACKNOWLEDGED IN WRITING BY THE CONTRACTING AGENCY'S PROJECT MANAGER. IF THE CLAIM IS NOT DISPOSED OF BY MEETINGS WHICH RESULT IN AGREEMENT WITHIN 60 DAYS, PROVIDED ADDITIONAL TIME IS NOT GRANTED IN WRITING BY THE CONTRACTING AGENCY'S PROJECT MANAGER, THE CLAIM WILL BE DECIDED BY THE CONTRACTING OFFICER. THE CONTRACTING OFFICER RESERVES THE RIGHT TO MAKE WRITTEN REQUEST TO THE CONTRACTOR AT ANY TIME FOR ADDITIONAL INFORMATION WHICH THE CONTRACTOR MAY POSSESS TO SUPPORT THE CLAIM(S). THE CONTRACTOR AGREES TO PROVIDE THE CONTRACTING OFFICER SUCH ADDITIONAL INFORMATION WITHIN 30 DAYS OF RECEIPT FOR SUCH A REQUEST. THE CONTRACTING OFFICER WILL ALLOW A REASONABLE TIME EXTENSION FOR GOOD CAUSE IF PRESENTED IN WRITING PRIOR TO THE EXPIRATION OF THE 30 DAYS. FAILURE TO FURNISH SUCH ADDITIONAL INFORMATION CONSTITUTES A WAIVER OF CLAIM.

A20.4 THE CONTRACTOR WILL BE FURNISHED A WRITTEN SIGNED COPY OF THE CONTRACTING OFFICER'S DECISION WITHIN 90 DAYS OF RECEIPT OF ALL NECESSARY INFORMATION FROM THE CONTRACTOR UPON WHICH TO BASE THE DECISION. THE CONTRACTING OFFICER'S DECISION IS FINAL AND CONCLUSIVE UNLESS FRAUDULENT AS TO THE CLAIM UNLESS, WITHIN 30 DAYS OF RECEIPT OF THE DECISION, THE CONTRACTOR DELIVERS A NOTICE OF APPEAL TO THE APPEALS OFFICER DESIGNATED ON PAGE 2 OF THIS AGREEMENT. THE NOTICE OF APPEAL SHALL INCLUDE SPECIFIC EXCEPTIONS TO THE CONTRACTING OFFICER'S DECISION INCLUDING SPECIFIC

PROVISIONS OF THIS AGREEMENT WHICH THE CONTRACTOR INTENDS TO RELY UPON ON APPEAL. GENERAL ASSERTIONS THAT THE CONTRACTING OFFICER'S DECISION IS CONTRARY TO LAW OR TO FACT ARE NOT SUFFICIENT.

A20.5 THE DECISION OF THE APPEALS OFFICER WILL BE RENDERED WITHIN 120 DAYS OF NOTICE OF APPEAL AND THE DECISION CONSTITUTES THE EXHAUSTION OF CONTRACTUAL AND ADMINISTRATIVE REMEDIES.

ARTICLE A21

EXTENT OF AGREEMENT

A21.1 THIS AGREEMENT INCLUDING APPENDICES REPRESENTS THE ENTIRE AND INTEGRATED AGREEMENT BETWEEN THE CONTRACTING AGENCY AND THE CONTRACTOR AND SUPERSEDES ALL PRIOR NEGOTIATIONS, REPRESENTATIONS OR AGREEMENTS, WRITTEN OR ORAL.

A21.2 NOTHING CONTAINED HEREIN MAY BE DEEMED TO CREATE ANY CONTRACTUAL RELATIONSHIP BETWEEN THE CONTRACTING AGENCY AND ANY SUBCONTRACTORS OR MATERIAL SUPPLIERS; NOR MAY ANYTHING CONTAINED HEREIN BE DEEMED TO GIVE ANY THIRD PARTY CLAIM OR RIGHT OF ACTION AGAINST THE CONTRACTING AGENCY OR THE CONTRACTOR WHICH DOES NOT OTHERWISE EXIST WITHOUT THIS AGREEMENT.

A21.3 THIS AGREEMENT MAY BE CHANGED ONLY BY WRITTEN AMENDMENT EXECUTED BY BOTH THE CONTRACTING AGENCY AND THE CONTRACTOR.

