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COMMITTEE REPORT

HOUSE

(5)

FURTHER:

4/30/81

Date:

3/4/82

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 546

"An Act relating to state contracts for professional services and establishing a penalty for violation of provisions of law relating to professional service contracts; and providing for an effective date."

under consideration and ~~(a majority of the committee)~~ ~~(the committee)~~ reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HB 546 (SA)  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommerdation *individual* *as "as for"*
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING

DO PASS

*[Handwritten signatures]*

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MEMBERS HAVING

OTHER RECOMMENDATIONS:

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CHAIRMAN

COMMITTEE REPORT

HOUSE

4/30/81

FURTHER:

(5)

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Mr. Speaker:

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MEMBERS SIGNING  
DO PASS

*[Handwritten signatures]*

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MEMBERS HAVING  
OTHER RECOMMENDATIONS:

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CHAIRMAN

1 IN THE HOUSE

BY STATE AFFAIRS  
COMMITTEE BY REQUEST

2  
3 CS for HOUSE BILL 546

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 TWELFTH LEGISLATURE - FIRST SESSION

6 A BILL

7  
8 For an Act entitled: "An Act relating to state contracts for professional  
9 services and establishing a penalty for violation  
10 of provisions of law relating to professional  
11 services contracts.

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

13 \*Section 1. AS 36 is amended by adding a new chapter to read:

14 CHAPTER 98. PROFESSIONAL SERVICES CONTRACTS.

15 Sec. 36.98.010. APPLICATION. This chapter applies to contracts for  
16 professional services to be provided to a state agency unless the total  
17 amount of the contract or contracts awarded <sup>By THE SAME STATE AGENCY</sup> to a person in a 12-month  
18 period does not exceed \$5,000.

19 Sec. 36.98.020. PROFESSIONAL SERVICES CONTRACTORS REGISTER. A person  
20 who desires to provide professional services to a state agency shall  
21 submit to the commissioner an application to be placed on the professional  
22 services register.

23 Sec. 36.98.030. SOLICITATION OF SERVICES. (a) When a state agency  
24 proposes to enter into a contract for professional services, the agency  
25 shall

26 (1) review the register of professional services contractors  
27 maintained by the commissioner under AS 36.98.020; and

28 (2) provide to each prospective contractor

29 (A) a general description of the proposed project for  
30 which the agency is seeking professional services; and

31 (B) the procedure by which a person interested in the  
32 professional services contract may apply to the agency for consideration  
for the contract.

1 (b) In addition to complying with the requirements of (a) of this  
2 subsection, when a state agency proposes to enter into a contract for  
3 professional services, the agency shall give at least 30 days prior  
4 public notice. This notice, by publication at least three times in one  
5 or more newspapers in general circulation in the state, shall consist of

6 (1) a general description of the proposed project for  
7 which the agency is seeking professional services; and

8 (2) the procedure by which a person interested in the  
9 professional services contract may apply to the agency for consideration  
10 for the contract.

11 (c) A solicitation of services need not be extended if

12 (1) there is a single source of the expertise or knowledge  
13 required or if one person or firm can clearly perform the required tasks  
14 more satisfactorily because of the person's or firm's prior work;  
15 however, this exemption from a solicitation of services applies only  
16 when the head of the state agency has submitted a written request to  
17 the commissioner which details the reasons for the exemption and the  
18 commissioner or his designee has authorized the state agency to enter  
19 contract negotiations with the single source;

20 (2) the services required are professional services which  
21 may, by law or regulation, be performed only by a person licensed to  
22 perform the service;

23 (3) the commissioner determines that public necessity will  
24 not permit delay incident to preparation of formal solicitations and  
25 evaluation of responses; or

26 (4) the service is to be provided by an agency or department  
27 of the state government.

28 (d) Unless the contract is for services exempt under AS 36.98.010  
29 a contract must be submitted to the commissioner for review and  
30 approval and, if approved, is effective from the date of such approval.  
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1           Sec. 36.98.040. AWARD OF CONTRACT. If a contract is made by a board  
2 or commission, execution of the contract on behalf of the board or  
3 commission must be authorized by a majority vote of the full membership  
4 of the board or commission. The contract must be executed by the  
5 provider of the service and the project director, be approved by the  
6 commissioner or deputy commissioner of the contracting agency, the  
7 commissioner or his designee, and be approved as to form by the attorney  
8 general.

9           Sec. 36.98.050. CONTRACT ADMINISTRATION. (a) When a state agency  
10 has entered into a professional services contract, the agency is  
11 responsible for the diligent administration and monitoring of the  
12 performance of the provisions of the contract.

13           (b) When a professional services contract has been completed, the  
14 state agency shall evaluate the performance of the contractor under  
15 the contract and shall report on and evaluate the use of the final  
16 product of the professional services contract. A copy of the report  
17 and evaluations prepared under this subsection shall be transmitted  
18 to the commissioner, and shall be retained by the commissioner.

19           Sec. 36.98.060. FILING. A copy of each contract must be filed with  
20 the contracting agency, and is open for public inspection. The request  
21 for proposals and each response submitted must be attached to the  
22 filed copy unless the contract is one in which a request for proposals  
23 is not required.

24           Sec. 36.98.070. CONTRACT PROCEDURES. The commissioner shall, by  
25 regulation adopted in accordance with the Administrative Procedure Act  
26 (AS 44.62), establish the manner and form by which state professional  
27 services contracts shall be prepared and processed. —

28           Sec. 36.98.080. DEFINITIONS. In this chapter

29                   (1) "commissioner" means the commissioner of administration;  
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1 (2) "professional services contract" means a contract for  
2 professional, technical, artistic, or consultant's services which are  
3 predominantly intellectual in character and which

4 (A) include analysis, evaluation, prediction, planning  
5 or recommendation; and

6 (B) result in the production of a report or the  
7 completion of a task; the term does not include skilled tradesmen such  
8 as carpenters, electricians, and plumbers.

9 (3) "public necessity" means an [urgent] public need which  
10 could not have been reasonably anticipated or foreseen; the term also  
11 includes emergency situations when work is necessary to protect life or  
12 property;

13 (4) "state agency" means a department, institution, board,  
14 commission, division, or other administrative unit of the executive branch  
15 of state government; the term does not include the University of Alaska.

16 Sec. 36.98.090. PENALTY. An appointing authority may discipline,  
17 reprimand, put on probation, demote, suspend or discharge a state  
18 employee found to have violated a provision of this chapter.

19 \*Section 2. AS 39.25.160 is amended by adding a new subsection to read:

20 (i) A person may not enter into a professional services contract  
21 on behalf of a state agency in violation of the provisions of AS 36.98.  
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IN THE HOUSE

BY STATE AFFAIRS  
COMMITTEE BY REQUEST

CS for HOUSE BILL 546

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to state contracts for professional services and establishing a penalty for violation of provisions of law relating to professional service contracts; and providing for an effective date."

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

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Sec. 36.98.010. APPLICATION. This chapter applies to contracts for professional services to be provided to a state agency unless

(1) the total amount of a contract or contracts awarded to a person in a 12-month period does not exceed [\$5,000;] 10,000

(2) the contract is an employment contract for services to be performed under direct supervision regardless of the existence of an employer-employee relationship and a written justification signed by the person responsible for awarding the contract is filed with the commissioner;

(3) the contract is for construction, repair, or maintenance of a structure and does not exceed \$5,000; or

(4) the contract is awarded based on competitive bids obtained under the competitive bid procedure provided in AS 37.05.230.

Sec. 36.98.020. PROFESSIONAL SERVICES CONTRACTORS REGISTER. (a) A person who desires to provide professional services to a state agency shall submit to the commissioner a statement of qualifications and performance data, and any other information which the commissioner, by regulation, may require.

1 (b) The commissioner may at any time require the person to revise  
2 the statement of qualifications and performance data, or any other  
3 information, submitted by the person if the commissioner believes  
4 that the credentials or record of experience of the person have  
5 materially changed since the last filing by the person.

6 X Sec. 36.98.030. SOLICITATION OF SERVICES. (a) When a state  
7 agency proposes to enter into a contract for professional services,  
8 the agency shall give public notice ~~of~~ the professional services  
9 contract. At least 30 days before the date on which the agency expects  
10 to enter into the contract for professional services it shall give  
11 notice by publication at least three times in one or more newspapers  
12 in general circulation in the state of

13 (1) a general description of the proposed project for which  
14 the agency is seeking professional services; and

15 (2) the procedure by which a person interested in the pro-  
16 fessional services contract may apply to the agency for consideration  
17 for the contract.

18 (b) In addition to complying with the publication requirements of  
19 (a) of this section, when a state agency proposes to enter into a  
20 contract for professional services it shall

21 (1) review the register of professional services contractors  
22 maintained by the commissioner under AS 36.98.020; and

23 (2) provide a request for proposals for the proposed pro-  
24 fessional services contract to each prospective contractor which, after  
25 review of the register of professional services contractors under (1)  
26 of this subsection, the agency finds is qualified for consideration for  
27 the contract.

28 X (c) A formal written request for proposals must be extended to a  
29 sufficient number of providers of the required services to assure that  
30 public interest in competition is adequately served. Proposals from  
31 at least six firms shall be solicited for contracts in excess of  
32 \$100,000 if the expertise required is widely available. Proposals

1 X from at least three firms shall be solicited for contracts of less than  
2 \$100,000 if the expertise required is widely available.

3 X (d) A request for proposals need not be extended if

4 (1) there is a single source of the expertise or knowledge  
5 required or if one person or firm can clearly perform the required  
6 tasks more satisfactorily because of the person's or firm's prior  
7 work; however, this exemption from a request for proposals applies  
8 only when the head of the state agency has submitted a written request  
9 to the commissioner which details the reasons for the exemption and the  
10 commissioner or his designee has authorized the state agency to enter  
11 contract negotiations with the single source;

12 (2) the services required are professional services which  
13 may, by law or regulation, be performed only by a person licensed to  
14 perform the service;

15 (3) the commissioner determines that public necessity will  
16 X not permit delay incident to preparation of formal solicitations and  
17 evaluation of responses; or ]

18 X (4) the service is to be provided by an agency or department  
19 of the state government.

*insert* — (c) A request for proposals should be designed to demonstrate that  
21 the proposed work represents a sound approach to an important public  
22 task. A request for proposals should be self-contained and written  
23 with care and thoroughness.

*shows 359 in memo.* (d) Unless the contract is for services exempt under AS 36.98.010  
24 a contract must be submitted to the commissioner for review and  
25 approval and, if approved, is effective from the date of such approval.

*deleted* Sec. 36.98.040. [ AWARD OF CONTRACT. (a) If a contract is made by  
27 a board or commission, execution of the contract on behalf of the  
28 board or commission must be authorized by a majority vote of the full  
29 membership of the board or commission. The contract must be executed  
30 by the provider of the service and the project director, be approved  
31  
32 *this feeling and add new*

1 by the commissioner or deputy commissioner of the contracting agency,  
2 the commissioner or his designee, and be approved as to form by the  
3 attorney general.

4 (b) A contract awarded under this section shall contain the amount  
5 of the contract stated on its first page.]

6 Sec. 36.98.050. CONTRACT ADMINISTRATION. (a) When a state agency  
7 has entered into a professional services contract, the agency is  
8 responsible for the diligent administration and monitoring of the  
9 performance of the provisions of the contract.

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11 state agency shall evaluate the performance of the contractor under the  
12 contract and shall report on and evaluate the use of the final product  
13 of the professional services contract. A copy of the report and  
14 evaluations prepared under this subsection shall be transmitted to  
15 the commissioner, and shall be retained by the commissioner for as  
16 long as he is required to maintain copies of completed contracts.

17 Sec. 36.98.060. FILING. A copy of each contract must be filed  
18 with the Department of Administration and the contracting agency, and  
19 is open for public inspection. The request for proposals and each  
20 response submitted must be attached to the filed copy unless the  
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\*Section 2. AS 39.25.160 is amended by adding a new subsection to read:

(i) A person may not enter into a professional services contract on behalf of a state agency in violation of the provisions of AS 36.98.

X \*Section 3. This Act takes effect July 1, 1982

# **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 has 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 1978 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 DCA 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 NOT 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 COMPLIANT 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	10,931,521.00	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	2,378,772.00	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	2,534,938.00	172	15,903,736.00	142	13,234,898.00	30	2,668,833.00	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	877,411.00	240	16,568,332.00	206	14,733,421.00	34	1,834,911.00	14%
FISH AND GAME	43	819,891.00*	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%
<b>TOTAL</b>	<b>1030</b>	<b>86,019,673.00</b>	<b>51</b>	<b>5,228,771.00</b>	<b>1000</b>	<b>79,351,796.00</b>	<b>754</b>	<b>56,691,218.00</b>	<b>246</b>	<b>22,660,578.00</b>	<b>24% average</b>

\*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. A 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 audit 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 "over-ramidding" 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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OFFICE OF THE OMBUDSMAN  
STATE OF ALASKA

SPECIAL REPORT 81-3

PROPER USE OF  
PROFESSIONAL SERVICES CONTRACTS

MARCH 27, 1981

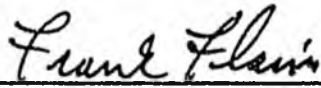
FRANK FLAVIN  
OMBUDSMAN

OFFICE OF THE OMBUDSMAN  
STATE OF ALASKA

SPECIAL REPORT 81-3

PROPER USE OF  
PROFESSIONAL SERVICES CONTRACTS

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FRANK FLAVIN  
OMBUDSMAN

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According to a recent report of the Comptroller General to the Congress, the "proper use" of consultants is viewed as a "normal, legitimate, and economical way to improve Government service and operations." In Alaska, consultant services are obtained through the use of Professional Services Contracts (PSC's); their "proper use," however, is a continuing controversy.

## I. BACKGROUND

In May, 1979, staff of the Attorney General's Office wrote to the Ombudsman:

AS 37.05.230(1)(c)(vi) specifically exempts professional services contracts from bidding requirements. . . . However, the Department of Administration, pursuant to AS 37.05.220(1), has established certain internal guidelines for the approval of such contracts. These guidelines are not regulations promulgated under the Administrative Procedures Act, and therefore do not have the force and effect of law. (emphasis added)

Although the Division of General Services and Supply is the purchasing agent for the state, in his response to a 1978 Legislative Audit, then Commissioner of Administration, B.B. Allen, explained that PSC's:

. . . are negotiated by the (various) agencies. The Department of Administration determines that prescribed guidelines and procedural safeguards are followed. This activity more closely resembles a pre-audit rather than a procurement function.

PSC guidelines, previously in the Purchasing Regulations, were moved to form a new chapter in the State Administrative Manual.

In August, 1980, the Pre-Audit Section, Division of Finance, ". . . assumed the responsibility of reviewing and processing proposed professional services contractual agreements." Subsequently, the PSC chapter in the State Administrative Manual was reorganized and minimally revised to include reference to a manual, Choosing and Using Contractors. This guidebook was developed by an Atlanta firm as the text for state-sponsored seminars conducted during 1980 on the "proper use" of consultants.

Additionally, in 1981, the Division of General Services and Supply compiled a computerized listing of potential contractors by professional service commodity code (area of specialization).

## II. PROBLEM

These incremental efforts to reform the system and educate those state employees who are subject to its controls are laudable and should continue, but are effective only if the guidelines are strictly observed.

In the Governor's Office response to a Legislative Audit on d-2 contracts, it was stated that, "Idealism oftentimes is tempered by reality." This argument, the substance of which has been used by various agencies when rejecting Ombudsman findings that proper procedures have been subverted or ignored, is that although agencies "endeavor to follow the ideal progression of events whenever possible," circumstances take precedence over guidelines.

Investigative findings in Ombudsman complaints reveal 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 accepted procedures and some have imposed further in-house restrictions, others attempt to outmaneuver Department of Administration oversight and provide only after-the-fact rationalization as to why their project 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 ensure compliance with procedural safeguards, then becomes manipulated into a post-audit rubber stamp. At best it is a paperwork review prior to issuance of a Request for Proposals, wholly dependent upon information submitted by the contracting agency.

### III. EXAMPLES

Following are examples of recent PSC complaints evidencing multiple problem areas, with selected Ombudsman findings and recommendations:

- A79-1133 et al (insurance coverage on fishing boats which were purchased with state loaned funds)

#### Summary:

Agency improperly and unfairly designated one company to work with a state program without fairly reviewing the current level of service available from other providers in the free market. This state endorsement created unfair competition for new customers.

#### Findings:

1. insufficient justification for sole source negotiations
2. no formal Request for Proposals (RFP) and insufficient proposal solicitation
3. no formal review of the few proposals submitted

Recommendations:

1. terminate favored status designation
2. take action to inform the public of state's withdrawal of the firm's special designation
3. develop guidelines to address future similar situations so that all businesses will have the opportunity to compete when a state endorsement will result in a considerable profit to the state designated entity.

- F80-0904 et al (land clearing)

Summary:

The process was in marked contrast to a 1959 Attorney General Opinion which states:

The purpose of the chapter (AS 37.05) 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 was 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.

Findings:

1. insufficient planning resulted in a rushed procedure deficient in virtually every PSC guideline area
2. work to be performed did not meet criteria of a professional service and therefore should have gone to bid
3. negotiations began prior to submission or approval of Authority to Negotiate (ATN)
4. no formal RFP and questions as to whether those verbally asked to submit proposals started with the same information or were given the same response time
5. no written record of some proposal costs and other estimates submitted in such inconsistent form as to preclude cost comparisons
6. no formal evaluation process

Recommendations:

1. clarify definition of and rules for professional services contracting
2. revise the Administrative Manual to reflect recommendation 1
3. plan future projects sufficiently far in advance so that proper contracting procedures can be followed, and then follow them

● A79-0429 (public participation in transportation planning process)

Summary:

Sole source professional services contracts can be authorized under certain circumstances. However, once a determination is reached to request proposals, contracting procedures change dramatically to ensure a fair and impartial selection. All proposers should start on equal footing so that the process is competitive rather than a bureaucratic ruse.

Findings:

1. prior sole source negotiations were fundamentally unfair to private sector providers subsequently allowed to compete
2. vague RFP
3. insufficient time between RFP and proposal submission deadline
4. no accessible and knowledgeable agency contact person to respond to proposers' questions
5. agency official involved in prior sole source negotiations drafted subsequent RFP and participated in finalizing evaluation criteria
6. agency officials involved in prior sole source negotiations evaluated proposals submitted
7. proposals were distributed to evaluators prior to finalization of evaluation criteria
8. DOT has statutory contracting authority; DOA provides advice and oversight only to the extent of a voluntary agreement

Recommendations:

1. Administrative Manual professional services contracting procedures be promulgated pursuant to the Administrative Procedures Act to afford them the force of law
2. DOTPF should not be a contracting empire unto itself. Statutorily DOTPF should be made subject to Department of Administration PSC regulations
3. Department of Administration should maintain a central specialized listing of professional services contractors by area of expertise which must be consulted before contract negotiations are initiated.

● J79-0013 (telecommunications--tape delay center)

Summary:

In a rush to obtain the services of a perceived expert, well established administrative contracting policies were abrogated and fundamental fairness violated.

Findings:

1. some services contracted for had previously been provided by a state employee
2. insufficient justification for sole source negotiations
3. no ATN, RFP, or evaluation system to compare other unsolicited proposals

Recommendations:

1. request proposals and impartially evaluate them when the current contract expires
2. delete from future contracts those services which can be performed by state employees

- J79-0515 (public school alcoholism education program)

Summary:

Substantial problems found with the technical aspects of the RFP and the evaluation method used by the proposal evaluation committee.

Findings:

1. evaluation system developed after contracting process began
2. budget information in proposals inadequate to the extent that cost of services to be provided and cost effectiveness of different approaches could not be compared
3. selected contractor's proposal did not meet all RFP requirements

Recommendations:

1. request standardized financial information in RFP
2. develop evaluation criteria prior to, and include in, RFP
3. RFP requirements should be explicit, and areas of latitude/allowable deviation specifically identified in the RFP
4. develop aggrieved bidder appeal procedures

- A80-0285 (evaluation of alcoholism education program)

Summary/Suggestion:

When basic parameters of an RFP are disregarded or altered by a proposer, the proposal should be found non-responsive. If the issues raised by the non-responsive proposal merit serious consideration, the appropriate avenues might include rejection of all proposals, plus reissuance of a new RFP or securing authority to proceed sole source.

Findings:

1. a proposal should have been rejected as non-responsive since it did not meet the time frame set out in the RFP and ATN
2. another proposal should have been rejected as non-responsive because of excessive costs

IV. RECOMMENDATIONS

These complaints, and numerous others, evidence areas of contracting problems. Ironically, most of these issues are adequately addressed in the current policy guidelines. Were the procedures and suggestions contained in the Administrative Manual and Choosing and Using Contractors consistently followed, the magnitude of administrative discretion, and therefore possible abuse, would be vastly lessened. Especially in these times of increased state spending, the "proper use" of PSC's is essential.

1. The following areas in the current guidelines should be clarified (or consistently interpreted) and/or emphasized:

- when to contract for services; when to have current employees do the work; when to hire project employees
- what constitutes a professional service as opposed to those services which would more appropriately be solicited through a bid process
- when are sole source negotiations, or any waivers from normal procedures, permissible
- why prior approval of Authority to Negotiate is essential
- why lists of prequalified vendors or interested potential contractors must be solicited, kept current, and mandatorily used
- why the RFP is as important a document as the contract itself, and why an accessible and responsive agency contact person to answer proposers' questions is required
- why adequate RFP response time must be allowed and why decisions to allow deviations from RFP requirements must be communicated to all proposers
- why early development of evaluation criteria, and their inclusion in the RFP, is important and how to structure and conduct a fair and impartial evaluation process
- why and how contractor performance must be adequately monitored
- why contract amendments, renewals and extensions must be carefully negotiated and considered to ensure that the competitive process which led to the contract award isn't now being subverted by substantive change or delays caused by the contractor
- why contractor performance must be evaluated for results so that agencies will have the benefit of past experience in letting future contracts

2. The current policy guidelines on PSC's contained in the State Administrative Manual and in Choosing and Using Contractors should, after revision, be adopted as regulations under the Administrative Procedure Act.

