

H B

537



4/30/81

Patty Marinsky - Ambassador (4970) Request 81.3

Professional Services Contract

Report (ad corr)

4 fees: DOR suby to same log as any other dept

(pg 15)

attys opinion in appendix

call for if any ques.



# Alaska State Legislature

## House

JUNEAU ALASKA

### TRANSPORTATION COMMITTEE

HB 537--An Act relating to the authority of the DOT/PF to enter into professional service contracts; e.d.

HB 537 was introduced by the State Affairs Committee by request of the Ombudsmen's office after their review of the "Proper Use of Professional Services Contracts" (see attached highlighted report).

The bill establishes a new section to AS 44.42. which states that regulations and procedures adopted by the Commissioner of Administration, whether or not adopted in accordance with the Administrative Procedure Act (AS.62) apply to contracts for professional services proposed to be entered into by the department.

The purpose of the bill, (concluded after conversations with Patty Morarity of the Ombudsmen's office and Jeff in Mike Miller's office) is to require the DOT/PF to comply with the same procedures in PSC's as other agencies.

A review of the Ombudsmen's report indicates that some agencies only comply with correct procedures only when it is convenient (or timely), with specific examples. The issue areas identified by the Ombudsmen's report have been addressed in the Administrative Manual and Choosing and Using Contractors but apparently not consistently followed. They recommend that currently 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. It may also be noted that DOA's authority to "veto" a contractual agreement proposed by the DOT/PF is in the case where the proposed contractor is a state employee. A legal opinion by the Transportation Section of the Department of Law regarding same is also included in the report. (Interesting note perhaps is that the opinions and agreements were made by then Deputy Commissioner Holden; one question that may bear fruit is asking the origination of the Ombudsmen's report. After the "Town Hall Meetings" of 1979, Holden was involved in controversy over the contracting procedures utilized to produce the show for the same reasons given in report's findings.)

(suggestion)

Lind -

- procedure currently used -

uniformity - not sure it would make a difference -

prof. consulting firm unless

firm qualifications - - yrs of training  
etc.

- sale source -

specific

inst - seek service of state employees'

not supposed to

policy to get services of private sector.  
over 5000.00 - even if there are state employees.

- HB 546 -

less than 2500.00 - you can select +  
proceed

- internal policy -

~~State~~

greater than 100,000.00 submitted by bid.

10 or 15% under 20,000.00

300 professional contract.

each <sup>response</sup> ~~function~~ assigned a weight

anything over 2,500 has been advertising

- 537 -

↳ - Administrative manual -

60 mil in state -  
5 mil in D.O.T. -

- I. uniformity in PSC in all agencies -
- II. uniform accountability -  
A+E - one agency responsible

\* 830, 150 expended by D.O.T.

\* 1,290,000 P+P=

- Administrative manual -

any  
public notice  
public input.

Noyes. <sup>operat</sup>  
A+E

- D.O.A. Manual -  
APA  
Administrative Procedure  
Act.

~~Noyes~~  
↳ left gov entering 1 yr ago -

Criteria right in process

- budgeting process -

except for statutory provision  
records include

unique

← → unique ness argument.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

DEPUTY COMMISSIONER - ADMINISTRATION

(907) 465-3900

POUCH 2  
JUNEAU, ALASKA 99811

May 13, 1981

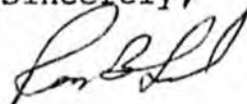
The Honorable Bette M. Cato,  
Chairperson  
House Transportation Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Representative Cato:

Attached are the Policy and Procedures sections that were superseded by the March 26, 1981 Policy and Procedure regarding selection of professional and specialty contractors. I have also reviewed AS 44.42.020(a)(6), where the phrase "private organizations and persons" is used. From the context in which this term is used, it appears that it would include all groups or units not already named.

If you should desire additional comments on HB 537 or the material provided, please do not hesitate to call me.