A21.4 ALL COMMUNICATIONS THAT AFFECT THIS AGREEMENT MUST BE MADE OR CONFIRMED IN WRITING AND MUST BE SENT TO THE ADDRESSES DESIGNATED IN THIS AGREEMENT.

A21.5 THE CONTRACTOR ON RECEIVING FINAL PAYMENT WILL EXECUTE A RELEASE, IF REQUIRED, IN FULL OF ALL CLAIMS AGAINST THE CONTRACTING AGENCY ARISING OUT OF OR BY REASON OF THE SERVICES AND WORK PRODUCTS FURNISHED UNDER THIS AGREEMENT.

ARTICLE A22

TAXES

A22.1 AS A CONDITION OF PERFORMANCE OF THIS AGREEMENT, THE CONTRACTOR SHALL PAY ALL FEDERAL, STATE AND LOCAL TAXES INCURRED BY THE CONTRACTOR AND SHALL REQUIRE THEIR PAYMENT BY ANY SUBCONTRACTOR OR ANY OTHER PERSONS IN THE PERFORMANCE OF THIS AGREEMENT.

ARTICLE A23

GOVERNING LAWS

A23.1 THIS AGREEMENT IS GOVERNED BY THE LAWS OF THE STATE OF ALASKA AND FEDERAL AND LOCAL LAWS AND ORDINANCES APPLICABLE TO THE WORK PERFORMED.

ARTICLE A24

ADDITIONAL PROVISIONS



DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
STATE OF ALASKA
PROFESSIONAL SERVICES AGREEMENT

AGREEMENT NO.

PROJECT NO.

PROJECT TITLE:

TO THIS AGREEMENT BETWEEN THE

, HEREAFTER THE CONTRACTING AGENCY,

AND

, HEREAFTER THE CONTRACTOR,

EFFECTIVE ON THE LAST DATE EXECUTED BY ITS PARTIES, IN CONSIDERATION OF THE TERMS, CONDITIONS AND PROMISES OF ARTICLES 1 THROUGH 8 IN THIS DOCUMENT, THE PARTIES HERETO AGREE:

CONTRACTOR

CORPORATE SEAL

SIGNATURE: _____

TYPED NAME: _____ DATE: _____

TITLE:

SIGNATURE: _____

TYPED NAME: _____ DATE: _____

TITLE:

CONTRACTING AGENCY

SIGNATURE: _____

TYPED NAME: _____ DATE: _____

TITLE:

SIGNATURE: _____

TYPED NAME: _____ DATE: _____

TITLE:

ARTICLE 1
PROJECT

1.1 LOCATION:

1.2 SUMMARY OF SERVICES:

ARTICLE 2
COMPENSATION

2.1 THE MAXIMUM AMOUNT PAYABLE UNDER THIS AGREEMENT, AS SET OUT IN APPENDIX C, SHALL NOT EXCEED

(\$ _____)

ARTICLE 3
PERIOD OF PERFORMANCE

3.1 CONTRACTOR SHALL COMMENCE WORK UNDER THIS AGREEMENT AS AUTHORIZED BY WRITTEN NOTICE(S) TO PROCEED AND SHALL COMPLETE THE WORK IN ACCORDANCE WITH ANY TIME SCHEDULES REQUIRED BY APPENDICES.

3.2 CONTRACTOR SHALL NOT BE COMPENSATED FOR ANY COSTS INCURRED PRIOR TO THE RECEIPT OF NOTICE(S) TO PROCEED.

3.3 THE PERIOD OF PERFORMANCE UNDER THIS AGREEMENT SHALL END:

ARTICLE 4
INSURANCE LIMITS

4.1 THE FOLLOWING MINIMUM LIMITS OF INSURANCE ARE REQUIRED BY THE PROVISIONS OF APPENDIX A.

<u>TYPE INSURANCE</u>	<u>EACH OCCURRENCE</u>	<u>AGGREGATE</u>	<u>TYPE INSURANCE</u>	<u>EACH OCCURRENCE</u>	<u>AGGREGATE</u>
PROFESSIONAL LIABILITY	\$	\$	EMPLOYER'S GENERAL LIABILITY	\$	\$
WORKER'S COMPENSATION	(STATUTORY)	(STATUTORY)	COMPREHENSIVE GENERAL LIABILITY	\$	\$
			COMPREHENSIVE AUTOMOBILE LIABILITY	\$	\$

ARTICLE 5
APPENDICES

5.1 THE FOLLOWING APPENDICES ARE ATTACHED TO THIS DOCUMENT AND INCORPORATED HEREIN:

<u>APPENDIX</u>	<u>TITLE</u>	<u>DATE</u>	<u>NO. PAGES</u>
A	GENERAL CONDITIONS		
B	STATEMENT OF SERVICES		
C	BASIS OF COMPENSATION		

ARTICLE 6
CONTRACTING AGENCY

PROJECT MANAGER:

MAILING ADDRESS

PROJECT OFFICE LOCATION

A.S. _____ AUTHORIZES THE CONTRACTING AGENCY TO ENTER INTO THIS AGREEMENT.