The APA, at AS 44.62.640(a) (2) defines "regulation" as:

every rule, regulation, order, or standard of general application or the amendment, supplement or revision of a rule, regulation, order or standard adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one which relates only to the internal management of a state agency; "regulation" does not include a form prescribed by a state agency or instructions relating to the use of the form, but this provision is not a limitation upon a requirement that a regulation be adopted under this chapter when one is needed to implement the law under which the form is issued; "regulation" includes "manuals," "policies," "instructions," "guides to enforcement," "interpretative bulletins," "interpretations," and the like, which have the effect of rules, orders, regulations or standards of general application, and this and similar phraseology shall not be used to avoid or circumvent this chapter; whether a regulation, regardless of name, is covered by this chapter depends in part on whether it affects the public or is used by the agency in dealing with the public

According to AS 37.05.020

The Department of Administration shall adopt rules and regulations for the performance of its powers or duties, the execution of its business, and its relations to and business with other state agencies. (emphasis added)

Following this statute is an excerpt from a 1959 Attorney General Opinion:

A policy of publishing regulations concerning bidding and letting of contracts in the Administrative Code is consistent with the Alaska Administrative Procedure Act, since these regulations are regulations in which an important portion of the public has a vital interest and since they are of great use to the portion of the public interested in dealing and contracting with the state.

An April 25, 1978, Legislative Audit of Professional Service Contracting in the Department of Administration (see Appendix A) recommended that the DOA "develop and implement regulations requiring departments to publicly request proposals for all professional service contracts." B.B. Allen, who was then DOA Commissioner, responded for the Department on August 24, 1978:

This department has prepared, to the degree we consider necessary, a separate section of the State Administrative Manual dealing with professional service contracts. Your recommendation is covered to the degree that we believe necessary in this addition to the manual.

Following this Audit, DOA prepared the July 1978 addition to the Administrative Manual on PSC's and submitted it to the Attorney General's Office for review. On November 14, 1978, Avrum Gross, then Attorney General, wrote to the DOA Commissioner:

. . . the material has a direct, regulatory effect on the rights of persons, firms, and corporations who seek to provide the state with professional services on a contractual basis. Because of that, the material, "affects the public or is used by the agency in dealing with the public" AS 44.62.640(a)(2). Accordingly, the material does not have the legal effect you apparently intend unless and until it is adopted under the Administrative Procedures Act. Coghill v. Boucher, 511 .2d 1297, 1302 (Alaska 1973).

The manual addition is an excellent effort to systematize the state's professional services contracts. It should be fairly simple to rewrite it in regulatory form. However, if you prefer and the Lieutenant Governor agrees, it could be codified by reference alone under AS 44.62.130. It seems to me that the important thing is that public notice be made, an opportunity to comment be given, and a regulation be adopted.

The advice of the Attorney General was apparently not heeded, and the PSC chapter of the Administrative Manual was adopted as guidelines only.

On April 12, 1979, a meeting was held in the Attorney General's Office to discuss adoption of the Administrative Manual section dealing with PSC's under the APA. In attendance were then Deputy Attorney General Wil Condon, then Deputy Commissioner of the Department of Administration Sue Greene, and William Ladwig of the Division of Finance. An excerpt from Mr. Ladwig's April 19, 1979, memo summarizing the meeting follows:

Concerning adopting the contract provisions of the Administrative Manual under the APA, it was stated by Mr. Condon that his purpose for suggesting this adoption was to (1) give the manual provisions the force of law when dealing with members of the public in that the person from the public sector would be put on notice that the person signing the contract on behalf of the State agency is in fact an authorized representative of the State who had the legal authority to commit the State to a contract and (2) that the manual provisions, once they were adopted and modified, could be used to discipline to the extent deemed necessary by the circumstances, those responsible officials who enter into contracts which are improper. The vehicle for disciplining certifying officers already exists; however, there is no provision, short of termination, for reaching the "man behind the scenes."

Based upon the representation by Mr. Condon concerning this first area it was the consensus of the group that with assistance from members of the Office of the Attorney General, the Administrative Manual provisions would be modified as to language and be adopted by reference under the Administrative Procedures Act.

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

3. Statutory language, similar to that which follows, should be adopted regarding professional services contracts.

Legislative Finding and Purpose. A formal written Request for Proposals soliciting an offer to perform the services required under a contract must be extended to a sufficient number of providers of the required services to assure that public interest in competition is adequately served. It is hereby declared to be the policy of the state to publicly announce requirements for consultant or professional and technical services, to encourage all qualified persons to put themselves in a position to be considered for a contract and to negotiate contracts for consultant or professional and technical services on the basis of demonstrated competence and qualifications for the types of services required and on the basis of the furnishing of such services at fair and reasonable fees. The provisions of this act apply to professional services contracting with state or federal dollars unless compliance with this Act would result in non-compliance with federal law or regulation governing the use of federal funds.

Public Notice. When consultant or professional and technical services are required to be contracted for, public notice shall be given by the state agency if the cost of the project is estimated by the state agency to be more than \$2,500. Such public notice shall be given at least thirty days in advance by publication three times in one or more daily newspapers of general circulation in this state and shall contain a general description of the proposed project and shall indicate the procedure by which interested persons may apply for consideration for the contract.

Professional Services Listings. (1) Any person desiring to provide consultant or professional and technical services to a state agency shall annually submit to the department a statement of qualifications and performance data and such other information as may be required by the department. The department may request such person to update such statement before the anniversary date to reflect changed conditions in the status of such person. (2) For each proposed project for which consultant or professional and technical services are required, the state agency for which the project is to be done shall evaluate current statements of qualifications and performance data on file with the department and shall send a Request for Proposals to all prospective contractors found qualified.

Duties of Commissioner. The commissioner, or his designee, shall perform all contract management and review functions for state contracts, excepting those functions presently performed by the contracting agency. In so doing, the commissioner shall, by regulation adopted under the Administrative Procedure Act, establish the manner and form in which all state contracts shall be prepared and processed and shall examine and approve or disapprove all state contracts as to content, purpose, propriety and budget ramifications. No agency shall execute a state contract without receiving the prior approval of the commissioner. All agencies shall afford full cooperation to the commissioner in the management and review of state contracts.

Duties of Contracting Agency. Before an agency may seek approval of a consultant or professional and technical services contract valued in excess of \$2,500, it shall certify to the commissioner that:

- (1) no state employee is competent or available to perform the services called for by the contract;
- (2) the normal competitive bidding mechanisms will not provide for adequate performance of the services;
- (3) the services are not available as a product of a prior consultant or professional and technical services contract, and the contractor has certified that the product of his services will be original in character;
- (4) required efforts were made to publicize the availability of the contract;
- (5) the agency has received, reviewed and accepted a detailed work plan from the contractor for performance under the contract; and
- (6) the agency has developed, and fully intends to implement, a written plan providing for (a) the assignment of specific agency personnel to a monitoring and liaison function, (b) the periodic review of interim reports or other indicia of part performance and (c) the ultimate utilization of the final product of the services.

Procedure for consultant and professional and technical services contracts. Before approving a proposed state contract for consultant or professional and technical services the commissioner shall have determined at a minimum that:

- (1) all provisions of the preceding section have been verified or complied with;
- (2) the work to be performed under the contract is necessary to the agency's achievement of its statutory responsibilities, and that there is statutory authority to enter into the contract;
- (3) the contract will not establish an employer/employee relationship between the state or the agency and any persons performing under the contract;
- (4) no current state employees will engage in the performance of the contract;
- (5) no state agency has previously performed or contracted for the performance of tasks which would be substantially duplicated under the proposed contract;
- (6) the contracting agency has specified a satisfactory method of evaluating and utilizing the results of the work to be performed.

Contract Terms. A consultant or technical and professional services contract shall by its terms permit the agency to unilaterally terminate the contract prior to completion, upon payment of just compensation, if the agency determines that further performance under the contract would not serve agency purposes or is not in the state's best interest. Each professional services contract shall contain a termination date.

Contract Administration. Upon entering into a state contract, an agency shall bear full responsibility for the diligent administration and monitoring of the contract. The commissioner may require an agency to report to him at any time on the status of any outstanding state contract to which the agency is a party. After completion of performance under a consultant or professional and technical services contract, the agency shall evaluate the performance under the contract and the utility of the final product. This evaluation shall be delivered to the commissioner who shall retain all such evaluations for future reference.

Rulemaking Authority. The commissioner shall adopt and enforce necessary regulations regarding the management and review of state professional service contracts. Regulations adopted pursuant to this section are subject to the Administrative Procedure Act (AS 44.62).

Validity of State Contracts. No state contracts shall be valid, nor shall the state be bound by the contract until it has first been executed by the head of the agency which is a party to the contract and has been approved in writing by the Commissioner, or his designee:

Liability. The following classes of people should be held accountable with regard to PSC violations specified. This could be accomplished through civil or criminal penalty provisions in this bill, through specific language to be included in ethics legislation, or through the criminal code.

(1) Any person, other than a bona fide employee working solely for a person providing consultant or professional and technical services, who offers, agrees, or contracts to solicit or secure for any other person state agency contracts for consultant or professional and technical services and who, in so doing, receives any fee, commission, gift, or other consideration contingent upon or resulting from the making of the contract.

(2) Any person providing consultant or professional and technical services who offers to pay or does pay any fee, commission, gift, or other consideration contingent upon or resulting from the making of a contract for consultant or professional and technical services with a state agency;

(3) Any state agency official or employee who solicits or secures or offers to solicit or secure a contract for consultant or professional and technical services with a state agency and who is paid any fee, commission, gift, or other consideration contingent upon the making of such contract;

(4) Any state employee who violates this statute or regulations promulgated under it, is subject to suspension or dismissal.

Definitions.

(1) Consultant or professional and technical services means services which are predominantly intellectual in character, which include analysis, evaluation, prediction, planning, or recommendation and which result in the production of a report or the completion of a task.

- (2) Department means Department of Administration.
- (3) Commissioner means Commissioner of the Department of Administration or his designee.
- (4) Agency means a department, office, institution, corporation, authority, organization, commission, committee, council or board in the executive legislative or judicial branches of the state government, and a department, office, institution, corporation, authority, organization, commission, committee, council or board of the state government independent of the executive legislative and judicial party, including the University of Alaska.

4. The Department of Transportation and Public Facilities should be subject to the same statutory and regulatory requirements regarding professional services contracts as other state agencies.

According to a March 23, 1979, Attorney General opinion (see Appendix B)

. . . it is clear that DOT/PF has statutory authority to enter into personal services contracts. It is equally clear that the Department of Administration does not have any statutory authority to override a decision by the Commissioner of the Department of Transportation to enter into a particular contract. This is not to say that the Department of Administration cannot, in an advisory capacity, make known its thoughts concerning the advisability of entering into a certain contract. It must be remembered, however, that in such a case the Department of Administration's opinion is in the nature of advice and that the only situation when the Department of Administration has the authority to "veto" a contractual agreement proposed by the DOT/PF is in the case where the proposed contractor is a state employee. And the source of this rests on the agreement referred to above between the Department of Administration and the Department of Transportation and Public Facilities.

The above-referenced agreement was proposed in November, 1977, by then DOT Deputy Commissioner Richard Holden, and agreed to that same month by then Commissioner B.B. Allen. It was agreed that:

1. Requests for proposals for professional services for the Department of Transportation and Public Facilities will be advertised.
2. Recommendations to your commissioner (DOT) will follow either Departmental or superseding federal procedure.
3. Following commissioner's approval, an Authority to Enter Contract Negotiations form will be submitted to the Department of Administration, Division of Finance. This form will list three firms when the proposed contract will exceed \$20,000.

4. Following submission of the Authority form, Department of Transportation and Public Facilities will proceed to negotiate the contract with the successful proposer. Contracts will contain a clause which declares the contract void should our Division of Finance find that by Internal Revenue Service definition, the contractor is, in fact, a State employee.
5. Division of Finance will return the Authority form after analysis. Should our analysis reveal an Internal Revenue Service violation, the contract will be voided or negotiations terminated.

It should be noted that DOT does have a policy "to promulgate standard procedures for selection of consultants for Department of Transportation and Public Facilities' negotiated agreements for architectural and engineering design, survey and related services." This P & P however, does not cover all the subject areas, nor address in detail the procedural safeguards presently contained in the Administrative Manual.

Apart from the sheer numbers of PSC's awarded by DOT, and the AG's opinion that this department has statutory authority to independently enter such contracts, there appears to be no valid reason why DOT should be exempt from requirements imposed on all other state agencies. Members of the public wishing to contract with the state should be able to reference one set of contracting regulatory procedures which are applicable to all agencies.

DOT's contracting authority as contained in:

AS 44.42.020(a)(6) and (b)(1),  
AS 44.43.030,  
AS 44.44.030,  
AS 19.05.040(10), and  
AS 35.05.040(7) and (10)

should be amended so as to subject the DOT to the same statutory and regulatory provisions as apply to other state agencies.

APPENDIX A

DIVISION OF LEGISLATIVE AUDIT

A REVIEW OF  
PROFESSIONAL SERVICE CONTRACTING

A SPECIAL REVIEW OF  
PROFESSIONAL SERVICE CONTRACTING  
DEPARTMENT OF ADMINISTRATION

April 25, 1978

Commissioner of Administration  
Deputy Commissioner of Administration

B. B. Allen  
Robert S. Gates

# STATE OF ALASKA

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION  
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION  
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

April 25, 1978

Members of the  
Legislative Budget and Audit Committee:

In accordance with your request and the provisions of Title  
24 of the Alaska Statutes, the attached report is submitted  
for your review:

A SPECIAL REVIEW OF  
PROFESSIONAL SERVICE CONTRACTING  
DEPARTMENT OF ADMINISTRATION

April 25, 1978



Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

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PURPOSE OF THE REVIEW

In accordance with a special request of the Legislative Budget and Audit Committee and the provisions of Title 24 of the Alaska Statutes, this audit was conducted to review professional service contracting procedures currently in use throughout the State.

## ORGANIZATION AND FUNCTION

The purpose of Article 4, Uniform Purchasing, of the Fiscal Procedures Act is to protect the State from uneconomic contracts let because of failure to request competitive bids and to insure that contractors would be insured a certain amount of "fair play" in dealing with the State and in competing with one another for State contracts.

However, legislation enacted in 1957, AS 37.05.230(1)(C)(iv), exempts professional services from competitive bidding. To provide uniform purchasing procedures with respect to professional services, the Department of Administration adopted chapter five of the State Purchasing Regulations, professional service contracts. This chapter defines a professional service as non-biddable duties or accomplishments that require personal knowledge and training to perform.

The Department of Administration's Division of Finance is currently responsible for the review and approval of professional service contracts. The Purchasing Regulations require all contracts negotiated by departments in excess of \$300 must be approved by the Division prior to execution. For contracts in excess of \$2,000, departments must have the Division's approval prior to commencing negotiations.

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The Department of Administration should develop and implement regulations requiring departments to publicly request proposals for all professional service contracts.

The purpose of Article 4, Uniform Purchasing, of the Fiscal Procedures Act is, in part, to insure contractors a certain amount of "fair play" in dealing with the State and in competing with one another for State contracts.

Legislation enacted in 1957, AS 37.05.230(1)(C)(iv), exempted professional services from competitive bidding. In 1957, the majority of professional services were not competitive and probably, in some cases, difficult to obtain. Since then, professional services have traditionally been excluded from any type of public competition in spite of their growth and competitiveness now in Alaska.

More recently, several departments have been leaning towards competition in awarding certain professional service contracts. The Department of Community and Regional Affairs recently advertised for financial compliance auditing of CETA subgrantees, a professional service. Five certified public accounting firms responded with costs ranging from \$24,484 to \$91,600. Although price should not be the only consideration in the evaluation of professional service proposals, the above example does show a benefit the State received from public competition.

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.

### Recommendation No. 2

The responsibility for the maintenance of a professional service request for proposal system should be placed within the Division of General Services and Supply.

Implementation of Recommendation No. 1, requiring a request for proposal (RFP) system for professional services, will change and/or add new responsibilities to the Department of Administration. These responsibilities would best be performed within General Services and Supply.

This Division, on behalf of the Department of Administration, is the purchasing agent for the State in other aspects of State buying. There is often a direct relation between proposed professional service contracts and other purchasing practices of the State. Having the necessary purchasing knowledge and expertise, General Services and Supply would best be able to evaluate and approve professional service RFP's. On the other hand, when the requested service does not meet the established criteria of a professional service, the Division would best be able to recommend other purchasing alternatives they feel would properly meet departments' needs in accordance with the State's Purchasing Regulations.

In addition, since the Division presently provides competitive bidding services for the State, the mechanism already exists to absorb the new responsibilities of professional service RFP's with a minimal amount of expansion. Once the Department has developed and implemented a workable system, one position within General Services and Supply should be adequate to properly monitor the RFP activity.

## AUDITOR'S COMMENTS

Initial implementation of these recommendations should include:

1. prequalification of vendors in professional fields commonly providing services for the State;
2. establishment of professional service vendor lists;
3. public notice of the State's RFP policy, requesting any interested parties to contact General Services and Supply for inclusion on vendor listings;
4. complete revision of chapter five, professional services, of the State Purchasing Regulations; and
5. notice to departments that RFP waivers will not be granted when poor planning is apparent, thereby requiring departments to better anticipate and properly plan their professional service needs.

Provisions of the new regulations should give the Division of General Services and Supply the authority to approve or deny:

1. RFP's prior to advertisement;
2. departments' evaluation of submitted proposals and selection of contractor; and
3. final contracts prior to execution.

The following are items we feel should be considered in the development of a professional service RFP system.

### Request for Proposals

1. Specifications should include the method of award. All criteria to be used in the award process should be listed so that those submitting proposals will know the areas in which they will be judged. Weighted values should be included in the specifications.
2. The RFP should clearly state that the contract will not be awarded solely on the basis of cost.
3. RFP's should be advertised within a reasonable period of time so that the State can receive the best possible proposals.
4. Proposals should be sent directly to General Services and Supply for formal opening.

### Evaluation of Proposals

1. Vendor proposals should be given to the requesting agency for evaluation.
2. No contract for professional services should be awarded solely on the basis of price. Evaluation should include qualifications, past performance, etc.
3. The notice to the successful vendor should specify that negotiation of specific terms of the contract may be required and that failure to agree to negotiated terms is cause for nonacceptance of the proposal.
4. If a proposal is selected that is other than the lowest dollar amount submitted, notice should be sent to vendors offering a lower dollar price giving the reasons for nonselection.

### Final Contracts

1. Contracts should specify a person or position within the agency as the project director who is responsible for the proper administration of the project.
2. Following completion of the project, a contractor evaluation should be prepared by the agency and submitted to General Services and Supply.

### Waivers

1. Approval or denial authority should rest solely with the Commissioner of Administration.
2. Waivers should not be granted when poor agency planning is apparent.

# STATE OF ALASKA

## DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH C - JUNEAU 99811

August 24, 1978

Gerald L. Wilkerson  
Legislative Auditor  
Division of Legislative Audit  
Pouch W  
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Thank you for giving me the opportunity to respond to your audit findings on professional service contracts.

You have recommended that the Department develop and implement regulations requiring departments to publicly request proposals for all professional service contracts. This department has prepared, to the degree we consider necessary, a separate section of the State Administrative Manual dealing with professional service contracts. Your recommendation is covered to the degree that we believe necessary in this addition to the manual.

In drafting the Fiscal Procedures Act, I believe that legislative intent of "fair play" was to assure all vendors of a homogeneous product an equal opportunity to engage in business with the State. This belief appears logical in light of the fact that the legislature specifically excluded non-homogeneous products, professional services, from the area of competitive bidding since each professional service is unique unto the type of service and the vendor.

Your report cites an example of a state agency advertising via newspapers for professional services. What your example does not contain, in the figures given in an effort to demonstrate savings from competitive bidding, is the culmination of the contract which included amendments to increase the cost.

It is my belief that the current system and that to be implemented under the new manual additions, parallels competitive bidding procedures. The request for proposal being the counterpart of the newspaper advertisement or invitation to bid, the review of submitted proposals being the counterpart of the bid opening, etc. In addition, to mandate competitive bidding as such may also conflict with the canons of ethics of certain professional groups which prohibit open price bidding in the solicitation of business.

Gerald L. Wilkerson  
Page two

August 24, 1978

In your second recommendation you suggest that the contract review become a function of the Division of General Services and Supply. The area of professional service is specialized and regardless of where the review function is performed the ultimate authority and responsibility rests with the Commissioner of Administration. The review function will remain in the Division of Finance.

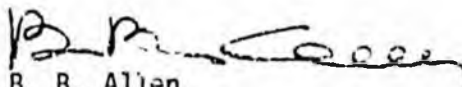
If professional contracts were negotiated and initiated by my department (such as purchase orders and leases) the function would be in the Division of General Services and Supply. Professional contracts, however, are negotiated by the agencies. The Department of Administration determines that prescribed guidelines and procedural safeguards are followed. This activity more closely resembles a pre-audit rather than a procurement function.

Also contained in the audit report is a section entitled, "Auditors Comments". Most of the points raised by the auditor are addressed in the new addition to the administrative manual. Comments that are not addressed in the manual are judgemental areas in which I feel you are requesting that my department make a value judgement on decisions and actions taken by other agencies thereby usurping their expertise in their appropriate areas.

Had the auditor assigned made an effort, other than the entrance conference, to talk to members of my staff to determine how contracts were being handled, areas of weakness in contract procedure and steps being taken to correct the deficiencies, most of his comments would not have had to have been made.

I believe the foregoing have been responsive to the issues raised by Mr. Welker. If I can be of additional assistance please let me know.

Sincerely,

  
B. B. Alien  
Commissioner

APPENDIX B

ATTORNEY GENERAL OPINION

DEPARTMENT OF TRANSPORTATION  
CONTRACTING AUTHORITY

# MEMORANDUM

TO: [ Richard Holden  
Deputy Commissioner  
Planning and Research  
DOT/PF

DATE: March 23, 1979

FILE NO: (Our) J-66-470-79

TELEPHONE NO:

FROM: Jack McGee *JGM*  
Assistant Attorney General  
Transportation Section  
Department of Law

SUBJECT: Dispute Between Department  
of Administration and the  
Department of Transportation  
Concerning the Latter's  
Contracting Authority

The general question you pose in your memorandum dated January 22, 1979, is this: Does the DOA have legal authority to overrule a decision made by the Commissioner of the DOT/PF to enter into a professional services contract.

The answer to this question must begin with an analysis of the DOT's contracting authority. The DOT/PF was created by Executive Order No. 39 (1977) effective July 14, 1977. Section 2 of the Order specifically created AS 44.42.010 and AS 44.42.020.<sup>1</sup> AS 44.42.10 reads as follows:

Sec. 44.42.010 Commissioner of transportation and public facilities. The principal executive officer of the Department of Transportation and Public Facilities is the commissioner of transportation and public facilities.

AS 44.42.020 sets out the powers and duties of the DOT/PF. Relevant sections of AS 44.42.020 are as follows:

Sec. 44.42.020. Powers and duties. (a) The department shall

(1) plan, design, construct and maintain all state modes of transportation and transportation facilities, communication facilities, and all docks, floats, breakwaters, buildings and similar facilities;

(2) study existing transportation modes and facilities and communication facilities in the state to determine how they might be improved or whether they should continue to be maintained;

(3) study alternative means of improving transportation and communication in the state with regard to the

1. Under Article III § 23 of the Alaska Constitution and AS 24.30.130(b), executive orders can create statutory law. A copy of Executive Order No. 39 is attached and marked as Appendix #1.

economic costs of each alternative and its environmental and social effects;

(4) develop a comprehensive, long-range intermodal transportation plan for the state;

(5) study alternatives to existing modes of transportation in urban areas and develop plans to improve urban transportation;

(6) cooperate and coordinate with and enter into agreements with federal, state and local government agencies and private organizations and persons in exercising its powers and duties; . . .

(8) study alternative means of transportation in the state, considering the economic, social, and environmental impacts of each alternative; . . .

(b) The department may

(1) engage in experimental projects relating to available or future modes of transportation and any means of improving existing transportation facilities and service and communication;<sup>2</sup>

Since (a)(6) of AS 44.42.020 above gives the DOT the authority to enter into agreements with "private organizations and persons in exercising its powers and duties", AS 44.42.020 (a)(b) is the primary statutory source of the contracting authority of the DOT/PF.

There are, however, additional sources for DOT's authority to enter into contracts. By section 9(a) of Executive Order No. 39(19,7) the DOT/PF was vested with "the duties and powers formerly held by the Department of Public Works relating to planning, construction, maintenance and operation of transportation facilities . . ." Section 9(b) of Executive Order No. 39 vested in the DOT/PF all the duties and powers "formerly held by the Department of Highways relating to planning, construction, maintenance and operation of state transportation facilities, . . ." Finally, § 11 of Executive Order No. 39 provides that all references in the Alaska Statutes to the Department of Highways or to the Department of Public Works shall be read as references to the DOT/PF. § 11 reads as follows:

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2. The definition of "transportation" and "transportation mode", pursuant to AS 44.42.900(3) "includes, but is not limited to, the following means of conveyance or travel, including their related or auxiliary structures, facilities or services: air, rail, water, highway and pipeline."

Sec. 11. All other references in the Alaska Statutes to the Department of Highways or the commissioner of highways, or to the Department of Public Works or the commissioner of public works, not expressly amended by or referred to in this Order shall be read as the Department of Transportation and Public Facilities or the commissioner of transportation and public facilities, respectively, in order to implement this Order.

The contracting authority of the old Department of Public Works and Department of Highways were found in AS 44.43.030 and AS 44.44.030 respectively.<sup>3</sup> They provided as follows:

Sec. 44.43.030. Contracts for design and engineering services. If it is not feasible for the staff of the Department of Public Works to perform design and engineering services or surveys, the commissioner may contract with a private engineering firm for design and engineering services or surveys on a negotiated basis after reasonable public notice is given. The prices submitted or negotiated shall be available for public inspection upon request.

Sec. 44.44.030. Contracts for design and engineering services. If it is not feasible for the staff of the Department of Highways to perform design and engineering services or surveys, the commissioner may contract with a private engineering firm for design and engineering services or surveys on a negotiated basis after reasonable public notice is given. The prices submitted or negotiated shall be available for public inspection upon request.

Since 9(a) and 9(b) of Executive Order No. 39 gave to the DOT all powers formerly held by the Department of Public Works and Department of Highways, it follows that the DOT now possesses the same authority to enter into contracts that was formerly held by these two agencies pursuant to AS 44.43.030 and AS 44.44.030.

Pertinent sections of the Alaska Statutes relating to contracting authority and affected by § 11 of Executive Order No. 39 are AS 19.05.040(10) and AS 35.05.040(7) and (10). AS 19.05.040 has to do with the power of the old Department of Highways, while AS 35.05.040 sets out the powers of the old Department of Public Works. These sections read as follows:

Sec. 19.05.040. Powers of department. The department may . . .

3. AS 44.43 and AS 44.44 were repealed by § 13 of Executive Order No. 39.

(10) enter into contracts or agreements relating to highways with the federal government, municipalities, a political subdivision or with a foreign government, if the contract is approved by the federal government.

Sec. 35.05.040. Powers of department. The department may . . .

(7) enter into contracts or agreements relating to public works with the federal government and political subdivisions, and also enter into contracts with a foreign government if approved by the federal government;

(10) procure directly materials, labor and contractual services for planning, designing and constructing public facilities of the state.

Since § 11 of Executive Order No. 39 provides that all references in the Alaska Statutes to the Department of Highways and Department of Public Works are now to be read as the DOT/PF, it is clear that the DOT is vested with the contracting authority set out in AS 19.05.040(10) and AS 35.05.040(10) and AS 35.03.040(7) and (10).

So much for the analysis of the first part of your question. Now, the second part of the question will be considered: Does the DOA have the authority to override a decision by the Commissioner of the DOT/PF to enter into a particular contract? With the exception of a proposed contract with a state employee, it appears that the DOA has no such authority.<sup>4</sup> The statutory duties of the DOA are set out in AS 44.21.020 and AS 37.05.220. AS 44.21.020 reads as follows:

Sec. 44.21.020. Duties of department. The Department of Administration shall

(1) (repealed by § 4 ch 97 SLA 1976.)

(2) make surveys and studies to improve administrative procedures, methods, and organization;

4. The authority of the DOA to "veto" a proposed contract with a state employee stems from the DOT's informal agreement with the DOA to submit the names of proposed contractors to the DOA for the purpose of establishing whether any contractor is a state employee. See Appendixes #2 and #3.

5. AS 44.21.160 sets out additional powers and duties of the DOA, but these have to do exclusively with the management of automatic data processing services.

- (3) keep general accounts;
- (4) approve vouchers and disburse funds for all purposes;
- (5) operate centralized purchasing and supply services, and necessary storerooms and warehouses;
- (6) allot space in state buildings to the various departments according to need and available space;
- (7) supervise telephone, mailing, messenger, duplicating, and similar services adaptable to centralized management;
- (8) administer the public employees' retirement system and teachers' retirement system;
- (9) administer a statewide personnel program, including central personnel services such as recruitment, examination, position classification, and pay administration;
- (10) administer the Alaska Pioneers' Homes;
- (11) administer and supervise a statewide automatic data processing program;
- (12) administer and maintain the recording system established under the laws of this state.

From the above, it is clear that AS 44.21.020 does not grant the DOA the authority to override a decision by the Commissioner of the DOT to enter into a particular contract.

The pertinent parts of AS 37.05.220 are as follows:

Sec. 37.05.220. Purchasing agent. The Department of Administration is the purchasing agent for the state. The department shall

- (1) purchase, rent, or otherwise provide for the furnishing of supplies, materials, equipment, or contractual services for all state agencies;
- (2) have power to authorize an agency to purchase directly certain specified supplies, materials, equipment, or contractual services under conditions and procedures prescribed in § 230 of this chapter;

Now it might be argued that a conflict exists between the statutes that grant contracting authority to the DOT and AS 37.05.220 (1) and (2). This argument, however, has little merit in light of the general rule that apparently conflicting statutes ought to be construed as, as far as is reasonably possible, to be in harmony with one another. See 82 C.J.S. Statutes, § 368 at 838, and Sands, Sutherland Statutory Construction, 4 ed, Vol. 2A, § 51.02, at 290. With this in mind, it should be noted that AS 37.05. 220 (1) says the DOA will "otherwise provide for the furnishing of supplies . . . or contractual services." The use of the word "otherwise" is instructive because its use indicates that if a state agency already has an independent statutory source of contracting authority, then the DOA ought not to be considered the contracting authority for such an agency. Similarly, AS 37.05.220(2) must be interpreted, not as a veto power, but as a power to authorize or delegate contracting authority (i.e. the power to enter into contracts) to state agencies, which possess no independent sources of authority to enter into contracts. Given this interpretation of (1) and (2), all other references to contracting services in AS 37.05.220 must be considered to be applicable only to those agencies who do not possess independent contracting authority.

If, however, one insists on maintaining that an irreconcilable conflict does exist between AS 37.05.220 and the statutes that grant contracting authority to the DOT, then a rule of law exists that resolves such a conflict. And that rule is this: If there is an irreconcilable conflict between two statutes, then the more recent statute controls since it is the later expression of the legislature. See Sands, Sutherland Statutory Construction, 4 ed., Vol. 2A, § 51.02 at 290 and 82 C.J.S., Statutes, § 368 at 838. If this rule is applied here, then since AS 35.05.040 (10), AS 44.44.030 and AS 44.42.020 were all enacted subsequent to AS 37.05.220 (1) and (2), it becomes clear that the statutes giving contracting authority to the DOT are controlling, and that AS 37.05.220 does not grant the DOA the authority to override a decision by the Commissioner of the DOT to enter into a particular contract.<sup>6</sup>

#### Conclusion:

Based on the above, it is clear that DOT/PF has statutory authority to enter into personal service contracts. It is equally clear that the DOA does not have any statutory authority to override a decision by the Commissioner of the

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6. AS 44.42.020 was enacted in 1977; AS 35.05.040(10) was enacted in 1975; and AS 44.44.030 was enacted in 1963. AS 37.05.220 was first enacted in 1955 and was later amended in 1960.

DOT to enter into a particular contract. This is not to say that the DOA cannot, in an advisory capacity, make known its thoughts concerning the advisability of entering into a certain contract. It must be remembered, however, that in such a case the DOA's opinion is in the nature of advice and is not binding on the DOT/PF. It must be concluded, therefore, that the only situation when the DOA has the authority to "veto" a contractual agreement proposed by the DOT/PF is in the case where the proposed contractor is a state employee. And the source of this authority, it must be noted, is not statutory but rests on the agreement referred to above between the DOA and the DOT/PF.

JM:clc:eb

Enclosures

The executive order submitted to the legislature on January 20, 1975, transferring the state museum from the office of the governor to the Department of Education was designated as Executive Order No. 34 on the interpretation that the number should follow the last executive order actually perfected. This executive order was incorporated in the Alaska Statutes as AS 14.57.

### EXECUTIVE ORDER NO. 37

Revisor's note (1976)

Executive Order No. 37, dated January 20, 1975, abolishing the Department of Economic Development and reassigning functions of that department, was submitted to the legislature on that date and withdrawn from legislative consideration by the governor on March 4, 1975. Essentially the same purposes were accomplished by ch. 207, SLA 1975 (HCS CSSB 225 [Finance]).

### EXECUTIVE ORDER NO. 38

Revisor's note (1976)

Executive Order No. 38, transferring the state archives from the Department of Administration to the Department of Education, was submitted to the legislature on January 12, 1976. That executive order was disapproved by 1976 House Special Committee Resolution No. 2.

### EXECUTIVE ORDER NO. 39

Under the authority of Article III, Section 23 of the Constitution of the State of Alaska, and in accordance with AS 24.30.130(b), I order the following:

Section 1. FINDINGS AND PURPOSE. As governor, I find that the diverse transportation needs of the state would best be served by the creation of a single department for the planning, study, development, management and operation of integrated, intermodal transportation systems. The purpose of this department is to evaluate, plan, design, construct, manage, operate and maintain all state transportation modes and systems, relying on analysis of the relative advantages of different modes and systems and considering their social, economic, and environmental consequences.

Secs. 2-7. Permanent laws. See Table of Disposition of Acts.

Uniform Rules  
Alaska State Legislature

Sec. 8. All litigation, hearings, investigations and other proceedings pending under a law amended or repealed by this Order, or in connection with functions transferred by this Order, continue in effect and may be continued and completed notwithstanding a transfer or amendment or repeal provided for in this Order. Certificates, orders, and regulations issued or adopted under authority of a law amended or repealed by this Order remain in effect for the term issued, until revoked, vacated, or otherwise modified under the provisions of this Order. All contracts, rights, liabilities, and obligations created by or under a law amended or repealed by this Order, and in effect on the effective date of this Order, remain in effect notwithstanding this Order's taking effect. Records, equipment, and other property of agencies of the state whose functions are transferred under this Order shall be transferred commensurate with the provisions of this Order.

Sec. 9. (a) The Department of Transportation and Public Facilities is vested with the duties and powers formerly held by the Department of Public Works relating to planning, construction, maintenance and operation of transportation facilities, including state ferries, airports and water and harbor facilities, and for design and construction of buildings and appurtenant structures, and specifically including all powers and duties formerly held by the Department of Public Works under AS 02, AS 30.05, AS 30.15, AS 35, AS 41.20 and AS 44.65.

(b) The Department of Transportation and Public Facilities is vested with the duties and powers formerly held by the Department of Highways relating to planning, construction, maintenance and operation of state transportation facilities including state highways, roads, bridges, traffic signs and signals, the supervision and maintenance of state automotive and mechanical equipment, the control of outdoor advertising visible from state highways and all other duties and powers of the Department of Highways, and specifically including powers and duties formerly held by the Department of Highways under AS 19, AS 28.01, AS 28.05, and AS 44.57.

Sec. 10. The commissioner of transportation and public facilities shall replace the commissioner of highways on the State Geographic Board, the Alaska Toll Bridge Authority, and all other boards and commissions.

Sec. 11. All other references in the Alaska Statutes to the Department of Highways or the commissioner of highways, or to the Department of Public Works or the commissioner of public works, not expressly amended by or referred to in this Order shall be read as the Department of Transportation and Public Facilities or the commissioner of transportation and public facilities, respectively, in order to implement this Order.

Sec. 12. During Fiscal Year 1978, all appropriation items made for that fiscal year and prior years for the Department of Highways and

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the Department of Public Works may, upon approval of the governor, be appropriately transferred to implement the purposes of this Order.

Sec. 13. Permanent law. See Table of Disposition of Acts.

Sec. 14. This Order takes effect July 1, 1977.

JAY S. HAMMOND  
*Governor*  
*State of Alaska*

Uniform Rules  
Alaska State Legislature

# MEMORANDUM

R. E. Allen, Commissioner  
Department of Administration

DATE November 3, 1977

FROM: Richard A. Holden  
Deputy Commissioner  
Department of Transportation  
and Public Facilities

SUBJECT: Negotiated Contracts

The Commissioner of the Department of Transportation and Public Facilities has statutory authority to contract for professional services.

AS 35.05.040 - "The department may (10) procure directly materials, labor and contractual services for planning, designing and constructing public facilities of the state."

The Commissioner is required to provide adequate public notice for entering into a contractual agreement.

AS 44.43.030 - "The Commissioner may contract with a private engineering firm for design and engineering services or surveys on a negotiated basis after reasonable public notice is given."

This requirement has been interpreted to mean a request for professional services must be advertised to insure that adequate notice is provided to interested parties. The department's selection procedure follows certain criteria. Projects using federal funds are required to follow F.H.W.A. or F.A.A. guidelines. Selection for projects using state funds follow an evaluation procedure which utilizes a point system applied to all proposals by a recommending committee with a minimum of three members. It is obviously impossible to remove all subjectivity from any selection procedure. However, the use of a point system tends to minimize personal prejudices. When dealing with state funded projects, the department currently requires the submission of a minimum of three names when the probable contract amount will exceed \$20,000.

The department's contract forms are developed in conjunction with the Department of Law.

The Department of Administration has a responsibility to insure that personal services contractors are not in fact employees within the definition of the Internal Revenue Service. You have also expressed concern that proposed work receive adequate exposure within the professions. We believe that OQB Department's procedures provide for such exposure.

In the light of the above, we would propose to modify the process delineated in your memo of September 29, 1977. We propose the following:

1. Requests for proposals for professional services for Department of Transportation and Public Facilities will be advertised.
2. Recommendations to the Commissioner will follow either Departmental or superceding Federal procedure.
3. Following Commissioner's approval, your Authority to Enter Contract Negotiations form will be submitted to the Department of Administration, Division of Finance. This form will list three firms when the proposed contract will exceed \$20,000.
4. Following submission of the Authority form, Department of Transportation and Public Facilities will proceed to negotiate the contract with the successful proposer. Contracts will contain a clause which declares the contract void should your Division of Finance find that by Internal Revenue Service definition, the contractor is, in fact, a State employee. Given the nature of our work, we are confident that the possibility of such a ruling is extremely remote.
5. Division of Finance will return the Authority form after analysis. Should your analysis reveal an Internal Revenue Service violation, the contract will be voided or negotiations terminated.

We feel that the above procedure will adequately discharge your statutory responsibility as well as that of this department.

RAH:ora

Richard A. Holden  
Deputy Commissione.  
Department of Transportation  
& Public Facilities

DATE: Nov 18, 1977

FILE NO.

TELEPHONE NO.

FROM: Commissioner B. B. Allen  
Department of Administration

SUBJECT: Negotiated Contracts

My staff and I have reviewed your November 3, 1977 memo on subject and find your recommendations acceptable.

Specifically:

1. Requests for proposals for professional services for Department of Transportation and Public Facilities will be advertised.

2. Recommendations to your Commissioner will follow either Departmental or superseding Federal procedure.

3. Following Commissioner's approval, an Authority to Enter Contract Negotiations form will be submitted to the Department of Administration, Division of Finance. This form will list three firms when the proposed contract will exceed \$20,000.

4. Following submission of the Authority form, Department of Transportation and Public Facilities will proceed to negotiate the contract with the successful proposer. Contracts will contain a clause which declares the contract void should our Division of Finance find that by Internal Revenue Service definition, the contractor is, in fact, a State employee.

5. Division of Finance will return the Authority form after analysis. Should our analysis reveal an Internal Revenue Service violation, the contract will be voided or negotiations terminated.

cc: Division of Finance  
Division of General Services  
& Supply

Division of Finance	
Post Card Office	
Administrative Services	
Accounting	
Construction	
Design	
General Services	
Information Systems	
Legal Services	
Planning & Development	
Public Works	
Records Management	
Security	
Telephone Services	
Training	
Transportation	
Utilities	

# State Administrative Manual

§ 8146 Rev Nov 17 80

Review Harry, etc of  
at Lila Dyer  
Chasey & Day  
Eubanks

" In addition to comply with other guidelines in this part of the manual, whenever an agency contemplates the negotiation of a contract in the probable amount of \$20,000 or more it must comply with the following

1. Preparation of a program review memorandum of funds have not been budgeted. Section 8128
2. Preparation of a formal request for proposal. Section 8142
3. Solicitation of proposals by newspaper advertising in addition to solicitation by other means.
4. Utilization of a review committee and a point system to evaluate proposals. Section 8144

Wm W  
Duf

... For most contracts in \$0 to \$20,000 and over some advertising is a requirement of the law in order to be the lowest bidder. A review committee of at least 3 members of an agency does not comply with the above requirements, it must explain its justification, and request concurrence of the Dept of Administration.