CONTRACTING OFFICER:

APPEALS OFFICER:

ARTICLE 7
CONTRACTOR

PROJECT MANAGER:

PROJECT MANAGER MAY BE CHANGED ONLY UPON WRITTEN CONSENT FROM THE CONTRACTING AGENCY.

MAILING ADDRESS

BUSINESS OFFICE LOCATION

PROJECT OFFICE LOCATION

CONTRACTOR: INDIVIDUAL PARTNERSHIP JOINT VENTURE NONPROFIT ASSOCIATION GOVERNMENT AGENCY
 INCORPORATED IN THE STATE OF:

ALASKA BUSINESS LICENSE NUMBER:

INTERNAL REVENUE SERVICE NUMBER:

ARTICLE 8
SUBCONTRACTORS

8.1 CONTRACTOR SHALL PERFORM ALL SERVICES REQUIRED UNDER THIS AGREEMENT EXCEPT AS MAY BE PERFORMED BY THE SUBCONTRACTORS LISTED BELOW WHICH MAY BE CHANGED ONLY UPON WRITTEN CONSENT FROM THE CONTRACTING AGENCY. THE PROVISIONS OF APPENDIX A ARE BINDING UPON SUBCONTRACTORS AND SHALL BE CONTAINED WITHIN ALL SUBCONTRACTS EXECUTED TO PERFORM SERVICES UNDER THIS AGREEMENT.

ENGINEERING DISCIPLINE OR SERVICE % TOTAL SVCS SUBCONTRACTOR AK BUSINESS LIC NO



DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
 STATE OF ALASKA
 AMENDMENT TO
 PROFESSIONAL SERVICES AGREEMENT

AMENDMENT NO.
 AMENDMENT NO.
 PROJECT NO.

PROJECT TITLE:

THE AGREEMENT BETWEEN THE

HEREAFTER, THE CONTRACTING AGENCY,

AND

HEREAFTER, THE CONTRACTOR,

IS HEREBY AMENDED, EFFECTIVE THE LAST DATE EXECUTED BY ITS PARTIES.

CONTRACTOR

CORPORATE SEAL

SIGNATURE _____

TYPED NAME:

DATE:

TITLE:

SIGNATURE _____

TYPED NAME:

DATE:

TITLE:

CONTRACTING AGENCY

SIGNATURE _____

TYPED NAME:

DATE:

TITLE:

SIGNATURE _____

TYPED NAME:

DATE:

TITLE:

CHANGE TO COMPENSATION:

ITEM(S) CHANGED	METHOD(S) OF PAYMENT	ORIGINAL AMOUNT(S)	AMOUNT(S) THRU LAST AMENDMENT	AMOUNT(S) FOR THIS AMENDMENT	AMOUNT(S) THRU THIS AMENDMENT
		\$	\$	\$	\$
SUBTOTALS FOR CHANGE:		\$	\$	\$	\$
TOTALS FOR AGREEMENT:		\$	\$	\$	\$

MAXIMUM AMOUNT PAYABLE TO THE CONTRACTOR FOR ALL SERVICES PERFORMED UNDER THE AGREEMENT, REVISED TO INCLUDE THIS AMENDMENT, SHALL NOT EXCEED

DOLLARS.

CHANGES TO CONDITIONS OR SERVICES:

ALL OTHER PROVISIONS OF THE AGREEMENT REMAIN IN FORCE.

THE FOLLOWING ATTACHMENTS TO THIS AMENDMENT ARE INCORPORATED HEREIN:

<u>ATTACHMENT NO</u>	<u>TITLE</u>	<u>DATE</u>	<u>NO PAGES</u>
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STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
POLICY AND PROCEDURES

P & P No.
28-8000

Page
1 OF 8

Effective Date
March 26, 1981

SUBJECT
Selection of Professional and
Specialty Services Contractors

Supersedes P & P No.
10-0006

Dated
10/1/78

APPROVED BY

Robert W. Ward

DIVISION Support
Services

SECTION Contracts
Administration

CHAPTER TITLE
Procedure

1.0 PURPOSE

1.1 To promulgate standard departmental procedures for the selection of Contractors to provide exempt professional or specialty services.

2.0 POLICY

2.1 To select Contractors for exempt professional and speciality services in an objective manner which is documented and results in the use of the most qualified Contractor consistent with sound financial practices.

3.0 DISTRIBUTION

3.1 All holders of the Policy and Procedures Manual.

4.0 DEFINITIONS

4.1 Professional/Specialty Services - Services rendered by a Contractor that require specialized knowledge and training to perform, often through long and intensive academic preparation. The term includes artistic abilities, but not manual skills. Services are not limited to those requiring professional licensing under State Law.

4.2 Exempt Services - Professional and specialty services specifically related to the planning, design or construction of a capital project, for which the Department of Transportation and Public Facilities (DOT/PF) has contracting authority under Alaska Statute and/or by Agreement with the Department of Administration (DOA), to include the following examples:

Aerial Photogrammetry;
Appraisals;
Architectural Services;
Art for Public Buildings and Facilities;
Engineering Services;
Land Surveys;
Mapping;
Materials Testing;
Pre-Construction Feasibility Studies;
Site Selection Studies;
and

Any services obtained from the University of Alaska or federal, municipal or local government agencies.

4.3 Contractor - Firm (person or any business combination) providing services.

4.4 Prequalification - General evaluation of Contractor capability to provide broadly defined types of services.

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
POLICY AND PROCEDURES

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Effective Date March 26, 1981	
Supersedes P & P No. 10-0006	Dated 10/1/78
APPROVED BY <i>Robert M. ...</i>	

SUBJECT
Selection of Professional and
Specialty Services Contractors

DIVISION Support Services	SECTION Contracts Administration	CHAPTER TITLE Procedure
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- 4.5 Qualification - Formal evaluation of a Contractor's capability to provide specific services.
- 4.6 Expression of Interest - Questionnaire for specific contract(s) which contains questions and space for each response by interested Contractors (prepared in accordance with Division procedures).
- 4.7 Divisional Procedures - Written supplemental procedures as required by reference in this document.
- 4.8 Short List - Contractors to be considered for negotiations in the order listed, or from which technical and/or priced proposals may be solicited.
- 4.9 Term Contract - Agreement to provide identified types of services when authorized by Notice to Proceed for specific projects.

5.0 USE

- 5.1 This Procedure applies to all contracts for exempt professional or specialty services.
- 5.2 When determined by the Commissioner of DOT/PF to be in the best interest of the State, this procedure may be waived

6.0 SUMMARY OF PROCEDURE

<u>Action</u>	<u>Paragraph</u>
Identify services required.	7.1
Prequalification of Contractors (Division Option).	7.2
If cost less than or equal to \$2,500, select Contractor (proceed to paragraph 7.16).	7.3
If cost greater than \$2,500, but less than or equal to \$20,000 and Contractors are Prequalified, select Contractor (proceed to paragraph 7.14).	7.4
If cost greater than \$2,500 (\$20,000 if Contractors Prequalified), Committee Selection required.	7.5
Establish Selection Committee.	7.6
Prepare Expression of Interest questionnaire.	7.7
Prepare Invitation.	7.8

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
POLICY AND PROCEDURES

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DIVISION Support Services	SECTION Contracts Administration	CHAPTER TITLE Procedure
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- Distribute Invitation and Expression of Interest. 7.9
- Log in responses. 7.10
- Score responses. 7.11
- Establish Short List. 7.12
- Prepare Evaluation Report. 7.13
- Obtain Approval for Negotiations (AFN). 7.14
- Mail Short List to all respondents. 7.15
- Negotiate (technical and or priced proposals, as appropriate). 7.16
- Select Contractors, prepare and execute contract. 7.17