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

PART I

I. REQUEST

Bill/Resolution No. CS HB 546  
Title An Act Relating to State Contract for Professional Services  
Requested by House State Affairs Date May 19, 1981

II. FISCAL DETAIL

Agency Affected Department of Administration -  
Program Category Affected Centralized Administration  
BRU, Program, or Subprogram(s) Affected Accounting

(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		88.3	95.4	103	111.2	120
200 TRAVEL		1.0	1.1	1.2	1.3	1.4
300 CONTRACTUAL		288.4	52.6	56.8	61.4	66.3
400 COMMODITIES		2.0	2.2	2.3	2.5	2.7
500 EQUIPMENT		14.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		393.7	151.3	163.3	176.4	190.4

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND		393.7	151.3	163.3	176.4	190.4
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME		3	3	3	3	3
PART TIME						
TEMPORARY						

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

Contractual

Computer Program Development:

Register Development  
Evaluation System/Form/Tracting System  
Application Form  
On-line Cap \$160.0  
Printing of Labels 4.0  
Printing of Applications 1.0

(continued)

IV. DATE May 19, 1981 PREPARED BY George Elgee

AGENCY Administration  
PHONE 465-2250

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named) Rep. Miller

Office of the Governor Keith Specking

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

PART II

I. REQUEST

Bill/Resolution No. CS HB 546  
 Title An Act Relating to State Contracts for Professional Services  
 Requested by House State Affairs Date May 19, 1981

II. FISCAL DETAIL

Agency Affected All Agencies  
 Program Category Affected All  
 BRU, Program, or Subprogram(s) Affected All

(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		856.0	941.6	1,035.8	1,139.4	1,253.4
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		<b>856.0</b>	<b>941.6</b>	<b>1,035.8</b>	<b>1,139.4</b>	<b>1,253.4</b>

FUNDING (Thousands of Dollars)

GENERAL FUND		856.0	941.6	1,035.8	1,139.4	1,253.4
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Advertisement \$700,000  
 (\$50 per ad) x (3 ads) x (3 papers -- Juneau, Anchorage, Fairbanks) x 2000 contracts  
 Less (\$100,000 spent this year) + (Sole Source Contracts -- \$100,000)

Letter of Intent and Postage 56,000  
 18¢ x 100 x 2000 = \$36,000 postage  
 10¢ x 100 x 2000 = \$20,000 printing

RFP Printing and Mailing 100,000  
 EST based on multi-page RFP

\$856,000

IV. DATE May 19, 1981

PREPARED BY George Elgee  
 AGENCY Department of Administration  
 PHONE 465-2250

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named) Rep. Miller  
 Office of the Governor Keith Specking

Contractual

Procedures:

Training in procuring contracts and operating  
within new regulations  
Re-write of Existing Procedures  
Administration Code Drafts  
Administration Code Public Hearings \$100.0

Advertising:

Professional Listing 2.4

Services associated with required positions --  
phone, office space, computer terminal rental, etc. 11.0  
\$288.4

1	POSITION TITLE Clerk Typist III				RANGE/STEP 8B	BARG. UNIT. G	LOCATION Juneau	GOV	APPROV	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY		FORM 12 PAGE/LINE	LEG		
3	TYPE OF EXPENDITURE			AMOUNT		<b>JUSTIFICATION:</b> As sole administrative support to the Accountant III and Accounting Clerk III this position will be responsible for maintaining records central over all incoming correspondence.  A substantive knowledge of documents and clerical processes is required to perform these duties independently. Procedures and directions governing work are available in manuals which may require considerable interpretation or extensive search to locate applicable guidelines. Accuracy is required, since work is only occasionally checked, and errors may cause significant disruption in the work cycle and are costly and time consuming to correct. Independent operation of a magnetic tape selectric typewriter and/or regular and significant use of a composer system with responsibility for final proofing of content, format, and layout may be involved, especially in the preparation of reports of contractor's activity. Person-to-person contacts will involve the exchange, collection, or furnishing of non-routine and sensitive information requiring interpretation during the preparation of Regulation and Procedures for State agencies and the public.				
	1	2	3							
4	PERSONAL SERVICES:									
	SALARY	1,433/m.o.	17.196							
5	BENEFITS	.1579	2,715							
6	FICA	.0613	1,054							
7	HEALTH INS.	150 x 2	1,800							
8	TOTAL PERSONAL SERVICES	01	22.8							
9	TRAVEL	02								
10	CONTRACTUAL	03	4.0							
11	COMMODITIES	04	1.0							
12	EQUIPMENT	05	10.8							
13	OTHER									
14	TOTAL COST		38.6							
	CODE	FUNDING SOURCE								
15		FED RCPTS. 1002								
16		GF MATCH. 1003								
17	00	GEN. FUND 1004		38.6						
18		I-A RCPTS. 1005								
19		PGM RCPTS 1006								
20		OTHER								
21	CONTINUATION									
22	ADDITION			<b>FOR B&amp;M USE ONLY</b>						
4A KEY NUMBER				COLUMN NO.						

AGENCY Administration

PROGRAM Centralized Administrative Services

BRU \_\_\_\_\_

**13** REQUEST FOR NEW POSITION.

COMPONENT \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

REVISED DATE \_\_\_\_\_

**FY 82**

1	POSITION TITLE Accounting Clerk III				RANGE/STEP 10B	BARG. UNIT. G	LOCATION Juneau	GOV.	APPROV.	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY		FORM 12 PAGE/LINE	LEG.		
3	TYPE OF EXPENDITURE			AMOUNT		JUSTIFICATION: Under general supervision performs the highest level of clerical accounting maintenance duties involving responsibility for the processing and maintenance of a variety of financial and statistical documents, records, ledgers and procedures, for a specialized accounts maintenance function. This specialized function (Professional Services Contracts Tracking System) requires the incumbent to perform the following professional service contract related tasks:				
	1	2	3							
4	PERSONAL SERVICES:									
	SALARY	1,613/mo	19,356							
5	BENEFITS	.1579	3,056							
6	FICA	.0613	1,187							
7	HEALTH INS.		1,800							
8	TOTAL PERSONAL SERVICES	01	25.4							
9	TRAVEL	02								
10	CONTRACTUAL	03	3.0							
11	COMMODITIES	04	.5							
12	EQUIPMENT	05	1.8							
13	OTHER									
14	TOTAL COST		30.7							
	CODE	FUNDING SOURCE								
15		FED RCPTS. 1002								
16		GF MATCH. 1003								
17	100	GEN. FUND 1004		30.7						
18		I-A RCPTS. 1005								
19		PGM RCPTS 1006								
20		OTHER								
21	CONTINUATION		FOR B&M USE ONLY							
22	ADDITION									
4A KEY NUMBER		COLUMN NO								

AGENCY Administration PROGRAM Centralized Administrative Services

**13** REQUEST FOR NEW POSITION.

BRU \_\_\_\_\_  
COMPONENT \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

REVISED DATE \_\_\_\_\_

**FY 82**

1	POSITION TITLE Accountant III				RANGE/STEP 18A	BARG. UNIT. G	LOCATION Juneau	GOV	APPROV	DISAPP		
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY		FORM 12 PAGE/LINE	LEG				
3	TYPE OF EXPENDITURE				AMOUNT			JUSTIFICATION: This position is needed so that full-time support can be given to professional service contracts.  CS for HB 546 requires the State to exercise a more aggressive role in the solicitation, negotiation, administration and evaluation of professional service contracts. The incumbent of this position will be a contract specialist and a resource person to other agencies.  This position will be responsible for: <ol style="list-style-type: none"> <li>Administering the Professional Service Contract Tracking System (PSCTS) -- a new computer system.</li> <li>Reviewing ATNS and PSCS to determine compliance with the provisions of AS 36.98 and regulations adopted thereunder.</li> <li>Preparing drafts of new materials and revisions of sections of the State Administrative Manual and regulations pertaining to professional service contracts.</li> <li>Coordinating the PSCTS with the Professional Services Contractors Register -- another new computer system.</li> <li>Advising the Commissioner of Administration and others in the Department of Administration on matters pertaining to professional contracting in general and on specific problem areas.</li> <li>Assisting agencies in their day-to-day activities pertaining to the solicitation, negotiation, administration and evaluation of professional service contracts.</li> </ol>				
	1	2	3									
4	PERSONAL SERVICES:											
	SALARY	2,640	31,680									
5	BENEFITS	.1579	5,002									
6	FICA	.0613	1,942									
7	HEALTH INS.	150 x 12	1,800									
8	TOTAL PERSONAL SERVICES	01	40.4									
9	TRAVEL	02	1.0									
10	CONTRACTUAL	03	4.0									
11	COMMODITIES	04	5									
12	EQUIPMENT	05	1.8									
13	OTHER											
14	TOTAL COST		47.7									
	CODE	FUNDING SOURCE										
15		FED RCPTS. 1002										
16		GF MATCH. 1003										
17		GEN. FUND 1004		47.7								
18		I-A RCPTS. 1005										
19		PGM RCPTS 1028										
20		OTHER										
21	CONTINUATION											
22	ADDITION											
				FOR B&M USE ONLY								
4A KEY NUMBER				COLUMN NO.								

AGENCY Administration PROGRAM Centralized Administrative Services

**13** REQUEST FOR NEW POSITION.

BRU \_\_\_\_\_

COMPONENT \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

REVISED DATE \_\_\_\_\_

**FY 82**

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
Bill/Resolution No. CS for House Bill 546 (Judiciary)  
Title Relating to contracts for professional services  
Requested by State Affairs Date 4-05-82

II. FISCAL DETAIL  
Agency Affected All  
Program Category Affected All  
BRU, Program, Or Subprogram(s) Affected All  
(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	700.0	756.0	816.5	881.8	952.3	1,028.5
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	700.0	756.0	816.5	881.8	952.3	1,028.5

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	700.0	756.0	816.5	881.8	952.3	1,028.5
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS

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

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

(\$50 per ad) x (3 ads) x (3 papers - Juneau, Anchorage, Fairbanks)  
2,000 contracts less - (\$100,000 spent in FY 81) less \$100,000 for  
Sole Source Contracts.

\$700,000

This is not a request for funds. This analysis indicates the estimated fiscal impact which will have to be absorbed by all State agencies.

IV. DATE 4-09-82 PREPARED BY George Elgee  
AGENCY Administration  
Original: Legislative Finance PHONE 465-2250  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)  
33-001 (Rev. 12/81)

*Smith*

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

PART I

I. REQUEST

Bill/Resolution No. CS HB 546  
 Title An Act Relating to State Contract for Professional Services  
 Requested by House State Affairs Date May 19, 1981

II. FISCAL DETAIL

Agency Affected Department of Administration -  
 Program Category Affected Centralized Administration  
 BRU, Program, or Subprogram(s) Affected Accounting

(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		88.3	95.4	103	111.2	120
200 TRAVEL		1.5	1.1	1.2	1.3	1.4
300 CONTRACTUAL		288.4	52.6	56.8	61.4	66.3
400 COMMODITIES		2.0	2.2	2.3	2.5	2.7
500 EQUIPMENT		14.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		<b>393.7</b>	<b>151.3</b>	<b>163.3</b>	<b>176.4</b>	<b>190.4</b>

FUNDING (Thousands of Dollars)

GENERAL FUND		393.7	151.3	163.3	176.4	190.4
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		3	3	3	3	3
PART TIME						
TEMPORARY						

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

Contractual

Computer Program Development:

Register Development  
 Evaluation System/Form/Tracing System  
 Application Form  
 On-line Cap

\$160.0 -

Printing of Labels

4.0

Printing of Applications

1.0

(continued)

IV. DATE May 19, 1981

PREPARED BY George Elgee

AGENCY Administration

PHONE 465-2250

Original: Legislative Finance

cc: Budget and Management

(First Legislator Named)

*Handwritten signatures and initials: Jc, M, RA, AM*

Contractual

Procedures:

Training in procuring contracts and operating  
within new regulations  
Re-write of Existing Procedures  
Administration Code Drafts  
Administration Code Public Hearings \$100.0

Advertising:

Professional Listing 2.4

Services associated with required positions --  
phone, office space, computer terminal rental, etc. 11.0  
\$288.4

1	POSITION TITLE Clerk Typist III				RANGE/STEP 8B	BARG. UNIT. G	LOCATION Juneau	GOV	APPROV.	DISAPP.						
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12	PAGE/LINE	LEG								
3	TYPE OF EXPENDITURE				JUSTIFICATION:											
	1	2	3		As sole administrative support to the Accountant III and Accounting Clerk III this position will be responsible for maintaining records central over all incoming correspondence.											
4	PERSONAL SERVICES:				A substantive knowledge of documents and clerical processes is required to perform these duties independently. Procedures and directions governing work are available in manuals which may require considerable interpretation or extensive search to locate applicable guidelines. Accuracy is required, since work is only occasionally checked, and errors may cause significant disruption in the work cycle and are costly and time consuming to correct. Independent operation of a magnetic tape selectric typewriter and/or regular and significant use of a composer system with responsibility for final proofing of content, format, and layout may be involved, especially in the preparation of reports of contractor's activity. Person-to-person contacts will involve the exchange, collection, or furnishing of non-routine and sensitive information requiring interpretation during the preparation of Regulation and Procedures for State agencies and the public.											
5	SALARY	1,433/mo.	17.196													
6	BENEFITS	.1579	2,715													
7	FICA	.0613	1,054													
8	HEALTH INS.	150 x 2	1,800													
9	TOTAL PERSONAL SERVICES	01	22.8													
10	TRAVEL	02														
11	CONTRACTUAL	03	4.0													
12	COMMODITIES	04	1.0													
13	EQUIPMENT	05	10.8													
14	OTHER															
15	TOTAL COST		38.6													
	CODE	FUNDING SOURCE														
15		FED RCPTS. 1002														
16		GF MATCH. 1003														
17	100	GEN. FUND 1004		38.6												
18		I-A RCPTS. 1005														
19		PGM RCPTS 1006														
20		OTHER														
21	CONTINUATION															
22	ADDITION				FOR B&M USE ONLY											
4A KEY NUMBER				COLUMN NO.												

AGENCY Administration PROGRAM Centralized Administrative Services

**13** REQUEST FOR NEW  
POSITION.

BRU \_\_\_\_\_

COMPONENT \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

REVISED  
DATE \_\_\_\_\_

**FY 82**

1	POSITION TITLE Accounting Clerk III				RANGE/STEP 10B	BARG. UNIT. G	LOCATION Juneau	GOV.	APPROV.	DISAPP.	
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12	PAGE/LINE	LEG.			
3	TYPE OF EXPENDITURE			AMOUNT							
	1			2							
				3							
4	PERSONAL SERVICES:										
	SALARY	1,613/mo		19,356							
5	BENEFITS	.1579		3,056							
6	FICA	.0613		1,187							
7	HEALTH INS.			1,800							
8	TOTAL PERSONAL SERVICES		01	25.4							
9	TRAVEL		02								
10	CONTRACTUAL		03	3.0							
11	COMMODITIES		04	.5							
12	EQUIPMENT		05	1.8							
13	OTHER										
14	TOTAL COST			30.7							
	CODE	FUNDING SOURCE									
15		FED RCPTS. 1002									
16		GF MATCH 1003									
17	100	GEN. FUN 1001		30.7							
18		I-A RCP 205									
19		PGM RCP 26									
20		OTHER									
21	CONTINUATION										
22	ADDITION		FOR B&M USE ONLY								
4A KEY NUMBER _____ COLUMN NO. _____											

JUSTIFICATION:  
Under general supervision performs the highest level of clerical accounting maintenance duties involving responsibility for the processing and maintenance of a variety of financial and statistical documents, records, ledgers and procedures, for a specialized accounts maintenance function. This specialized function (Professional Services Contracts Tracking System) requires the incumbent to perform the following professional service contract related tasks:

1. Pre-audit a variety of expenditure and encumbrance documents;
2. Maintain and adjust summary ledgers, and individual accounts;
3. Determine liability for payments due the State (prepare supporting documentation and billings for collection or legal action);
4. Prepare expenditure reports derived from records of accounts, projects, and funds;
5. Computes ratio of expenditures; and,
6. Apply statutory provisions, and rules and regulations, in accomplishing work.

AGENCY Administration PROGRAM Centralized Administrative Services

**13** REQUEST FOR NEW POSITION.

BRU \_\_\_\_\_

COMPONENT \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

REVISED DATE \_\_\_\_\_

**FY 82**

1	POSITION TITLE Accountant III			RANGE/STEP 18A	BARG. UNIT. G	LOCATION Juneau	GOV	APPROV	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY	FORM 12 PAGE/LINE	LEG		
3	TYPE OF EXPENDITURE			AMOUNT					
	1			2		3			
4	PERSONAL SERVICES. SALARY			2,640	31,680				
5	BENEFITS			.1579	5,002				
6	FICA			.0613	1,942				
7	HEALTH INS.			150 X 12	1,800				
8	TOTAL PERSONAL SERVICES			01	40.4				
9	TRAVEL			02	1.0				
10	CONTRACTUAL			03	4.0				
11	COMMODITIES			04	5				
12	EQUIPMENT			05	1.8				
13	OTHER								
14	TOTAL COST				47.7				
	CODE	FUNDING SOURCE							
15		FED RCPTS. 1002							
16		GF MATCH. 1003							
17		GEN. FUND 7004			47.7				
18		I-A RCPTS. 1005							
19		PGM RCPTS 1028							
20		OTHER							
21	CONTINUATION								
22	ADDITION		FOR B&M USE ONLY						
A KEY NUMBER _____ COLUMN NO. _____									

JUSTIFICATION:  
This position is needed so that full-time support can be given to professional service contracts.

CS for HB 546 requires the State to exercise a more aggressive role in the solicitation, negotiation, administration and evaluation of professional service contracts. The incumbent of this position will be a contract specialist and a resource person to other agencies.

This position will be responsible for:

1. Administering the Professional Service Contract Tracking System (PSCTS) -- a new computer system.
2. Reviewing ATNS and PSCS to determine compliance with the provisions of AS 36.98 and regulations adopted thereunder.
3. Preparing drafts of new materials and revisions of sections of the State Administrative Manual and regulations pertaining to professional service contracts.
4. Coordinating the PSCTS with the Professional Services Contractors Register -- another new computer system.
5. Advising the Commissioner of Administration and others in the Department of Administration on matters pertaining to professional contracting in general and on specific problem areas.
6. Assisting agencies in their day-to-day activities pertaining to the solicitation, negotiation, administration and evaluation of professional service contracts.

AGENCY Administration PROGRAM Centralized Administrative Services

**13** REQUEST FOR NEW POSITION.

BRU \_\_\_\_\_  
CCOMPONENT \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

REVISED DATE \_\_\_\_\_

**FY 82**

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

PART II

I. REQUEST

Bill/Resolution No. CS HB 546  
 Title An Act Relating to State Contracts for Professional Services  
 Requested by House State Affairs Date May 19, 1981

II. FISCAL DETAIL

Agency Affected All Agencies  
 Program Category Affected All  
 BRU, Program, or Subprogram(s) Affected All  
 (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		856.0	941.6	1,035.8	1,139.4	1,253.4
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		<b>856.0</b>	<b>941.6</b>	<b>1,035.8</b>	<b>1,139.4</b>	<b>1,253.4</b>

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND		856.0	941.6	1,035.8	1,139.4	1,253.4
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME						
PART TIME						
TEMPORARY						

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

Advertisement  
 (\$50 per ad) x (3 ads) x (3 papers -- Juneau, Anchorage, Fairbanks) x 2000 contracts  
 Less (\$100,000 spent this year) + (Sole Source Contracts -- \$100,000)

\$700,000

Letter of Intent and Postage  
 18¢ x 100 x 2000 = \$36,000 postage  
 10¢ x 100 x 2000 = \$20,000 printing

56,000

RFP Printing and Mailing  
 EST based on multi-page RFP

100,000

\$856,000

IV. DATE May 19, 1981

PREPARED BY George Elgee

AGENCY Department of Administration

PHONE 465-2250

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
 Bill/Resolution No. HB 546 Relating to state contracts for professional services and  
 Title establishing a penalty for violation of provisions of law  
 Requested by State Affairs Date 5/5/81

II. FISCAL DETAIL

Agency Affected \_\_\_\_\_  
 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	FY82	FY83	FY84	FY85	FY86
100 PERSONAL SERVICES		42.0				
200 TRAVEL		3.0				
300 CONTRACTUAL		20.0				
400 COMMODITIES		1.0				
500 EQUIPMENT		2.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>		<b>68.0</b>				

68.0 + inflation

FUNDING (Thousands of Dollars)

GENERAL FUND		68.0				
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME		1				
PART TIME						
TEMPORARY						

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

Development of a fiscal note for this bill is difficult if not impossible until the regulations which would be adopted by the Department of Administration are known. During the last 12 months, DOTPF had approximately 300 professional services contracts, of which 60 were processed through the Department of Administration.

We assume that the requirement for a plan contained in AS 36.98.110(6), combined with a follow-up report in 36.98.140 will require at least 1 day per contract. This equals 300 days of effort, which is slightly in excess of one employee.

(cont'd)

IV. DATE 5/12/81

PREPARED BY Row B Linc

AGENCY DOTPF

PHONE 465-3400

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

FISCAL NOTE: HB 546 (cont'd)

ANALYSIS (cont'd)

Increased costs would also result from the necessity to advertise more jobs, since all in excess of \$2,500 would need to be advertised at least 3 times in newspapers of general circulation.

This legislation would undoubtedly cause additional project expenses due to delay. The department's current process allows consultants to be selected and contracted with in an expeditious manner, while protecting the various public and state interest involved. The possible additional expense caused by delay cannot be calculated. The possibility of delay becoming very costly is materially increased by the lack of any provision for emergency purchase or professional services.

Another possible expense which cannot be calculated at this time is the effect of this bill on AS 35.15.010(b) and AS 19.10.170 which require that this department contract for certain professional services. If this bill's requirement that, if possible, the work be done by a state employee, is interpreted to effectively repeal these services, a substantial sum would be required for personnel and attendant cost for various architects, engineers and surveyors required to perform work now done under professional service contracts.