7.0 PROCEDURE

- 7.1 Identify services to be obtained by contract. Services may be for one or several specific projects, or for services on an "as-needed" basis under a term contract. Services which are non-exempt or which may be non-exempt must be coordinated with DOA through the DOT/PF Contracts Administration Section.
- 7.2 Prequalification of Contractors (Division option) may be used for broadly defined projects or professional/specialty services in accordance with Division procedures. If prequalification is used, such procedures must include the following;
 - A. Annual solicitation thru advertisement to obtain general qualifications or to update prior submittals from Contractors for the provision of services. Specific items to be included with submittals must be identified.
 - B. Designation of an office of record to maintain Contractor Qualification Files. In addition to prequalification submittals, Contractor files may contain performance evaluations (memos, letters, or agency forms) for previous projects, selection reports for previous projects, and Contractor's comments concerning any evaluation or selection.
 - C. Provision for a Prequalification Committee of not less than three of the Department's professional level employees to evaluate general experience and competence of Contractors. Directors may coordinate between Divisions for the appointment of personnel for such Committees.
 - 1. The Committee must review each file at least annually and new or updated submittals at least quarterly.

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			APPROVED BY <i>Robert W. Ward</i>	
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<p>2. In accordance with Division procedures the Committee must assign a Pre-qualification Rating for each Contractor for each type of service/project for which the Contractor's physical plant is adequate and current personnel are experienced and qualified. Assigned ratings will be retained until the next quarterly or annual review.</p> <p>D. Provision for any Contractor to review its file by appointment during the Division's normal working hours.</p> <p>7.3 If contract cost is less than or equal to \$2,500, select Contractor (Proceed to Paragraph 7.16).</p> <p>7.4 If contract cost is greater than \$2,500, but less than or equal to \$20,000, and Contractors are Prequalified in accordance with Division procedures, select Contractor (Proceed to paragraph 7.14).</p> <p>7.5 If contract cost is greater than \$2,500 (\$20,000 if Contractors are Prequalified), Committee evaluation is required.</p> <p>7.6 Establish Evaluation and Selection Committee. Committees must be composed of a minimum of three persons appointed in writing by the Director or his designee. Client Agency representation must be in accordance with Division procedures.</p> <p>7.7 Prepare an Expression of Interest questionnaire for the proposed contract(s) which includes:</p> <p>A. Instructions for completion, including a statement that responses must be entered on the form and limited to the space provided, and an explanation of standard Department scoring procedure (paragraph 7.11).</p> <p>B. Identification of project and/or services required.</p> <p>C. Amount of funding available expressed by one significant figure.</p> <p>D. Statement indicating if technical and/or priced proposals will be solicited from the Contractors placed on the Short List.</p> <p>E. Questions relating to the proposed contract(s), addressing professional, technical and organizational capabilities. The following question must be included verbatim:</p> <p>"What is the approximate percentage of total compensation under the proposed contract(s) which will be paid to Female and to Minority Business Enterprises (FMBE) and list the business name(s) and telephone number(s) of each such enterprise?"</p> <p>F. Weights (paragraph 7.11) shall be assigned to each question prior to distribution of the Expression of Interest to allow each Contractor to stress those areas which are most important.</p>				

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- G. Statement concerning statutory residency requirements, if applicable.
- H. Current requirements for Affirmative Action for Equal Employment Opportunity and Female and Minority Business Enterprises.
- I. Approximate Date for Short List to be mailed.
- J. Maximum of fifteen questions.
- 7.8 Prepare an Invitation to submit the Expression of Interest which includes:
 - Abbreviated definition or scope of services to be provided;
 - Desired approach and anticipated disciplines to be involved;
 - Information and/or assistance to be furnished by the Department, Division other agency or other Contractors;
 - Time constraints;
 - Number of contracts proposed for negotiations;
 - Number of copies, time and place to be submitted;
 - Any additional items expected to be submitted with the Expression of Interest;
 - Instructions for obtaining the Expression of Interest.
- 7.9 Distribute Invitation and the Expression of Interest questionnaire. If direct contact with contractors prequalified in accordance with Division procedure is not used (or if used and the contract cost is greater than \$100,000) the Invitation to submit the Expression of Interest must be advertised in local papers, state-wide papers, appropriate minority media and professional publications. The advertisement must be placed at least once in three publications, with the first advertisement appearing at least 15 calendar days before the submittal deadline.
- 7.10 Log responses. Insure that responses are not evaluated before submittal deadline and that contact with any respondent does not result in any unfair advantage or premature commitment.
- 7.11 Score responses as follows:

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Each question must be assigned a Weight before Expression of Interest questionnaires are distributed to Contractors. Weights will be expressed as a whole number between 1 and 100 and the sum of all weights must equal 100 (i.e. 100%). Minimum Weight of the mandatory FMBE Question is "5". If some questions are deleted from consideration by the Committee after responses are received, the assigned Weight for other questions will not be changed.