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

- I. REQUEST  
 Bill/Resolution No. CS HB 546  
 Title An Act Relating to State Contracts for Professional Services  
 Requested by House State Affairs Date 3/5/82
- II. FISCAL DETAIL  
 Agency Affected All  
 Program Category Affected All  
 BRU, Program, Or Subprogram(s) Affected All  
 (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	250.0	270.0	291.6	314.9	340.1	367.3
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	250.0	270.0	291.6	314.9	340.1	367.3

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	250.0	270.0	291.6	314.9	340.1	367.3
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS

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

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

Advertisements:

\$50 per ad) x (3 ads) x (3 papers--Juneau, Anchorage,  
 Fairbanks) x 700 contracts less (\$100,000 spent in FY 81) \$215,000

RFP Printing and Mailing  
 EST based on Multi-page RFP 35,000

\$250,000

IV. DATE March 26, 1982 PREPARED BY George Elgee *RE Smith*  
 AGENCY Administration  
 Original: Legislative Finance PHONE 465-2250  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS HB 546  
Title An Act Relating to State Contracts for Professional Services  
Requested by House State Affairs Date 3/5/82

II. FISCAL DETAIL

Agency Affected Administration  
Program Category Affected Centralized Administration  
BRU, Program, Or Subprogram(s) Affected Accounting  
(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	67.5	72.9	78.7	84.9	91.6	98.9
200 TRAVEL	-					
300 CONTRACTUAL	238.4	257.4	277.9	300.1	324.1	350.0
400 COMMODITIES	1.5	1.6	1.7	1.3	1.9	2.0
500 EQUIPMENT	12.6	13.6	14.6	15.7	16.9	18.2
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	320.0	345.5	372.9	402.5	434.5	469.1

FUNDING (Thousands of Dollars)

	320.0	345.5	372.9	402.5	434.5	469.1
GENERAL FUND						
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS

	2	2	2	2	2	2
FULL TIME						
PART TIME						
TEMPORARY						

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

Contractual

Computer Program Development:

Register Development  
Evaluation System/Form/Tracking System  
Application form  
On-line Capabilities 160.0  
Printing of Labels 4.0  
Printing of Applications 1.0

IV. DATE March 26, 1982 PREPARED BY George Elgee  
AGENCY Administration  
Original: Legislative Finance PHONE 465-2250  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)  
33-001 (Rev. 12/81)

Contractual

Procedures:

Training in procuring contracts and operating  
within new regulations

Re-write of Existing Procedures

Administration Code Drafts

Administration Code Public Hearings 60.0

Advertising:

Professional Listing 5.4

Services associated with required positions --  
phone, office space, computer terminal rental, etc. 8.0

\$238.4

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSHB 546  
 Title For an Act Relating to State Contracts for Professional Services, etc.  
 Requested by State Affairs Committee Date 3/15/82

II. FISCAL DETAIL

Agency Affected \_\_\_\_\_  
 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 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)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	0	0	0	0	0	0

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY	0	0	0	0	0	0

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

IV. DATE 3/15/82 PREPARED BY Colonel Robert J. Stickles  
 AGENCY Dept. of Public Safety  
 Original: Legislative Finance PHONE 269-5532  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

# STATE OF ALASKA

ROOM 508  
CAPITOL BUILDING  
POUCH V  
JUNEAU, ALASKA 99811

## THE LEGISLATURE BUDGET AND AUDIT COMMITTEE

907-465-3818  
907-465-3810

MEMORANDUM

January 25, 1982

TO: All Members

From: Senator Arliss Sturgulewski, <sup>AS</sup> Chairman  
Legislative Budget and Audit

RE: School District Management Policies *and related issues*

*emo* →

*a copy is to all members' desks*

Recent discussions on the floor of the Senate, as well as audits released by the Committee, have focused on financial management policies of Alaska's school districts.

Under Alaska Statutes, AS 14.17.081, the Legislative Budget and Audit Committee reviews requests by school districts to waive the requirement that 55% of a district's general operating fund be spent on direct instructional services. Since November of 1981, 18 of Alaska's 52 districts have requested waivers from this requirement.

A number of issues related to school district financial management policies and practices were brought out at Legislative Budget and Audit Committee hearings on those waiver requests. The Committee has asked the State Board of Education to review those issues, and indicate where the responsibility lies for answering the questions raised.

On January 11 1982, the State Board of Education responded to the Committee's request, outlining a program to provide policy recommendations or guidelines for the issues listed to the Committee.

Copies of both the Committee's letter to the State Board of Education and the Board's response are attached for your review.

Attachments

REC'D JAN 27 1982

December 11, 1981

Mr. Vincent Casey, President  
Board of Education  
1024 LaTouche Street  
Anchorage, AK 99501

Dear Mr. Casey:

On November 9 and 10, the Legislative Budget and Audit Committee reviewed the requests for waivers submitted by school districts under AS 14.17.081. In accordance with that statute, this Committee took action to recommend to the State Board of Education that waivers be approved for the following districts:

Bering Strait School District  
Copper River School District  
Galena City School District  
The Lake and Peninsula School District  
Lower Kuskokwim School District  
Lower Yukon School District  
North Slope Borough School District  
Northwest Arctic School District  
Railbelt School District  
St. Mary's School District  
Southwest Region Schools  
Yakutat City School District  
Yukon Flats School District  
Yukon Koyukuk School District

The recommendation that these waiver requests be approved does not signify that the Committee approved of all school districts' budgeting practices or efforts to comply with AS 14.17.081. While most districts appear to be making an earnest effort to meet the 55% instructional expenditure requirement, Committee members expressed concern over the budgeting practices of specific districts. However, the Committee felt that, overall, it was more important to maintain existing programs than penalize districts, during the current school year, for last year's actions.

In addition, there appear to be inconsistencies in the method of accounting for "instructional" as opposed to "non-instructional" expenditures.

Lack of uniformity in the treatment of special revenue funds, teacher housing subsidies, and so on, lead to differences in what is included in the "instructional" component of each district's budget.

Several districts questioned the fairness of the Department of Education's regulations defining instructional and non-instructional budget items. One area of concern was in the specific accounting of school principals as non-instructional; some district spokesmen saw principals as having primarily a program support function, which would otherwise be considered as an "instructional" activity. Another major concern was the regulatory definition of a district's expenditure as being limited only to the districts general operating fund. Thus, special revenue funds (primarily federally funded programs such as Indian Education Act programs or PL874 payments) which may be used to provide direct instructional services are not considered. Further, any transfer of general operating funds to special revenue funds are considered as a "non-instructional" use of funds, no matter how that money is eventually used. Finally, the inclusion of local or direct federal funding under AS 14.17.081 as opposed to limiting the analysis of compliance with the 55% spending level only to state funds was questioned.

The commitment of a large, and growing, portion of school district funds to operations and maintenance (O&M) expenses conflicts with the desire to increase instructional spending. The question of the relation between O&M costs, instructional costs and the ability to fund both types of program expenditures needs to be addressed. This is especially critical in those districts with small, widely dispersed school sites. For these districts, increased educational opportunities leads to expanded facilities, lower pupil/teacher ratios, lower numbers of students per room, and growing per student O&M costs.

The complexities and ambiguities surrounding the funding and management of education in general, and the implementation of AS 14.17.081 in particular, raise a number of policy questions that must be resolved. To this end, the Committee is requesting the State Board of Education to determine where the responsibility lies for developing and implementing policies in several issue areas. The Board is requested to identify whether specific issues can, or should, be resolved at the local, state departmental, Board of Education or Legislative levels.

The issue areas in which the Board is requested to provide direction are listed below, with examples of the types of questions that came before the Committee.

#### --Teacher Housing

Questions include how subsidies for teacher housing are to be accounted for; uniformity in accounting under AS 14.17.081; direct provision of housing vs. subsidizing salary levels.

—Use of Area Differentials

Comparative levels of area differentials; effect of area differentials in relation to actual costs of educational services; differentials for "overhead" or O&M costs vs. service costs.

—Costs of Mandatory Improvements

Accounting of unavoidable, mandatory costs, such as state code improvement orders, under AS 14.17.081; alternate mechanisms for funding mandatory, unbudgeted improvements costs.

—Maintenance Planning and Budgeting

Ability of districts to develop maintenance plans; ability to budget for maintenance vis-a-vis the foundation program and AS 14.17.081; equity in funding or reimbursement for improvements costs between REAA's and incorporated districts.

—"Creative" Accounting Practices

Uniformity of accounting practices; need for standardization or guidelines on fiscal management and practices; accounting for and use of interest received on various school district funds.

—Contracting Procedures

Standards on board review, notification, inclusion of detailed scope-of-services, competition, conflict-of-interest in granting or obtaining contracts.

—Definition of Instructional Costs

Review of regulations defining instructional and non-instructional budget components, especially classification of supervisory support and special revenue funds; inclusion of local source revenues within the 55% limit under AS 14.17.081, and changes in accounting practices necessary to separate expenditures of state and local funds.

—Capital vs. Program Costs

Relation of capital construction programs to program budgets, especially future O&M costs; responsibility for capital planning, budgeting and construction; student enrollment per facility - minimum levels vs. complete K-12 facilities in each village;

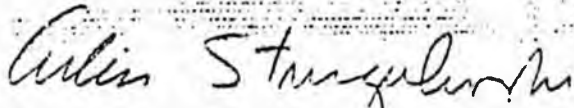
December 11, 1981

**Assumption of BIA Schools**

Effect of BIA schools on O&M budgets; effect of BIA schools on capital improvements budgets and legislative appropriations; options of State in response to costs of taking over BIA schools.

In summary, the Committee would sincerely appreciate the State Board of Education identifying the questions that need to be answered within each issue area, and identifying where the responsibility lies for developing those answers. While the Committee did not specify a time frame for requesting the Board's response, I would encourage the Board to treat this request as a priority. An early response would give the Legislature a chance to begin work on policy issues that the Board identifies as legislative responsibilities, and allow local districts to begin work on subjects within their area of responsibility early in the budget cycle for the 1982-83 school year.

Sincerely,



Senator Arliss Sturgulewski, Chairman  
Legislative Budget and Audit Committee

cc: All Members, State Board of Education  
All School District Superintendents  
Marshall L. Lind, Commissioner

# STATE OF ALASKA

## DEPARTMENT OF EDUCATION

STATE BOARD OF EDUCATION

JAY S. HAMMOND, GOVERNOR

January 11, 1982

The Honorable Arliss Sturgulewski  
Chairman, Legislative Budget & Audit  
Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Sturgulewski:

This letter is written in response to your December 11, 1981, letter to me regarding the need for the State Board of Education to provide direction in several issue areas as specified.

On December 15, 1981, a letter was drafted to seven individuals in the state, representing a broad base of expertise and perspectives, requesting their participation in a study group established by the State Board to analyze areas of fiscal accounting and management, technical and broad policy questions needing action. In addition to these individuals, the study group included Department of Education personnel and three State Board members.

This group met in Anchorage on January 7 and 8, and the following actions and recommendations had unanimous support by this group:

1. Local school board policies regarding fiscal management:
  - (a) Local school boards must have fiscal management policies.
  - (b) A specified list of areas local school boards need in their policy manuals will be developed and presented to the State Board at its February 18-19, 1982, meeting in Juneau.
  - (c) Guidelines (cookbook approach for suggested policies) will be developed and presented to the State Board by March or April.
  - (d) The 1982 audit of local school districts by independent auditors will include an examination and review of policies already in place and those lacking, and these will be specified in their management letters.

- (e) The Association of Alaska School Boards, following this identification of needed policies, will hold regional workshops throughout the state to assist school boards in the development of policy. This effort will be completed by October/November of 1982.
- (f) If local school boards do not have policies developed and implemented by the 1983 audit, it was unanimously agreed by this study group that no protection should be afforded to them and punitive action initiated. This action, by regulation development, will be promulgated by the State Board of Education.

It is also urged by this study group that some of these requirement dates be changed so that all fiscal matters do not fall due during the same cycle. School board policy development might be an area that could more thoroughly be examined by auditors when they are not under the pressures of the fiscal year audits.

- (g) A subcommittee of this study group was formed consisting of a certified public accountant, Jim Altman; local school district business managers, Ron Wesley, Nat Cole, and Marilyn Pederson; Director of Western Regional Resource Center, Richard Hazen; school district controller, Guy Bellville; Executive Secretary of the Association of Alaska School Boards, Bob Greene and Department of Education, Marilou Madden. This subcommittee will meet before the February meeting of the State Board of Education to address the following:
  - (1) Areas in which policies for fiscal/administrative procedures need to be developed and adopted by local boards (e.g., contracting, purchasing, board/Superintendent remuneration, etc.)
  - (2) Criteria for board policy which would allow expenditures to be audited in conformance with board policy.
  - (3) Recommendations for state policy concerning transfer of funds between operating and capital accounts.
  - (4) Procedures for uniformity in coding and reporting expenditures through district policies defining district budget process, budget revision process, and restrictions and/or procedures applicable to budgetary controls over allocation of expenditures within and between functions.
  - (5) All conclusions of this group will be communicated to the full study group prior to the February meeting of the State Board.

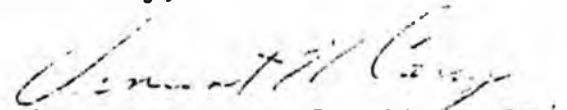
The Honorable Arliss Sturgulewski  
January 11, 1982  
Page Three

2. The Alaska Association of School Administrators (AASA) will introduce a planned approach to inservice training of administrators regarding administrative procedures for implementing the fiscal management policies of their local school districts at their 1982 Fall Conference and will complete this training by October, 1983.
3. The Department of Education will provide the State Board with information on a plan for preventative maintenance in local school districts at the February meeting of the Board. Future legislative action may be forthcoming following this presentation.
4. Definition of Instructional Costs:
  - (a) Examination by the State Board of the repeal of the 55% law, and alternatives possible to address the dollars being spent for instruction.
  - (b) Examination by the State Board of expanding the areas included in the present 55% regulations.
  - (c) The Department of Education will prepare information on the controversial areas presently excluded from the 55% regulations (e.g., teacher housing, principals, etc.) and will present this to the State Board for development of a policy decision at the February meeting.
  - (d) An analysis by the Department of Education testing the 55% issue with the inclusion of other revenues (e.g., local funds, PL-874, federal dollars, etc.) will be presented to the State Board at their February meeting.

I hope that this synopsis of our actions to date gives you assurance that we are moving in a timely manner with regard to the concerns expressed by the Rural Education Attendance Area's Oversight and the Budget and Audit Committees. It was the unanimous opinion of the study group that every opportunity should be afforded local school boards to "get their own house in order" which is consistent with the State Board of Education's policy supporting local control. There is a strong commitment by the Association of Alaska School Boards to assume this responsibility.

If you have any questions, I hope you will always feel free to call and there is, of course, a most welcome invitation to attend and participate in our State Board of Education meetings.

Sincerely,

  
Vincent H. Casey, President  
State Board of Education

cc: Members, State Board of Education  
Marshall L. Lind, Commissioner  
Members, Fiscal Study Group

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 21, 1982

SUBJECT: Contracts for professional services  
(CSHB 546)

TO: Representative Ray H. Metcalfe  
Chairman, House State Affairs Committee

FROM: Thomas A. Sofo *TAS*  
Legislative Counsel

This office has prepared in final the enclosed Committee Substitute for HB 546 based on the draft prepared by the Department of Law. Since the request for the committee substitute indicates that the committee has already passed this bill out, this office did not attempt to revise the text supplied. This bill, however, raises numerous questions concerning the application of the new chapter as well as the need for further amendments within the Alaska Statutes that should be considered before final action on this bill. If you or your staff would care to review some of those problems, I would be happy to discuss them further with you at your convenience.

TAS:ljb

Enclosure

REC'D JAN 22 1982

**FAIRBANKS SOCIETY OF  
PROFESSIONAL LAND SURVEYORS**

S.R. 10113  
~~P.O. Box 2592~~  
Fairbanks, Alaska 99701

February 24, 1982

Rep. Ray Metcalfe  
Chairman, House State Affairs Committee  
State House of Representatives  
Pouch V  
Juneau, AK 99811

Ref: HB 612 and HB 546

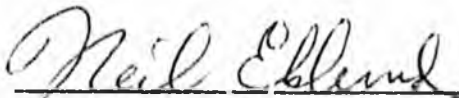
Dear Rep. Metcalfe:

The Fairbanks Society of Professional Land Surveyors (FSPLS) met on February 23, 1982 and discussed HB 612 and HB 546. We are appalled at the revisions that were made to HB 612 language after it was grafted to the Legislative Reform Bill (HB 546). The addition of provisions for use of competitive bidding procedures as an optional method of selecting contractors for Engineering, Architectural, and Land Surveying services reverses the intent and meaning of HB 612 as originally written.

We have no problem with the bulk of HB 546, except that page one deals with construction, and is not germane to professional contracts. We are adamantly opposed to passage of this bill with the language contained on page 7, concerning competitive bidding. We do not believe the public interest is served - in fact, cost of administration is potentially much higher, should state agencies adopt such procedures.

We request a rationale for the competitive bidding revisions to HB 546 from the legislator or legislators who initiated them.

Respectfully submitted,

 RLS  
Neil Eklund  
President, FSPLS

NE/skk

Notwithstanding

If more than one person or firm is competent and qualified to perform the desired work the state shall select the person or firm with whom it has negotiated the lowest price.



# Ombudsman

Frank Flavin

State of Alaska

May 14, 1981

TO: Rep. Mike Miller, Chairman  
and Members  
House State Affairs Committee

FROM: Frank Flavin *FF*

SUBJECT: HB 546 -- PROFESSIONAL SERVICES CONTRACTS

Reply to:

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch WO  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

On March 27, 1981, I issued Special Report 81-3, Proper Use of Professional Services Contracts, which explained problems with the current system in the Executive Branch and recommended possible solutions for legislative consideration. HB 546, by the State Affairs Committee by request, resulted from this Special Report.

Following a preliminary hearing by your committee on the bill, the administration prepared a proposed committee substitute. We have used this proposed CS as a mark-up bill to integrate its language with some sections in the original HB 546. The proposed CS mirrors HB 156, the legislative contracting bill which recently passed the House, with some notable exceptions.

Below are our suggested changes to the proposed committee substitute and attached is our proposed committee substitute which incorporates these changes.

Proposed Changes to Proposed CS HB 546 (Administration)

page 1 title change

line 10 change in chapter title

line 12 insert "professional"

line 16 add language in HB 156 re written justification

line 18 add language in HB 156 re less than \$5,000

line 20 insert sections from HB 546 re contractors register and solicitation of services

line 20 renumber

line 22 delete "solicitation" and insert "request for proposals"

line 24 delete "Solicitations to" and insert "Proposals from"

line 25 delete "extended" and insert "solicited"  
line 26 delete "Solicitations to" and insert "Proposals from"  
line 27 delete "extended" and insert "solicited"  
line 27 - 31 delete language beginning with "Formal advertising . . ."

page 2 line 1 renumber and delete "solicitation of services" and  
insert "request for proposals"  
line 5 delete "solicitation for services" and insert "request  
for proposals"  
line 7 delete "of administration"  
line 8 delete "of administration"  
line 13 delete "of administration"  
line 17 delete "or by a municipality"  
line 18 delete "solicitation" and insert "request for proposals"  
line 20 delete "solicitation" and insert "request for proposals"  
line 23 delete "of administration"

page 3 line 5 insert sections from HB 546 re monitoring and evaluation  
of contracts  
line 8 delete "request for services" and insert "request for  
proposals"  
line 9 delete "requests for services" and insert "a request for  
proposals"  
line 10 delete section and replace with section from HB 546  
re APA regulations  
insert section from HB 546 to include definitions  
insert section from HB 546 to include penalty  
insert section from HB 546 to include effective date

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IN THE HOUSE

BY STATE AFFAIRS  
COMMITTEE BY REQUEST

CS for HOUSE BILL 546

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to state contracts for professional services and establishing a penalty for violation of provisions of law relating to professional service contracts; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

\*Section 1. AS 36 is amended by adding a new chapter to read:

CHAPTER 98. PROFESSIONAL SERVICES CONTRACTS.

Sec. 36.98.010. APPLICATION. This chapter applies to contracts for professional services to be provided to a state agency unless

(1) the total amount of a contract or contracts awarded to a person in a 12-month period does not exceed \$5,000;

*10,000*

(2) the contract is an employment contract for services to be performed under direct supervision regardless of the existence of an employer-employee relationship and a written justification signed by the person responsible for awarding the contract is filed with the commissioner;

(3) the contract is for construction, repair, or maintenance of a structure and does not exceed \$5,000; or

(4) the contract is awarded based on competitive bids obtained under the competitive bid procedure provided in AS 37.05.230.

Sec. 36.98.020. PROFESSIONAL SERVICES CONTRACTORS REGISTER. (a)

A person who desires to provide professional services to a state agency shall submit to the commissioner a statement of qualifications and performance data, and any other information which the commissioner, by regulation, may require.

*Need remedy for excessive fees*

1 (b) The commissioner may at any time require the person to revise  
2 the statement of qualifications and performance data, or any other  
3 information, submitted by the person if the commissioner believes  
4 that the credentials or record of experience of the person have  
5 materially changed since the last filing by the person. *need remedy*

6 Sec. 36.98.030. SOLICITATION OF SERVICES. (a) When a state *for an effort*  
7 agency proposes to enter into a contract for professional services, *to*  
8 the agency shall give public notice of the professional services *exclude*  
9 contract. At least 30 days before the date on which the agency expects  
10 to enter into the contract for professional services it shall give  
11 notice by publication at least three times in one or more newspapers  
12 in general circulation in the state of

13 (1) a general description of the proposed project for which  
14 the agency is seeking professional services; and

15 (2) the procedure by which a person interested in the pro-  
16 fessional services contract may apply to the agency for consideration  
17 for the contract.

18 (b) In addition to complying with the publication requirements of  
19 (a) of this section, when a state agency proposes to enter into a  
20 contract for professional services it shall

21 (1) review the register of professional services contractors  
22 maintained by the commissioner under AS 36.98.020; and

23 (2) provide a request for proposals for the proposed pro-  
24 fessional services contract to each prospective contractor which, after  
25 review of the register of professional services contractors under (1)  
26 of this subsection, the agency finds is qualified for consideration for  
27 the contract.

28 (c) A formal written request for proposals must be extended to a  
29 sufficient number of providers of the required services to assure that  
30 public interest in competition is adequately served. Proposals from  
31 at least six firms shall be solicited for contracts in excess of  
32 \$100,000 if the expertise required is widely available. Proposals

1 from at least three firms shall be solicited for contracts of less than  
2 \$100,000 if the expertise required is widely available.

3 (d) A request for proposals need not be extended if

4 (1) there is a single source of the expertise or knowledge  
5 required or if one person or firm can clearly perform the required  
6 tasks more satisfactorily because of the person's or firm's prior  
7 work; however, this exemption from a request for proposals applies  
8 only when the head of the state agency has submitted a written request  
9 to the commissioner which details the reasons for the exemption and the  
10 commissioner or his designee has authorized the state agency to enter  
11 contract negotiations with the single source;

12 (2) the services required are professional services which  
13 may, by law or regulation, be performed only by a person licensed to  
14 perform the service;

15 (3) the commissioner determines that public necessity will  
16 not permit delay incident to preparation of formal solicitations and  
17 evaluation of responses; or

18 (4) the service is to be provided by an agency or department  
19 of the state government.

20 (c) A request for proposals should be designed to demonstrate that  
21 the proposed work represents a sound approach to an important public  
22 task. A request for proposals should be self-contained and written  
23 with care and thoroughness.

24 (d) Unless the contract is for services exempt under AS 36.98.010  
25 a contract must be submitted to the commissioner for review and  
26 approval and, if approved, is effective from the date of such approval.

27 Sec. 36.98.040. AWARD OF CONTRACT. (a) If a contract is made by  
28 a board or commission, execution of the contract on behalf of the  
29 board or commission must be authorized by a majority vote of the full  
30 membership of the board or commission. The contract must be executed  
31 by the provider of the service and the project director, be approved  
32

*Time frame for \$60000  
cost benefit ratio?  
Add time frame  
or approved  
clause  
or time to reject  
clause*

1 by the commissioner or deputy commissioner of the contracting agency,  
2 the commissioner or his designee, and be approved as to form by the  
3 attorney general. *Should be 100,000 up*

4 (b) A contract awarded under this section shall contain the amount  
5 of the contract stated on its first page.

6 Sec. 36.98.050. CONTRACT ADMINISTRATION. (a) When a state agency  
7 has entered into a professional services contract, the agency is  
8 responsible for the diligent administration and monitoring of the  
9 performance of the provisions of the contract.

10 (b) When a professional services contract has been completed, the  
11 state agency shall evaluate the performance of the contractor under the  
12 contract and shall report on and evaluate the use of the final product  
13 of the professional services contract. A copy of the report and  
14 evaluations prepared under this subsection shall be transmitted to  
15 the commissioner, and shall be retained by the commissioner for as  
16 long as he is required to maintain copies of completed contracts.

17 Sec. 36.98.060. FILING. A copy of each contract must be filed  
18 with the Department of Administration and the contracting agency, and  
19 is open for public inspection. The request for proposals and each  
20 response submitted must be attached to the filed copy unless the  
21 contract is one in which a request for proposals is not required.

22 Sec. 36.98.070. CONTRACT PROCEDURES. The commissioner shall, by  
23 regulation adopted in accordance with the Administrative Procedure Act  
24 (AS 44.62), establish the manner and form by which state professional  
25 services contracts shall be prepared and processed.

26 Sec. 36.98.080. DEFINITIONS. In this chapter

- 27 (1) "commissioner" means the commissioner of administration;  
28 (2) "professional services contract" means a contract for

29 professional, technical, or consultant's services which are predomi-  
30 nantly intellectual in character and which

31 (A) include analysis, evaluation, prediction, planning  
32 or recommendation; and

(B) result in the production of a report or the  
completion of a task;

*Does this apply to legislators?*

*or inflation clause  
5000 to 10,000*

*Remove*

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(3) "public necessity" means an urgent public need which could not have been anticipated or foreseen; the term also includes emergency situations when work is necessary to protect life or property;

(4) "state agency" means a department, institution, board, commission, division, or other administrative unit of the executive branch of state government; the term does not include the University of Alaska.

\*Section 2. AS 39.25.160 is amended by adding a new subsection to read:

(i) A person may not enter into a professional services contract on behalf of a state agency in violation of the provisions of AS 36.98.

\*Section 3. This Act takes effect July 1, 1981.

546

Dave or Donna-

What is most practical way to proceed with HB 546 in view of committee's approval? I've looked at the bill. In addition to its stylistic variations from our work product (e.g. uses the word "utilize" instead of use) and the assumption that no additional amendments beyond adding <sup>new</sup> language to Title 36 are needed, I suspect it has one other rather large deficiency. AS 36.98.010(a)(1) exempts certain contracts from this new chapter. The exemption is difficult to understand because it can only be understood completely by reference to both the particular contract involved and the potential contractor to whom the award might go. As an example a very small contract (i.e. well within the \$25,000 limit) might otherwise be subject to this chapter since the contractor may already have received \$26,000 of contracts that year. Worse yet, some of the eligible contractors might be over the exemption limit while others ~~are~~ are substantially below it. And as the criteria is used with respect to any individual contractor, how can we know for sure whether <sup>or not</sup> the ~~is will remain~~ amount of contracts awarded to that contractor <sup>will</sup> remain below the \$25,000 limit until the close of the "fiscal year" (which is also not defined)? ~~Since~~ The exemption language does not merely make the incremental contract over \$25,000 subject to AS 36.98 but can be interpreted to apply to all contracts awarded to a contractor if they cumulatively exceed \$25,000. The draft seems to have similar problems in later pages but I don't know how much time can be invested in this project if the chances of actually receiving permission to revise this are negligible.

Tom (1/21)

Can we use committee to put bill on some sort of "hold" while we confer w/ someone in HHS who drafted this and maybe get their cooperation in improving this ]



# Alaska State Legislature

## House of Representatives

PREVIOUS ACTION ON HB 546

Pouch V  
State Capitol  
Juneau, Alaska 99811

### Official Business

March 3 - today

Representative Fanning, having reviewed the file on HB 612, is ready to offer amendments to the current bill. However, the current bill has already been "passed out" of committee so you may need to rescind that action before amending it again.

February 10

Tom Sofo's version #1 was adopted as the CS and the bill was signed out of committee contingent on review of file on HB 612.

1 IN THE HOUSE

BY STATE AFFAIRS  
COMMITTEE BY REQUEST

2  
3 CS for HOUSE BILL 546

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 TWELFTH LEGISLATURE - FIRST SESSION

6 A BILL

7  
8 For an Act entitled: "An Act relating to state contracts for professional  
9 services, [and establishing a penalty for violation  
10 of provisions of law relating to professional  
11 services contracts.]

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

13 \*Section 1. AS 36 is amended by adding a new chapter to read:

14 CHAPTER 98. PROFESSIONAL SERVICES CONTRACTS.

15 Sec. 36.98.010. APPLICATION. This chapter applies to contracts for  
16 professional services to be provided to a state agency, [unless the total  
17 amount of the contract or contracts awarded to a person in a 12-month  
18 period does not exceed \$5,000.]

19 Sec. 36.98.020. PROFESSIONAL SERVICES CONTRACTORS REGISTER. A person  
20 who desires to provide professional services to a state agency shall  
21 submit to the commissioner an application to be placed on the professional  
22 services register.

23 Sec. 36.98.030. SOLICITATION OF SERVICES. (a) When a state agency  
24 proposes to enter into a contract for professional services, the agency  
25 shall

26 (1) review the register of professional services contractors  
27 maintained by the commissioner under AS 36.98.020; and

28 (2) provide to each prospective contractor

29 (A) a general description of the proposed project for  
30 which the agency is seeking professional services; and

31 (B) the procedure by which a person interested in the  
32 professional services contract may apply to the agency for consideration  
for the contract.

Formal advertising in a medium which will reasonably bring the solicitation to the attention of persons able to provide the required service may be substituted for or used jointly with direct solicitation of services. Advertising, if used, shall consist of:

1 (b) [In addition to complying with the requirements of (a) of this  
2 subsection, when a state agency proposes to enter into a contract for  
3 professional services, the agency shall give at least 30 days prior  
4 public notice. This notice, by publication at least three times in one  
5 or more newspapers in general circulation in the state, shall consist of]

6 (1) a general description of the proposed project for  
7 which the agency is seeking professional services; and

8 (2) the procedure by which a person interested in the  
9 professional services contract may apply to the agency for consideration  
10 for the contract.

11 (c) A solicitation of services need not be extended if

12 (1) there is a single source of the expertise or knowledge  
13 required or if one person or firm can clearly perform the required tasks  
14 more satisfactorily because of the person's or firm's prior work;

15 however, this exemption from a solicitation of services applies only  
16 when the head of the state agency has submitted a written request to  
17 the commissioner which details the reasons for the exemption and the  
18 commissioner or his designee has authorized the state agency to enter  
19 contract negotiations with the single source;

20 (2) the services required are professional services which  
21 may, by law or regulation, be performed only by a person licensed to  
22 perform the service;

23 (3) the commissioner determines that public necessity will  
24 not permit delay incident to preparation of formal solicitations and  
25 evaluation of responses; or

26 (4) the service is to be provided by an agency or department  
27 of the [state] government.

28 (d) Unless the contract is for services exempt under AS 36.98.010  
29 a contract must be submitted to the commissioner for review and  
30 approval and, if approved, is effective from the date of such approval.  
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1           Sec. 36.98.040. AWARD OF CONTRACT. If a contract is made by a board  
2 or commission, execution of the contract on behalf of the board or  
3 commission must be authorized by a majority vote of the full membership  
4 of the board or commission. The contract must be executed by the  
5 provider of the service and the project director, be approved by the  
6 commissioner or deputy commissioner of the contracting agency, the  
7 commissioner or his designee, and be approved as to form by the attorney  
8 general.

9           Sec. 36.98.050. CONTRACT ADMINISTRATION. (a) When a state agency  
10 has entered into a professional services contract, the agency is  
11 responsible for the diligent administration and monitoring of the  
12 performance of the provisions of the contract.

13           (b) When a professional services contract has been completed, the  
14 state agency shall evaluate the performance of the contractor under  
15 the contract, [and shall report on and evaluate the use of the final  
16 product of the professional services contract.] A copy of the [report  
17 and] evaluation[s] prepared under this subsection shall be transmitted  
18 to the commissioner, and shall be retained by the commissioner.

19           Sec. 36.98.060. FILING. A copy of each contract must be filed with  
20 the contracting agency, and is open for public inspection. The request  
21 for proposals and each response submitted must be attached to the  
22 filed copy unless the contract is one in which a request for proposals  
23 is not required.

24           Sec. 36.98.070. CONTRACT PROCEDURES. The commissioner shall, by  
25 regulation [adopted in accordance with the Administrative Procedure Act  
26 (AS 44.62),] establish the manner and form by which state professional  
27 services contracts shall be prepared and processed.

28           Sec. 36.98.080. DEFINITIONS. In this chapter

29                   (1) "commissioner" means the commissioner of administration  
30 or his designee:

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(2) "professional services contract" means a contract for professional, technical, artistic, or consultant's services which are predominantly intellectual in character and which

(A) include analysis, evaluation, prediction, planning or recommendation; and

(B) result in the production of a report or the completion of a task; the term does not include skilled tradesmen such as carpenters, electricians, and plumbers.

(3) "public necessity" means [an <sup>A</sup>urgent] public need which could not have been reasonably anticipated or foreseen; the term also includes emergency situations when work is necessary to protect life or property;

(4) "state agency" means a department, institution, board, commission, division, or other administrative unit of the executive branch of state government; the term does not include the University of Alaska.

[Sec. 36.98.090. PENALTY. An appointing authority may discipline, reprimand, put on probation, demote, suspend or discharge a state employee found to have violated a provision of this chapter.]

[\*Section 2. AS 39.25.160 is amended by adding a new subsection to read:

(i) A person may not enter into a professional services contract on behalf of a state agency in violation of the provisions of AS 36.98]

ALASKA

STATE LEGISLATURE

Jan 10, 1981

**MEMORANDUM**

To Rep Metcalfe.

Please consider having hearings in Jan. on  
HB 546 ~~and~~. These are a priority of "Common-  
sense for Alaska".

For update call Kneely Taylor at

276-8144

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	
Supersedes P & P No. 10-0006	Dated 10/1/78
APPROVED BY <i>Robert W. Ward</i>	

SUBJECT  
Selection of Professional and  
Specialty Services Contractors

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 specialty 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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SUBJECT  
Selection of Professional and  
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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

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SUBJECT  
 Selection of Professional and  
 Specialty Services Contractors

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.

STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES <b>POLICY AND PROCEDURES</b>			P & P No. 28-8000	Page 4 OF 8
SUBJECT Selection of Professional and Specialty Services Contractors			Effective Date March 26, 1981	
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DIVISION Support Services	SECTION Contracts Administration	CHAPTER TITLE Procedure		
<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>				

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

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SUBJECT  
Selection of Professional and  
Specialty Services Contractors

DIVISION Support Services	SECTION Contracts Administration	CHAPTER TITLE Procedure
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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:

STATE OF ALASKA  
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**POLICY AND PROCEDURES**

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**SUBJECT**  
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DIVISION Support Services	SECTION Contracts Administration	CHAPTER TITLE Procedure
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- A. 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 10 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	<u>25</u>	3	<u>75</u>
(Sum = 100)		Member's Score =	<u>370</u>

- 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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28-8000

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Effective Date

March 26, 1981

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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

- 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.
- 7.14 Obtain Approval for Negotiations (AFN) with Contractors on the Short List using DOT/PF Form 25A251.
- 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.
- 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.
- 7.15 Mail approved Short List to all respondents.
- 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.)
- A. Technical Proposals must be solicited from Contractors on the Short List when any of the following apply:
- Services required are unusually large or complex;
  - Scope of Services is not clearly defined;
  - Requested by a simple majority of the Evaluation Committee.
- B. Priced Proposals should be requested in accordance with Division policy, the type and scope of services desired, and professional practice.
- 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.

STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES <b>POLICY AND PROCEDURES</b>			P & P No. 28-8000	Page 8 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 <i>Robert Ward</i>	
DIVISION Support Services	SECTION Contracts Administration	CHAPTER TITLE .Procedure		
<p>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.</p> <p>8.0 IMPLEMENTATION</p> <p>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.</p>				

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

April 13, 1981

Mr. Frank Flavin, Ombudsman  
State of Alaska  
P. O. Box 74358  
Fairbanks, Alaska 99707

RE: Ombudsman Complaints F80-0904,  
F80-0928, and F80-0936

Dear Mr. Flavin:

I am writing in response to your letter of February 26 regarding the above mentioned ombudsman complaints concerning the test clearing operation at the Point MacKenzie Agricultural Project.

Item #1: It may well be that the lack of understanding displayed in this assertion is typical of that throughout the complaints. Land clearing comes in two or more phases: the initial phase, in which the trees are tipped over by chaining, must be done before the ground freezes in order to pull the stumps and roots out of the ground rather than having them broken off. The piling of the trees should take place after the ground has frozer up so that the blade of the cat riding against the ground moves as little dirt with the trees as possible. So, we most certainly were correct in our timing of the operation.

Item #2: We were informed by the proper officials in the Department of Administration that the Professional Services Contracts were suitable for this type of work since we required very strict attention to detail and hour-to-hour change of operation as determined by the on-site Contract Administrator. The Contract Administrator for the Ag Council is one individual who is Glen Franklin. He certifies that everyone in the Delta area that he was in contact with was given the same information. I do not know what may have happened in the Fairbanks or Palmer areas. While there was no advertising, certainly the local people were informed beforehand about the work to be done.

April 15, 1991

Item #5: This charge is simply untrue. First, the bid proposals stated on Page 4 of your report are not accurate and do not clearly reflect what was stated at the meeting. Mr. Robert Walton of your office contacted my assistant Julie Hickey regarding this. She read to him her notes of the meeting. Here are her notes:

Bud LaFon \$200/hr. clearing OR \$200/hr. for piling  
(Eud has "D-9's" and did the work for Carr)

Glen Helkenn \$120,000/ 300 acres

Earl Mitchell \$75,000 (through stackup for 320 Acres)

Jerry Brehmer \$153/hr.

Hermon Bros. \$128/hr. (They have two "D-9's")

Item #5 (Continued): The two winners were the only ones qualified according to the bid specifications. Glen Helkenn had only one "D-9" and Earl Mitchell had only one machine; thus, not qualifying. In addition, Mitchell bid much higher than the quoted \$75 per hour. (The tape off which you obtained your information was difficult to understand as you mentioned on page four of your report. Glen Helkenn's bid proposal was \$120,000 not \$120/hr. and Earl Mitchell's was \$75,000 not \$75/hr.) Jerry Brehmer had only one machine of the proper size available; thus leaving only the two contractors who won this bid.

Paragraph 2 - Page Three: Your report indicates that "the contractors stated that the proposals were due the same day that they heard about the opportunity to submit a proposal, thereby allowing insufficient time to prepare a written proposal..." This is partially justified. The contractors did know about the upcoming bid several days before as Mike Gilleland and Glen Franklin went to each prospective contractor to let them know about it. It's not true that the contractors hadn't heard. Mike Gilleland and Glen Franklin simply presented the bid specifications to them on the final day on which proposals could be accepted. Each contractor interested submitted his proposals by phone which was an option open to everyone.

Paragraph 3 - Page Five: There is no way that it could have been specified that those contractors involved in the test clearing would not be involved in further phases of the project. The further phases of the project obviously refer to further clearing and that is to be done by the private sector under their own contracts. It certainly would be unfair for us to eliminate them from that. There is no way that we could if we wished to do so.

Paragraph 2 - Page Six: Again, the investigator does not seem to understand the differences in the phases of clearing and the fact that part of it must be done prior to freeze-up and part of it after freeze-up. There was the constraint of timing and cold weather that we were fighting. During the period of July, August and September, we were searching for methods to arrive at a fair price to charge the farmers for the clearing. By asking for contractor estimates in writing, we had hoped this could be done. Hopefully, there would be enough uniformity to indicate that the figures suggested were accurate. By the time we had those estimates back in, recognizing that the Council met only on a monthly basis at that time, we faced a severe time constraint in getting the work done by freeze-up. We were not simply looking for a contractor, we were looking for people that could do the job well, with whom we had sufficient experience to know that they could follow instructions and keep meticulous records. There was not time to go through a 2-3 week bidding procedure. Having been assured that we could correctly use a Professional Services Contract to accomplish this work, that is the route we chose to follow. That judgement seems to be substantiated by the decision by the Contract Review Committee (CRC) in the Department of Administration.

While it is easy to be a Monday morning quarterback I question whether the individuals involved in making the criticism would have done better, or perhaps as well, in planning for the Point MacKenzie development work, having at hand the resources that were available. I definitely dispute the statement that the services were not in response to an emergency situation, whether it had progressed to the point that there could be no delay, once we had received the original proposals and found them to be too much in variance to use as a reliable guide for establishing the cost of clearing operations in the Point MacKenzie project. We were then required to take immediate action to make that determination of clearing costs by an actual test clearing operation.

Page Nine: In response to discussion at the top of page nine, the Authority to Negotiate (ATN) that was signed in this office had only one name on it. That was the individual that we intended to sign a Professional Services Contract with. Some other individual, unknown to me, added the additional names that you speak of on page nine, and, as were discussed earlier. Apparently, the criticism about the Hermon Brothers not having "D-9's" is a justifiable criticism. I was misled by the people that were working with me on this subject. I thought they were all meeting the same criteria. My decision to go with Bud LaFon of Fandik Construction was based completely on the recommendation of Glen Franklin who I have utmost confidence in.

April 13, 1981

Page Ten: The statement made on page ten that some staff member said that "Bud LaFon is our buddy" may or may not be correct. The reputation that he has earned as a result of work on the Delta project and the unquestioned meticulousness of his record-keeping were the factors that were decisive in the decision to hire him.

#### RESPONSES TO ALLEGATIONS:

Allegation Number One and Finding: Dispute this finding. The individuals making this finding simply do not understand the different phases of clearing work. To repeat the earlier statement, chaining down of the timber must be done before the ground freezes up. Pushing into berm piles should be done after the ground freezes up. Because of that we definitely were in a time crunch.

Allegation Number Two: We were assured that we did meet the criteria for a Professional Services Contract; therefore, we went ahead with it. Also, the Clearing Supervisor was there as much to insure that record-keeping was accurate for all parties involved as any other one thing. This is distinctly separate from insuring that the proper quality of work was done.

Allegation Number Three: The advertising in the Delta Junction area was done competently and adequately.

Allegation Number Four: This allegation is not correct. The work was well advertised at least in the Delta Junction area.

Allegation Number Five: Mitchell's bid was not \$75/hr. but at least \$175/hr.

#### RECOMMENDATIONS:

1. Recommendation #1 is in complete accord with the policies and intent of the Council. Unfortunately, circumstances and the very limited staff available to accomplish the tasks necessary do not always allow the luxury of this degree of advance planning. For instance -- scores of hours have been spent during the last 3 months at legislative hearings at the direct request of legislators. As a direct result of these unprecedented demands on my time, activities scheduled to be accomplished for the Delta II disposal have fallen behind schedule.

Letter to Chief on Elvin

Page 5

April 18, 1981

2. Recommendation #2 is completely consistent with Ag Council policy and practice as carried out in Delta I with the test clearing work done in 1977.
3. Recommendation #3 is completely consistent with Ag Council policy.

IN CONCLUSION:

Many persons, inexperienced with the clearing methods presently employed, are failing to distinguish between the chaining down of the timber which does not result in significant damage to the trees for use as either lumber or firewood and berm piling which does result in a dense mixture of underbrush, moss, some dirt and tree stems.