- B. Each Committee member shall rate Contractor response for each question as follows: "X" = Disqualified (submittal must be rejected) or a whole number from 0 to 5 where 0 = Unacceptable, 1 through 4 = Acceptable and 5 = Outstanding. Responses to the mandatory FMBE Question must be rated as follows: 0% = 0, 1 - 20% = 1, 21 - 40% = 2, 41 - 60% = 3, 61 - 80% = 4, 81 - 100% = 5.
- C. Committee members' ratings for Contractor responses to each question must be multiplied by the assigned weight and the products summed to obtain the member's score for each Contractor. Example (3 questions):

<u>Question</u>	<u>Weight</u>	<u>Rating</u>	<u>Product</u>
1	70	4	280
2	5	3	15
3	25	3	75
	(Sum = 100)	Member's Score =	370

- D. A Contractors total score shall be equal to the sum of each member's score (Do not average member ratings to obtain a Committee rating for each response or manipulate this scheme in any other way).

7.12 Establish Short List for negotiations based on one or any combination of the following:

- A. Highest numerical score for responses in the Expressions of Interest.
- B. Interviews with highest scored Contractors. (Committee must develop a list of questions to be uniformly presented to each Contractor within an approximately equal amount of time for the interview. Contractors selected for interviews must be notified by telephone and letter.)
- C. Contact with Contractor's references.
- D. Current Affirmative Action Programs for Equal Employment Opportunity and Female and Minority Business Enterprises.
- E. Records of Contractor performances.

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<p>7.13 Prepare an Evaluation Report which identifies Committee members, all responsive Contractors, Committee member scores and total scores for each Contractor, the Short List, and indicates if technical and/or priced proposals will be requested from Contractors on the Short List. Contractors whose submittals were rejected should be identified, including the reason for rejection. If the Short List is not based on the highest numerical scores, document the reason(s). Attach one copy of the Expression of Interest questionnaire used for the evaluation.</p> <p>7.14 Obtain Approval for Negotiations (AFN) with Contractors on the Short List using DOT/PF Form 25A251.</p> <p>A. Copies of the Committee Evaluation Report, or a memorandum stating why Committee selection not required and documenting the bases of selection, and an uncompleted Expression of Interest questionnaire must be attached.</p> <p>B. All approvals indicated on the AFN Form must be obtained before a contract is executed. Negotiations may begin, however, following signature on the AFN by the individual authorized by Delegation of Authority to execute the contract.</p> <p>7.15 Mail approved Short List to all respondents.</p> <p>7.16 Either negotiate with Contractors on the Short List in the order listed or solicit and evaluate technical and/or priced proposals, as appropriate, from all Contractors on the list. (Guidelines for preparing Requests for Proposals (RFP) and evaluating proposals are contained in the State Administrative Manual - Sections 8142 and 8144.)</p> <p>A. Technical Proposals must be solicited from Contractors on the Short List when any of the following apply:</p> <p style="padding-left: 40px;">Services required are unusually large or complex;</p> <p style="padding-left: 40px;">Scope of Services is not clearly defined;</p> <p style="padding-left: 40px;">Requested by a simple majority of the Evaluation Committee.</p> <p>B. Priced Proposals should be requested in accordance with Division policy, the type and scope of services desired, and professional practice.</p> <p>C. If negotiations cannot be concluded within the amount stated in the AFN, verbal approval of the increased amount must be obtained from the individual authorized by Delegation of Authority before the Contract is executed by either party, following which a revised AFN to document such approval must be processed.</p>			