Pushing into berm piles should always be done on frozen ground. This is not true of the chaining process.

Thank you for the opportunity to respond to the allegations and recommendations. It is our hope and expectation that as time goes by and those involved in these projects, as well as interested observers, become more thoroughly acquainted with the details of the projects and their implementation, then, perhaps, friction and discord and be lessened.

Sincerely,



W. I. "Bob" Palmer  
Special Projects Coordinator

# STATE OF ALASKA

JAY S. HAMILTON, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

POUCH C

JUNEAU, ALASKA 99811

Ph: 465-2200

March 26, 1981

Mr. Frank Flavin  
Ombudsman  
840 K Street, Room 203  
Anchorage, AK 99501

RECEIVED  
APR 1 1981

ANCHORAGE  
OFFICE OF THE OMBUDSMAN

Dear Mr. Flavin:

Re: Ombudsman Complaints F80-0904  
F80-0928, and F80-0936

In your February 26 communication, you stated that the Governor's Special Projects Office and the Alaska Agricultural Action Council did improperly award certain contracts for test clearing at the Point MacKenzie Agricultural Project. You further stated that the Department of Administration shared the responsibility for the alleged failure to comply with state policy, and made two specific recommendations as follows:

- 1) The Department should clarify the definition of and rules for professional services contracting, seeking new legislation as necessary, and;
- 2) The Department should ensure that the Administrative Manual is revised to reflect the new definition and that employees of the Department are familiar with the new criteria.

In response, I wish to preface my comments with a recognition of your staff's professional level of effort during the course of their investigative procedures and report-finding(s). The investigation was very professional, reflective of professional effort through-out, and your staff should be complimented on that quality of effort.

The point raised by the Ombudsman is that the professional services regulations do not have the force of law (thus have no legal effect); and that they should be adopted under the Alaska Administrative Code since they affect the public.

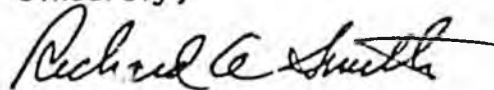
March 26, 1981

It is our belief that the contract regulations are internal management procedures only and do not affect the public's right to do business with the State to any greater or lesser degree than their rights had been affected prior to the implementation to these regulations. If there is any effect at all upon the public's ability to do business with the State since these regulations have been adopted, it is to greatly increase their capacity to do business since one of the prime purposes of these regulations is to eliminate to the greatest degree possible the so - called "special friends" type of contract. These regulations make it incumbent upon agencies who wish the contract to go to the public sector to secure competition whenever possible, rather than dealing continuously with the same contractors.

The manual may appear to impose conditions on the public; however, these requirements are already statutorily imposed such as business license, corporate registry, professional licensing, and all we are seeking to accomplish by the regulations is to make agencies aware of these laws before the contract with a vendor. This is no more nor less a precaution than a prudent man would take before entering into a contract. In fact, if the State were to contract with a person or firm that was not in compliance with these Statutes, particularly if a third party were to suffer damage, the State could be morally or legally guilty of aiding and abetting in a misdemeanor or felony violation of its own laws.

Alaska Statutes Title 37 makes the Commissioner of Administration responsible for sound fiscal procedure and further gives him power to adopt rules and regulations for administering his responsibility. The Commissioner has chosen to a great degree to adopt regulations to administer his duties in the form of the State Administrative Manual and the State Purchasing Regulations. Neither of these two documents has been codified into the Alaska Administrative Code; both still operate in a quasi-legal fashion as they mandate purchasing power of the agencies, processing a bill for payment, and other internal management procedures. Additionally, the Department of Administration is of the opinion that the term professional services is adequately defined, and will not therefore seek statutory definition nor redefinition in the Administrative Manual.

Sincerely,



Richard A. Smith  
Deputy Commissioner  
for Administrative Management

RAS/dm  
C1/Z1



Ombudsman

Frank Flavin

State of Alaska

Reply to:

- 440 K Street, Room 203  
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Bob Palmer  
Coordinator, Special Projects  
Office of the Governor  
Pouch AN  
Juneau, Alaska 99811

Re: Ombudsman Complaints F80-0904  
F80-0928, and F80-0936

Dear Mr. Palmer:

On November 4, 5, and 6, these complaints were filed in our Fairbanks office. The complainants alleged that the contracts for the test clearing operation at the Pt. MacKenzie Agricultural project were awarded improperly for the following reasons:

1. The rush to have the land cleared before the ground froze was improper since most arguments favor clearing after the ground freezes.
2. The contracts did not meet the criteria for Professional Services Contracts and therefore should have gone to bid.
3. Several contractors were verbally asked to submit proposals by different people regarding the test clearing but were given conflicting stories regarding the test clearing specifications (ie. the equipment required, time to submit proposals, etc.). As a result, the complainants did not have a fair opportunity to prepare their proposals.
4. There was no advertising of the contracts and they were awarded without local people knowing about them or having an opportunity to compete for them.
5. The state didn't award the contract to the person with the lowest proposal of those submitted.

The office of the Ombudsman has completed its investigation of these complaints. During the course of the investigation our office:

1. Conducted interviews by telephone and in person with the Chairman of the Alaska Agricultural Action Council and three members of its staff; representatives of the Departments of Administration, Natural Resources and Law; members of the Department of Administration's Contract Review Committee; employees of several private contracting firms and the Alaska Chapter of the Associated General Contractors; district conservationists with the U.S. Soil Conservation Service; and others.
2. Reviewed the applicable provisions of the Alaska Statutes and the Alaska Administrative Manual.
3. Listened to a tape of the October 31, 1980, Alaska Agricultural Action Council (AAAC).
4. Reviewed pertinent statutes from other states.
5. Reviewed documents and correspondence of the AAAC.

BACKGROUND INFORMATION:

The development of approximately 15,000 acres of state and Matanuska-Susitna Borough land at Pt. MacKenzie for a farming project was proposed to the Alaska Legislature by the Alaska Agricultural Action Council (AAAC) in 1980. The project has been discussed in general terms since 1977 and has been the subject of various analyses since early 1979. The project is considered a joint effort of the AAAC, the Divisions of Agriculture and Forest, Land and Water Management in the Department of Natural Resources and the Matanuska-Susitna Borough. The land will be sold by State land lottery, with agricultural interest offered in accordance with AS 38 and 11 AAC 67. The scheduled date for the lottery is March 6, 1981.

Members of the AAAC and its staff presented a proposal to the Legislature in 1980 for initial project funding and CSSB 305, sponsored by Senator Kerttula, appropriated \$3,600,000 to the AAAC for land clearing. This amounted to approximately \$240 per acre and was estimated based on experience in Delta and the Matanuska Valley. The money was intended for loans to the winners of the lottery but the specific terms of the loans were to be established by the AAAC.

Several reports and memoranda concerning the Pt. MacKenzie Project address land clearing. Budget and Management's report of 3/14/80, discusses the state loan program for clearing (\$220/acre); AAAC Executive Director Robert C. Pollock's letter of June 16, 1980 to the AAAC includes a proposed activity plan for consideration by the council at its June 27, 1980 meeting. Mr. Pollock proposed that priority attention be given to those development areas that needed to be accomplished in the next several months. He suggested several specific areas for concentration, including: "...9) clearing and breaking, Glen Franklin, Carol Lewis, S.C.S.,..." and on the plan itself, across from "clearing and breaking", "Determine Specifications" was indicated in July, August, and September. Mr. Pollock told Mr. Walton of our Fairbanks office that this activity plan was never adopted by the AAAC.

TEST CLEARING CONTRACT PROCESS:

Acting on earlier recommendations by its staff, the AAAC decided in late August and early September, 1980 that several estimates of the clearing costs should be obtained from local contractors to substantiate the earlier estimates done by the University of Alaska for the AAAC and the Legislature. AAAC staff members indicated to Mr. Walton that this was behind schedule due to their work load. They stated that the planning should have been done earlier. Phone calls were placed by Paul Hubert, Vice Chairman of the AAAC, to several contractors, prompting the following responses:

1. Gary M Baugh, President of Baugh Construction and Engineering Company to the Matanuska-Susitna Borough dated October 7, 1980, giving "very general budget numbers" intended to "be of assistance to (the Borough) in establishing the budgets for future work."

2. James S. Hennon, President of Hennon Brothers Construction Co. to Alaska Agricultural Council, dated October 3, 1980, entitled: "Proposal based on clearing with a 46AD8 with 15' Scarifier Blade."

3. Edward E. Carney, President of Carney Bros. Inc., to Alaska Agricultural Council, giving figures for clearing approximately 300' wide fields.

These letters (enclosed in Appendix A) were reviewed by AAAC staff, who considered the estimates to be too high and therefore recommended that an actual test be performed to obtain detailed information on clearing costs as the basis for future loans. The staff advised the Council that, in their opinion, the test should be performed before winter, therefore creating a time constraint. Different reasons of the need for pre-winter activity were discussed, including clearing before the ground froze and clearing before deep snow covered the area. The AAAC decided to have the test performed and instructed its staff to contact potential contractors. At this point Robert Pollock called Rod Mourant of the Governor's office to check on contracting procedure requirements. Mr. Mourant indicated that at least three contractors would have to be contacted.

The following contractors were contacted in person by Mike Gilliland of the Fairbanks AAAC office and/or Glen Franklin of the Delta office of the Governor's Special Project's office in October 1980: Jerry Brehmer, Glen Helkenn, Earl Mitchell, Dennis Green, Bud LaFon (Kandik Construction), Carney Bros., and Hennon Brothers. Both Gilliland and Franklin indicated to Mr. Walton that Brehmer, Helkenn, Mitchell and Green were contacted in person, were shown a copy of the "POINT MACKENZIE TEST CLEARING SPECIFICATIONS" sheet (undated) (see Appendix B) and were asked to submit a proposal. Several contractors told Mr. Walton that no written specifications were provided. The contractors also stated that the proposals were due the same day that they heard about the opportunity to submit a proposal, thereby allowing insufficient time to prepare a written proposal. The AAAC did receive written proposals submitted by Hennon Bros., Bud LaFon and Carney Bros (see Appendix C). Proposals by Helkenn, Mitchell and Brehmer were submitted verbally in late October and, according to AAAC staff, no written record of these proposals exists.

On October 31, 1980, the AAAC met in Anchorage. Members of the Ombudsman staff have listened to a taped recording of this meeting. During the executive session portion of the meeting, the AAAC discussed the test clearing contracts and mentioned that three local (Pt. MacKenzie) contractors had been asked to estimate the costs for clearing the land. The contractor's estimates ranged from \$500 or \$750 to \$2200 per acre for clearing costs.

You indicated that you felt the AAAC had to get an unbiased individual who had a lot of land clearing expertise, was very meticulous about his record keeping and who could be hired by the AAAC on an hourly basis to do some test clearing. You said that the Department of Administration had indicated the clearing could be done on a professional services contract basis and that it "would be good to go

out and have some other people give us some proposals...on this test clearing."

You indicated you were ready to go with Bud LaFon of Kandik Construction, since LaFon apparently had cleared more farm land in Alaska than anybody else. Additionally LaFon did an extremely good job in clearing land in Delta Junction and that Glen Franklin knew his work and the work that he could do. You proposed that the AAAC hire Bud LaFon on a professional services contract to clear. Glen Franklin would oversee the project.

At this point in the discussion, proposals by several other contractors were mentioned, including the following:

(inaudible)	\$200/ hr (probably Bud LaFon)
Glen Helkenn	\$120/ hr
Earl Mitchell	\$75 / hr
Jerry Brehmer	\$150/ hr
Hemon Bros.	\$128/ hr

The subsequent discussion is difficult to understand on the tape. It included, according to one AAAC staff member, considerations of the need for two contractors to ensure competition, so that costs wouldn't be "padded." The benefits of having an inspector to watch the contractors and the problem of inducing productivity from the contractor(s) were discussed. Also, the AAAC wanted to reduce the backlash in the Palmer area (expected, due to the hiring of a Fairbanks contractor, Bud LaFon) by hiring a local contractor. Several of the proposals were rejected for failure to meet the required specifications, such as lack of the D-9 tractors. A motion was made that the AAAC contract with the Hemon Bros. and Kandik construction. They would each clear 300 acres on the Pt. MacKenzie Project on an hourly basis using the AAAC's specifications. Glen Franklin, the contract administrator, would evaluate the results. The motion was seconded and approved by the AAAC.

On November 3, 1980, Robert Pollock sent a memo to Rod Mourant, Administrative Officer for the Office of the Governor, summarizing the developments and asking Mr. Mourant to review the contracting process. You also sent a memo to Rod Mourant dated November 4, entitled "Attached Two Contracts for Test Clearing in the Point MacKenzie Project." The documents included two "Authority to Enter Contract Negotiations" forms dated November 5, 1980, each listing one firm (Kandik Construction on one and Leslie B. Enterprises on the other). (See Appendix D.)

On November 6, 1980, the ATNs and proposed contracts were submitted to the Department of Administration's Contract Review Committee (CRC) for approval. The AAAC argued that there was a time constraint because the work had to be done prior to freeze up, but the contracts were rejected because no professional services were being obtained. After this meeting, Robert Walton of our Fairbanks office called Ken Ryals, Supervisor of the Pre-Audit section in the Department of Administration. Mr. Walton pointed out that the Administrative Manual describes professional services in section 8102 as follows:

Professional services require specialized knowledge and training to perform, often through long and intensive academic preparation. The term includes artistic abilities, but not manual skills....For purposes of this part of the manual professional services are defined as services rendered by an individual or firm contractually hired by an agency because of in-depth expertise in a particular field. Skilled tradesmen such as carpenters, electricians and plumbers are not considered in the professional category.

Mr. Walton asked Mr. Ryals if he could clarify what kinds of services qualified as professional services. Mr. Ryals used as an example a lot clearing in which the grader work to clear the land would not be a "professional service" but the surveying of the land would be.

On November 14, the CRC met again to consider the contracts. By this time, additional contractors' names had been handwritten onto the ATN forms (our investigation was unable to determine who wrote these in); now one contained Kandik Construction (typewritten) and Baugh Construction, Hermon Brothers Construction and Carney Bros., (all handwritten); the other contained Leslie B. Enterprises (typewritten) and Baugh, Herman Brothers and Carney Bros. (handwritten).

Rod Mourant made a presentation to the CRC that emphasized: the test was more than just clearing because different methods were to be tried to determine cost effectiveness; the need for meticulous record keeping; and the time constraints due to approaching cold weather. At least one member of the CRC understood from the presentation that the contractor(s) for the test clearing would not be involved in further phases of the project. Our investigation found no evidence that this condition was ever seriously considered and no stipulations to this effect were included in the contracts or specifications.

Following this presentation, the CRC approved the contracts, reasoning that they did in fact meet the criteria for professional services, given the considerations presented by Mr. Mourant. The test clearing commenced several days later.

On December 24, 1980, Mr. Walton asked Mr. Mourant to clarify what qualified as a professional services contract. Mr. Mourant indicated that, in his opinion, certain flexibility is necessary in the determination of what constitutes a professional service. He gave as an example secretarial services for the transcription of meetings. Mr. Mourant believes that these do qualify as professional services.

#### RESULTS OF OUR INVESTIGATION: WHAT SHOULD HAVE TAKEN PLACE

Planning: The consideration of clearing and breaking specifications was proposed for July, August, and September by AAAC staff. If this schedule had been implemented by the AAAC, there would have been ample time to follow a proper contracting process before winter. While it is true that excess snow on the ground can cause problems during clearing, it is also true that many authorities agree that the best time for clearing is after the ground has frozen. Much of

6.2  
6.1 →  
the test clearing could have been recognized as a winter activity; in fact problems were encountered because the test clearing was begun too early and the large tractors "wallowed in the soft ground." The AAAC should have paid special attention to scheduling tasks that required action prior to cold weather so that time would have been available for proper planning.

The AAAC should have investigated clearing costs earlier. The legislative appropriation of \$3,600,000 for land clearing that was signed into law by Governor Hammond on June 18 should have been based on data sufficiently reliable so that a last minute test clearing would not have been necessary, but in any case the decision to request estimates and have a test clearing should not have been delayed as long as it is.

Test Clearing Contract: If and when the need for a test clearing had been established, the AAAC should have determined, with the assistance of the Department of Administration, the proper contracting process - before negotiating with potential contractors.

The following steps, taken from "Choosing and Using Contractors: Seminar for State of Alaska Employees (1980)" are representative of what should have been included in this process:

1. Establish criteria for determining qualified firms, ie. required characteristics such as experience, equipment, past performance, etc.

2. Obtain a list of potential contractors, using several sources, such as AAAC, Department of Administration (a computerized listing of potential contractors is now available from General Services and Supply), Department of Natural Resources, professional organization(s) such as Associated General Contractors, and advertising.

3. Compare sole source, request for proposal and request for bid alternatives:

a. Sole source procurements when the agency is certain that the firm selected is uniquely qualified,

b. RFPs allow contractors wider latitude in developing proposed approaches and cost estimates and allow the contracting agency to select from a range of skills and approaches,

c. RFPs are used when fairly standard services are required.

4. Review pertinent statutes and rules, including the following:

a. AS 37.05.220 This section designates the Department of Administration as the purchasing agent for the state with the authority to purchase contractual services or to delegate this power to other agencies in accordance with AS 37.05.230.

b. AS 37.05.230 states:

...a contract for contractual services must be based on competitive bids; and award shall be made to the lowest responsible bidder after advertising the bids except that (C) competitive bids need not be required (i) for contractual services where no competition exists...or (vi) for professional services...

c. The State Administrative Manual, which sets forth "regulations to serve as agency guidelines for administration,

negotiation, execution and accounting and control of Professional Service Contracts."

In addition to section 8102 of the Administrative Manual (quoted previously) that discusses requirements for professional services, section 8104 states:

Whereas employee services are performed under supervisory direction in an employer provided and controlled environment, professional services are rendered independently, artfully and skillfully. To qualify as a contractor the individual or organization usually maintains an office and staff, provides the necessary tools and instruments... (emphasis added).

The test clearing operation was supervised by Glen Franklin so the services were not rendered independently and at least one of the contractors did not have the specified equipment (D-9 tractors) or in-depth experience in agricultural clearing. It is clear to our office that the test clearing contracts should not have been awarded on a professional services basis.

In this case or in any other, however, once a conclusion is reached that a professional services contract is applicable, then the procedures set forth in the Administrative Manual should be followed. The following discussion addresses these procedures.

Section 8102 of the Administrative Manual states that:

...An agency may submit a statement to the Commissioner of Administration requesting approval to modify the application of any specific procedure to its unique circumstances. Unless the request is approved in advance, compliance with the procedural safeguards set forth here is mandatory... (emphasis added).

Since the action of the Department of Administration's CRC on November 6 was to reject the contracts because they did not contain professional services, it is clear that prior approval was not obtained and the "procedural safeguards" in the Administrative manual were therefore mandatory.

Since the services were clearly not in response to an emergency situation, Section 8134's waiver allowance of the prior approval does not apply to these contracts. The urgency that did exist was the result of poor planning.

Section 8140 reiterates that an agency may not enter into contact negotiations until the Authority to Negotiate form is approved by the Department of Administration. It states:

Contract negotiation is defined as a process of conferring with others to arrive at a mutually acceptable agreement. Therefore, the Department of Administration must approve an ATN before an agency may do one of the following:

1. Send a formal RFP (Section 8142) to prospective contractors.
2. Request one or more prospective contractors to submit formal proposals.

Each ATN submitted to the Department of Administration must be accompanied by documents in support of the items listed above (Section 8136) and where appropriate, by an outline of the evaluation procedures which will be used to judge proposals.

In some cases, preliminary contact with prospective contractors may precede negotiations. Care must be taken that these contacts do not result in a premature commitment and do not give any firm or individual an unfair advantage.

It is clear that not only were the prospective contractors requested to submit proposals before Mr. Ryals signed the ATN (on November 14), but the contracts were in effect awarded verbally by the AAAC prior to the signing of the ATN.

Each of the contracts was for approximately \$60,000, therefore the provisions of Section 8146 should have been followed:

...whenever an agency contemplates the negotiation of a contract in the probable amount of \$20,000 or more it must comply with the following:

1. Preparation of a program review memorandum if funds have not been budgeted. (In this case they had, by CSSE 305.)
2. Preparation of a formal request for proposal. Section 8142.
3. Solicitation of proposals by newspaper advertising in addition to solicitation by other means.
4. Utilization of a review committee and a point system to evaluate proposals. Section 8144.

...If an agency does not comply with the above requirements it must explain its position in writing and request concurrence of the Department of Administration.

Our investigation found no evidence that 2, 3 or 4 above were completed or considered or that the agency position was explained in writing.

Section 8142 discusses the Request for Proposal and states that: "In professional service contracting it is one of the most important documents prepared." No RFP was prepared for the test clearing contract.

Section 8108 states that a list of all vendors to whom the RFP is to be sent must be forwarded to administration in the form of an ATN. This was not done. Instead, the ATN with an incomplete set of names was signed after the contracts were negotiated.

Section 8106 cites AS 37.05 220 and states:

...It is State policy to solicit proposals from at least three potential vendors unless justified otherwise or unless newspaper advertising is used in lieu of direct solicitations...

There was no newspaper advertising. The ATN form includes a statement that says: "We intend to negotiate with the following persons or firms. Agencies SHOULD list at least three choices or explain why it is not possible", followed by three lines (see Appendix D). On the copies of the ATNs signed by you and Mr. Ryals (after the negotiations), the following firms were listed. Kandik, Baugh, Hemon Brothers and Carney Bros. on one and Leslie B., Baugh, Hemon Brothers and Carney Bros. on the other.

Mr. Baugh's letter was not a proposal at all but a response to the initial inquiry about estimates for future clearing costs. Mr. Baugh told Mr. Walton in a telephone interview on December 10 that he would have liked to have had a chance to bid on the test clearing but was given no such opportunity.

The letter from Mr. Hemon is a proposal based on clearing with a "46AD" which is not a D-9 as called for in the specifications sheet. The lack of D-9 tractors or their equivalent is what caused the Carney Bros. and other contractors to not qualify for the test clearing.

Leslie B. Enterprises is run by Leslie B. Hemon, a nephew of the Hemon brothers, but it is separate from the Hemon Brother's company. Leslie Hemon told Mr. Walton on February 23, 1981 that his company had experience in clearing but, prior to the test clearing contract, Leslie B. Enterprises had not done any agricultural clearing work and had not used D-9 equipment. In a telephone conversation with Mr. Walton on December 10, 1980, Mr. Ben Hemon stated that Hemon Brothers Construction had turned the test clearing project over to their nephew because his wife is a minority and they are trying to get him established so he can get minority hire contracts. He also indicated that Leslie B. Enterprises leased the equipment from Hemon Brothers so that the criteria for D-9 equipment could be met.

Section 8122 states:

"The following points are representative of what should be considered by the agency before a decision is made to perform work by contract:

...7. Have at least three prospective providers of the desired service been designated: Are there other sources that could be included? Why have any qualified firms been excluded?

During the course of the investigation, Mr. Walton contacted the Associated General Contractor's office in Anchorage and several individual contractors. Mr. Walton asked if they knew of any firms that had agricultural clearing experience in Alaska. The consistent answer received was that there were many contractors who were qualified, had

experience, had D-9 or equivalent equipment, and were eager to submit bids or proposals to do clearing work.

No consideration of this large number of potential contractors was made in the test clearing contracting process. On the contrary, according to members of the AAAC staff, the contract was awarded to Bud LaFon of Kandik Construction because he was personally known by the AAAC to have done good work at the Delta Project and, according to one staff member, "Bud LaFon is our buddy."

Section 8132 discusses the need to secure competitive proposals; to award the contract to the firm submitting the lowest cost, responsive proposal; the advantages of soliciting proposals from a large number of qualified firms; and the caution: "Extreme care must be taken not to exclude any firm prematurely."

Section 8108 includes a requirement that contracts be accompanied by an explanation as to the reasonableness of the proposed transaction's cost. Item 6 also requires "Agency justification of price if the lowest proposal is not accepted or if agency contracts were limited to fewer than three sources."

The proposals that were submitted were not consistent in the manner in which the costs were estimated. Some of the contractors used dollar per hour figures and some used dollar per acre figures, and various combinations of clearing, disposal, windowing, stump rowing and other tasks were mentioned in the various proposals. The differences in cost (from Mitchell's \$75 per acre mentioned at the October 31 AAAC meeting to Hermon Brothers \$400 per acre) and the differences in the way the proposals were received (ie. by letter and phone) are examples of the need for the explanation required by section 8108 (6).

#### SUMMARY OF ALLEGATIONS AND FINDINGS:

ALLEGATION NUMBER 1 (The rush to have the land cleared before the ground froze was improper since most arguments favor clearing after the ground freezes.):

There are differences of opinion about the best time to perform certain operations associated with land clearing. Several of the operations are best performed after the ground freezes, but if the clearing were delayed too long, deep snow could have seriously hindered the clearing operation. With proper planning, the AAAC could have avoided the hurried contracting process and precluded the problems and complaints that resulted.

FINDING: This allegation is partially justified.

ALLEGATION NUMBER 2 (The contracts did not meet the criteria for Professional Services Contracts and therefore should have gone to bid.):

It is the opinion of the Office of the Ombudsman that the Contract Review Committee's original decision was correct based on the definitions provided in the Administrative Manual, especially Section

8102. Mr. Mourant's arguments (that different clearing methods were to be tried and that meticulous record keeping was needed) fail to establish that the clearing activity was a professional service. If specifications called for contractors to create new and innovative techniques for clearing, for instance, then it might have been a professional service. In addition, since the AAAC had prescribed the clearing process and had a supervisor on hand to insure compliance, the contractors were not operating independently, therefore contradicting the Administrative Manual, Section 8104, which describes professional services as being rendered independently. The test clearing contracts do not constitute professional services and they should have been awarded through the competitive bid process.

FINDING: Allegation number 2 is justified.

ALLEGATION NUMBER 3 (Several contractors were verbally asked to submit proposals by different people regarding the test clearing but were given conflicting stories regarding the test clearing specifications (ie. the equipment required, time to submit proposals, etc.). As a result, the complainants did not have a fair opportunity to prepare written proposals.):

There remain differences of opinion between AAAC staff and several contractors as to exactly what information was provided to whom, when and with how much lead time to submit proposals, but it is clear that these problems would not have occurred if a proper RFP had been prepared and proper records had been kept.

FINDING: This allegation is partially justified.

ALLEGATION NUMBER 4 (There was no advertising of the contracts and they were awarded without local people knowing about them or having an opportunity to compete for them.):

The proper procedures for processing Professional Services Contracts were not followed. Although advertising is not always required in the selection of a contractor, it is clear that there should have been a greater effort to obtain the maximum practicable competition for the contracts.

FINDING: This allegation is justified.

ALLEGATION NUMBER 5 (The state didn't award the contract to the lowest bid proposal of those submitted.):

Due to the absence of written records on several of the proposals that were submitted and due to the lack of consistency in the estimates, it is difficult for this office to determine the exact relationship of the cost estimates in the proposals. It appears that the lowest bid was Mitchell's at \$75 per hour but there are disagreements as to the specifics of Mitchell's proposal. One of the firms that was awarded a contract, Leslie B. Enterprises, was not experienced in agricultural clearing and did not meet the AAAC requirements of experience and having its own D-9 equipment. Leslie B. Enterprises should not have been

awarded the contract. As discussed above, an RFP should have specified the exact manner in which costs were to be proposed as well as the exact work to be accomplished.

FINDING: This allegation is partially justified.

ADDITIONAL FINDING: As a general finding, it is clear that the several safeguards established by the state in AS 37 and the Administrative Manual to establish contracting procedures were not followed in the case of the Pt. MacKenzie test clearing contract. Numerous examples of failure to follow pertinent guidelines were revealed during the course of our investigation, such as failure to prepare an RFP, failure to include other qualified contractors, and failure to have a formal review process. In general, the process was in marked contrast to the following quote from Attorney General Opinion Number 27, 1959, which is printed in Alaska Statutes following AS 37.05.230:

The purpose of the chapter was not only to protect the state and the public purse from uneconomic contracts let because of failure to request competitive bids and because of possible favoritism, but was 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.

The Office of the Ombudsman notes that the Division of Legislative Audit recommended (in correspondence from Gerald L. Wilkerson, Legislative Auditor, to B.B. Allen, Commissioner, Department of Administration, dated April 25, 1978) that the Office of the Governor should comply with its established contracting procedures. Compliance with contracting procedures continues to be a problem that requires resolution.

RECOMMENDATIONS:

For the Alaska Agricultural Action Council:

1. Future projects should be planned far enough in advance for timely consideration of important tasks such as contract processing within the guidelines of the Administration Manual.
2. The experience of the test clearing should be made available to all persons and firms interested in future clearing work in the state and extreme care should be exercised to prevent the two contractors selected from having any unfair advantage, based on their test clearing work, over other contractors who might be interested in providing clearing services in the future, including the Pt. MacKenzie project.
3. In upcoming agricultural projects, such as Delta II, particular care should be taken to ensure that a fair and competitive system is utilized in the contracting of any work performed through the contract system.

I would like to thank you for the assistance and patience of your staff during the course of this investigation. We are requesting that

you respond to our specific recommendations within 30 days. If you have questions, please do not hesitate to contact our Fairbanks office.

Sincerely yours,

Frank Flavin  
Ombudsman

FF/RGW:jb

cc: Ted Smith, Director  
Forest, Land and Water Management

Nick Carney, Director  
Division of Agriculture

Bob Pollock, Executive Director  
Alaska Agricultural Action Council

Mike Gilliland  
Alaska Agricultural Action Council

Glen Franklin  
Governor's Special Projects Office  
Delta

ALASKA GOVERNMENT

Frank Flavin

May 4, 1981

Bob Palmer  
Coordinator, Special Projects  
Office of the Governor  
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Juneau, Alaska 99811

10/1/81

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Fairbanks, Alaska 99707  
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Re: Ombudsman Complaints F80-0904  
F80-0928, F80-0936, and  
A80-1126

Dear Mr. Palmer:

Thank you for your letter of April 13, 1981 in response to our investigation of the test clearing operation at the Point MacKenzie Agricultural Project. I feel obliged to respond to your comments since many of our points were either misread or are misinterpreted in your response.

The comments that follow are organized according to the allegations and findings in our February 26 letter.

ALLEGATION NUMBER 1 (The rush to have the land cleared before the ground froze was improper since most arguments favor clearing after the ground freezes.):

We found (p. 10) this allegation partially justified. The contracting process used in the test clearing operation was hurried. We found numerous departures from the guidelines established in the Statutes and the Administrative Manual. Additionally, the services were clearly not in response to an emergency situation. We stated that, with proper planning, these problems could have been avoided since the Alaska Agricultural Action Council (AAAC) should have investigated the clearing costs earlier. The legislative appropriation for the clearing was signed by the Governor on June 18, yet the AAAC didn't receive estimates of clearing costs until October, and only then decided to do a test clearing.

We also stated: "There are differences of opinion about the best time to perform certain operations associated with land clearing."

In your April 13 letter, you stated in part:

(p. 1) It may well be that the lack of understanding displayed in this assertion is typical of that throughout the complaints. Land clearing comes in two or more phases: the initial phase, in which the trees are tipped over by chaining, must be done before the ground freezes in order to pull the stumps and roots out of the ground rather than having them broken off . . . So, we most certainly were correct in our timing of the operation.

(p.3) There was that constraint of timing and cold weather that we were fighting . . . By the time we had those estimates back in, recognizing that the Council met only on a monthly basis at that time, we faced a severe time constraint in getting the work done by freeze-up. There was not time to go through a 2-3 week bidding procedure.

(p. 3) I definitely dispute the statement that the services were not in response to an emergency situation . . . We were then required to take immediate action to make that determination of clearing costs by an actual test clearing operation.

### Our Response

**Planning:** The AAAC failed to comply with various contracting guidelines. By ignoring these guidelines, it failed to ensure that the "state and the public purse (were protected) from uneconomic contracts" and "contractors would be insured a certain amount of 'fair play' in dealing with the state government." With proper planning, the AAAC would have had time to go through a bidding process and to satisfy all contracting guidelines.

Our criticism of the AAAC's planning focuses on the timing of the request for clearing cost estimates. If the AAAC was concerned about the accuracy of the estimates used for the legislative appropriation, it should have obtained estimates before October. Chaining could then have been done prior to freeze-up if so desired.

**Chaining:** In acknowledging differences of opinion on the subject, we did not intend to initiate an argument over the best time to chain trees. As noted on page one of our letter, we contacted district soil conservationists with the U.S. Soil Conservation Service. Three different USDA soil scientists have stated in telephone conversations with our Fairbanks office that there are good reasons to chain after the ground is frozen. Ted Cox, soil scientist with the Soil Conservation Service in Palmer, confirmed this in a telephone conversation with Robert Walton on April 24. He also indicated that he had observed some of the test clearing at Point MacKenzie in December when it was cold, that the shallow roots were coming out, and that there was little if any breaking off of trunks. It is because "experts" may disagree on this issue that we moderated our statement of finding in Allegation Number 1 to partially justified.

**Emergency:** The Administrative Manual contains two references to an "emergency" situation. Section 8108 states in part: ". . . when there is an emergency and such work is necessary to protect life or property." We see no evidence that such a situation existed concerning the test clearing operation. Section 8132 states in part:

"Competition may not be feasible when one or more of the following conditions prevail: . . . 3. Public necessity will not permit delay incident to preparation of formal requests and evaluation of proposals."

It is not clear that public necessity required chaining before freeze-up but, as we stated earlier, proper planning would have allowed proper procedures whether the chaining was done before or after freeze-up.

ALLEGATION NUMBER 2 (The contracts did not meet the criteria for Professional Services Contracts and therefore should have gone to bid.):

We found (p. 10) this allegation justified. We believe that the Department of Administration's Contract Review Committee was correct in its original decision that professional services were not involved in the test clearing operation.

You responded in part:

(p. 3) We were not simply looking for a contractor, we were looking for people that could do the job well, with whom we had sufficient experience to know that they could follow instructions and keep meticulous records.

(p. 3) My decision to go with Bud LaFon of Kandik Construction was based completely on the recommendation of Glen Franklin who (sic) I have utmost confidence in.

(p. 3) In response to discussion at the top of page nine, the Authority to Negotiate (ATN) that was signed in this office had only one name on it. That was the individual that we intended to sign a Professional Services Contract with.

(p. 4) The reputation that (Bud LaFon) has earned as a result of work on the Delta project and the unquestioned meticulousness of his recordkeeping were the factors that were decisive in the decision to hire him.

Our Response:

Professional services consultants are expert advisers who offer views and opinions based on administrative, professional, or technical experience. The Administrative Manual states that "professional services require specialized knowledge and training . . . but not manual skills." Professional services are "rendered independently, artfully and skillfully" but "skilled tradesmen such as carpenters, electricians and plumbers are not considered in the professional category."

We agree that despite these guidelines the Department of Administration gave the AAAC the authority to proceed on a Professional Services Contract basis. As a result, we recommended to the Commissioner of Administration that the definition of professional services contracting be clarified and new legislation be sought as necessary. In our Special Report 81-3, p. 11, we suggested a new definition of professional services, as well as other changes in the current guidelines. Until these or other changes are implemented, the AAAC and all agencies should follow the current guidelines on professional services contracting. Although a bid process would have been appropriate, the AAAC was authorized to proceed under professional services contracting guidelines. We found little evidence of intent to comply with these procedures, however.

Your inclusion of the Authority to Negotiate (ATN) with only one name was improper. As stated on the ATN, you should have listed at least three names or explained why not. You were effectively asking for a sole source contract and, according to the Administrative Manual, should have sought prior approval.

ALLEGATION NUMBER 3 (Several contractors were verbally asked to submit proposals by different people regarding the test clearing but were given conflicting stories regarding the test clearing specifications (ie. the equipment required, time to submit proposals, etc.). As a result, the complainants did not have a fair opportunity to prepare written proposals.):

We found (p. 10) this allegation partially justified. We stated:

There remain differences of opinion between AAAC staff and several contractors as to exactly what information was provided to whom, when and with how much lead time to submit proposals, but it is clear that these problems would not have occurred if a proper RFP had been prepared and proper records had been kept.

You responded:

(p. 1) (Glen Franklin) certifies that everyone in the Delta area that he was in contact with was given the same information. I do not know what may have happened in the Fairbanks or Palmer areas.

(p. 2) The contractors did know about the upcoming bid several days before as Mike Gilleland and Glen Franklin went to each prospective contractor to let them know about it. It's not true that the contractors hadn't heard. Mike Gilleland and Glen Franklin simply presented the bid specifications to them on the final day on which proposals could be accepted. Each contractor interested submitted his proposals by phone which was an option open to everyone.

(p. 4) RESPONSE TO ALLEGATIONS: . . . Allegation Number Three: The advertising in the Delta Junction area was done competently and adequately.

Our Response:

You missed our point. The only way to ensure accuracy and fairness in the solicitation and evaluation of bids is to have a written request for proposals which invites written proposals and allows adequate time for their preparation.

We do not question the integrity of Glen Franklin or Mike Gilleland; it is simply unprofessional to base important financial transactions on conversations. An individual's recollection of conversations is not a permanent record, especially if, as you state, more than one person were making presentations. It is also clear since the "bids" were submitted in inconsistent form (hours, acres) that the proposers were given either no instructions or conflicting instructions in this regard. Accountability to the public and other contractors

Bob Palmer  
May 4, 1981  
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requires written documentation. This standard procedure of good public administration is adhered to in most administrative agencies.

ALLEGATION NUMBER 4 ( There was no advertising of the contracts and they were awarded without local people knowing about them or having an opportunity to compete for them.):

We found (p. 11) this allegation justified. We concluded: "there should have been a greater effort to obtain the maximum practicable competition for the contracts."

You responded in part:

(p. 1) I do not know what may have happened in the Fairbanks or Palmer areas. While there was no advertising, certainly the local people were informed about the work to be done.

(p. 4) RESPONSES TO ALLEGATIONS: . . . Allegation Number Four: This allegation is not correct. The work was well advertised at least in the Delta Junction area.

Our Response:

No advertising took place in the Palmer or Anchorage areas. If you do not know what happened in the Palmer and Fairbanks areas, how can you be certain the local people were informed about the work to be done? Numerous contractors with clearing experience, D-9 equipment, and other necessary qualifications were not contacted. As stated earlier, given the predilection for Kandik Construction, a sole source contract would have been more appropriate than the process followed. It should also be noted that word of mouth is not advertising, as specified in the contract guidelines.

ALLEGATION NUMBER 5 (The state didn't award the contract to the lowest bid/proposal of those submitted.):

We found (p. 11) this allegation partially justified. We stated in part:

Due to the absence of written records on several of the proposals that were submitted and due to the lack of consistency in the estimates, it is difficult for this office to determine the exact relationship of the cost estimates in the proposals . . . As discussed above, an RFP should have specified the exact manner in which costs were to be proposed as well as the exact work to be accomplished.

You responded in part:

(p. 2) This charge is simply untrue. First, the bid proposals stated on Page 4 of your report are not accurate and do not clearly reflect what was stated at the meeting.

(p. 2) The two winners were the only ones qualified according to the bid specifications.

(p. 4) RESPONSES TO ALLEGATIONS: . . . Allegation number Five:  
Mitchell's bid was not \$75/hr. but at least \$175/hr.

Our Response:

We acknowledge several inaccuracies in the list of bids on page 4 of our report. We relied on the taped recording which was difficult to hear. The important issue, however, is the lack of written proposals and the inconsistencies in the proposals. An RFP should have been written which established a uniform method for estimating expenses (e.g. dollars per acre or dollars per hour). The RFP should have required written proposals or bids. This would have precluded any misunderstanding about the specifics of any of the bids or about which bids were low.

ADDITIONAL FINDING: A general finding was included in our report. We found several safeguards in Alaska Statutes, Title 37 and the Administrative Manual establishing contracting procedures that were not followed. We cited Attorney General Opinion Number 27, 1959. We also noted the recommendation of the Division of Legislative Audit, dated April 25, 1978, that the Office of the Governor should comply with its established contracting procedures.

You did not respond to this finding.

RECOMMENDATION NUMBER 1 (Future projects should be planned far enough in advance for timely consideration of important tasks such as contract processing within the guidelines of the Administration Manual):

You stated in part:

Recommendation #1 is in complete accord with the policies and intent of the Council . . . As a direct result of these unprecedented demands on my time, activities scheduled to be accomplished for the Delta 2 disposal have fallen behind schedule.

Our Response:

If heavy workload and staff limitations preclude the use of proper contract procedures, the AAAC should request assistance from the Department of Administration rather than continue to ignore established guidelines. Had this contract been bid, as we believe would have been appropriate, the AAAC could have given General Services and Supply the bid specifications and that agency would have completed the process.

CONCLUSION: The complaints about the test clearing contracting process have been found to be justified and are now closed in our files as partially rectified. We understand that some of the same issues addressed in our complaint may be a problem in the upcoming Delta 2 project. We hope that you will be able to coordinate with the Department of Administration, thus precluding the types of complaints generated by both Delta 1 and Point MacKenzie. The Division of General Services and Supply can implement the

Bob Palmer  
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bidding process at an agency's request. We encourage the AAC and the Governor's office to use this service.

Thank you for your patience in this matter.

Sincerely yours,

*Frank Flavin*

Frank Flavin  
Ombudsman

FF/RW:jb

**FAIRBANKS SOCIETY OF  
PROFESSIONAL LAND SURVEYORS**

S.R. 10113  
P.O. Box 2592  
Fairbanks, Alaska 99701

February 24, 1982

Rep. Ray Metcalfe  
Chairman, House State Affairs Committee  
State House of Representatives  
Pouch V  
Juneau, AK 99811

Ref: HB 612 and HB 546

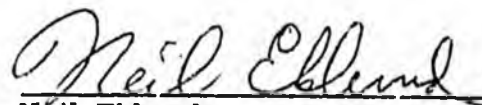
Dear Rep. Metcalfe:

The Fairbanks Society of Professional Land Surveyors (FSPLS) met on February 23, 1982 and discussed HB 612 and HB 546. We are appalled at the revisions that were made to HB 612 language after it was grafted to the Legislative Reform Bill (HB 546). The addition of provisions for use of competitive bidding procedures as an optional method of selecting contractors for Engineering, Architectural, and Land Surveying services reverses the intent and meaning of HB 612 as originally written.

We have no problem with the bulk of HB 546, except that page one deals with construction, and is not germane to professional contracts. We are adamantly opposed to passage of this bill with the language contained on page 7, concerning competitive bidding. We do not believe the public interest is served - in fact, cost of administration is potentially much higher, should state agencies adopt such procedures.

We request a rationale for the competitive bidding revisions to HB 546 from the legislator or legislators who initiated them.

Respectfully submitted,

 RLS  
Neil Eklund  
President, FSPLS

NE/skk

Dear Representative Barnes,

I believe HB 546 should pass quickly as is.

I do not agree in making exemptions for special interest groups (as in SB 819). Do it for one group, you'll be asked to do it for others.

Sincerely,

Jean Bennett

Jean M. Bennett  
3845 Helvetia Drive  
Anchorage, AK 99504