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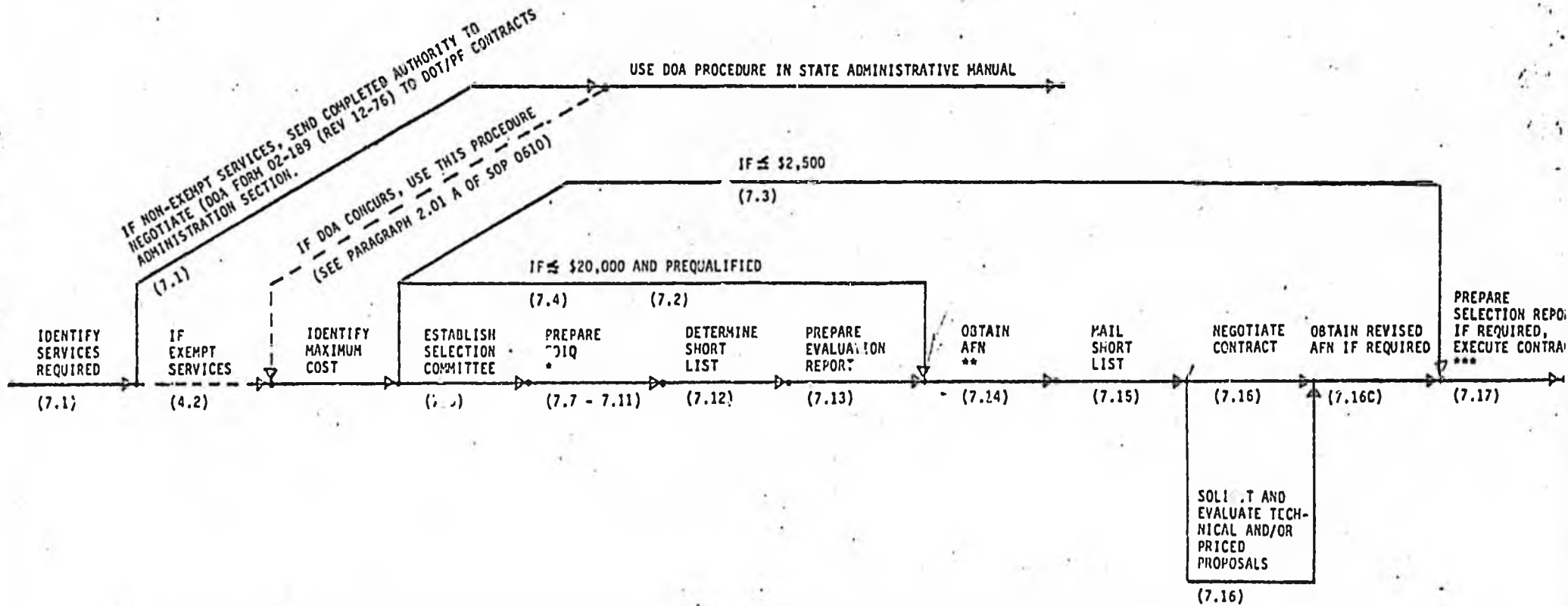
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7.17 Select Contractor and prepare and execute contract in accordance with current DOT/PF Policy and Procedure. If selection was based upon technical and or priced proposals from several Contractors a Committee Report which documents such action must accompany the Contract when forwarded for execution for the Department.

8.0 IMPLEMENTATION

8.1 Directors are responsible for establishing divisional procedures to augment this Department Procedure as applicable to each Division's functions and to maintain records of all selection and Contracting actions.

DIAGRAM CHECKLIST FOR SELECTION PROCEDURE
(DOT/PF P&P 28-8000)



*EOIQ = EXPRESSION OF INTEREST QUESTIONNAIRE. USE STANDARD EOIQ FORM AND SCORING SHEETS CONTAINED IN SOP 0610 AS EXHIBITS D, E AND F.

**AFN = AUTHORITY FOR NEGOTIATIONS, DOT/PF FORM 25A251 (1/81) SEE ALSO PARAGRAPHS 2.01 B AND C OF SOP 0610.

***NOTE: IF NON-EXEMPT SERVICES, COORDINATE WITH DOT/PF CONTRACTS ADMINISTRATION TO OBTAIN DOA CONCURRENCE AND SIGNATURE.

#B 612 - Federal Brooks bill
23-28 states. model procurement
bill.

can't adopt work state laws -
blame Alaska law for const. law

professional selection procedure rather
than bidding procedure.

Frank Glavin
 Billings Requested by Ombudsman
 304 hearings in 81

HB 156 Leg Contracting
 \$5,000 limit

Administration - Executive Branch - Reinwand
 CS takes out judiciary + U of A.

all members supported CS. most similar to 156

2 CS Proposals Finance

1. for Admin Smith or Miller

In addition sole source - made more flexible

Common sense - A

CS w/ penalty B

will bring by report this afternoon