Sincerely,



Ron B. Lind  
Deputy Commissioner

Attachments

## MEMORANDUM

State of Alaska

TO: ALL DEPUTY COMMISSIONERS

DATE: February 8, 1980

FILE NO: 000H-

FROM: Robert W. Ward  
Commissioner  
DOT/FF

TELEPHONE NO:

SUBJECT: Interim Final  
Consultant Selection  
Procedures

Enclosed is a copy of the Department's recently revised Consultant Selection Procedure. It supercedes P & P 10-0006 and 10-0007 and becomes effective immediately. For Consultant selection efforts previously initiated under P & P 10-0006 and 10-0007, please transition into using this new procedure to the extent practicable. The decision to use the new procedure for these earlier projects should be based on your own judgement and whether there will be a substantial conflict with information already requested or provided by consultants.

A Department wide Standard Agreement(s) for Professional/Technical Services has not yet been completed. However, it is my intent that this Standard Agreement be developed and implemented by May 1, 1980. Meanwhile this procedure is modified to allow interim use of existing approved agreements for Professional/Technical Services.

I appreciate very much the hard work that many of you and your staff have devoted to this difficult task. While a general concensus has been reached, I also recognize that the procedure still may not be ideal and further refinements may be necessary.

In view of these possible uncertainties, this procedure is to be used and in effect until September 1, 1980. Meanwhile, Ron Lind, Deputy Commissioner of Administration, and his staff will work with you, your staff and the private sector to identify problem areas and propose specific solutions. By September 1, 1980, I intend to complete the review process and issue the final P & P for the Consultant Selection Procedure process. Your continued cooperation and assistance on this important matter would be appreciated.

Enclosure

cc: Internal Review  
Federal Highway Administration

RWW/JWS/sh

State of Alaska  
Department of Transportation and Public Facilities

Consultant Selection and Contracting Procedures  
for Professional or Technical Services

1.0 PURPOSE

- 1.1 To promulgate standard procedures to insure that uniform practices will be applied in all situations involving the use of consultants to perform professional or technical services.

2.0 DISTRIBUTION

- 2.1 All Procedure Manual Holders.

3.0 DEFINITIONS

- 3.1 Professional/Technical Services - Services rendered by a Consultant having in depth expertise in a particular field and which requires specialized knowledge, training and experience to perform. The phrase includes artistic abilities but not manual skills.
- 3.2 Consultant - The individual or firm providing professional or technical services. A firm may be a proprietorship, partnership, corporation, co-venture or joint venture. The term "Consultant" includes planners, architects, engineers, land surveyors and professionals in other disciplines requiring similar technical expertise.
- 3.3 Subconsultant - Consultant engaged thru a subcontract with the firm or individual under contract with the State.
- 3.4 Approving Officer - That State employee who is authorized by current delegation of authority from the Commissioner of the Department of Transportation and Public Facilities, to function in the Commissioner's capacity with regard to specified actions.
- 3.5 Project Manager - That State employee who is in responsible charge of a project. Project Managers are appointed for projects of a statewide nature or for regional projects.
- 3.6 Client/User Agency - That agency (Department, Division, School District, Municipality, etc.) which generates a project requirement for which a negotiated contract for services is necessary.
- 3.7 Agreement - The legal instrument, a negotiated contract, which defines the obligations and considerations of the signatory parties.
- 3.8 Scope of Work - Services and actions required of the Consultant by the obligations of the Agreement.

#### 4.0 USE

- 4.1 This Procedure applies to all operating divisions of Planning and Research, Design and Construction, and Maintenance and Operations Units of the Department. All personnel within these divisions, who participate in the Consultant selection process and the execution of negotiated contracts, shall comply with these procedures.
- 4.2 The Department's Standard Agreement(s) for Professional/Technical Services must be used for all negotiated Contracts, irrespective of the amount or form of compensation. Changes to any Agreement must be accomplished by negotiated Amendment using the Department's standard form.
- 4.3 Agreements executed in accordance with these procedures may be for one or several specific projects, or for professional/technical services on an "as-needed", calendar term basis. Maximum allowable compensation and the type(s) of services to be provided must be specifically identified within each Agreement.
- 4.4 When an emergency exists, or when determined by the Commissioner of the Department of Transportation and Public Facilities to be in the best interest of the State, the Commissioner may waive any or all requirements of this procedure.

#### 5.0 PROCEDURES

- 5.1 Summary - The CPM diagram at Appendix E presents the 24 principal activities required to complete this procedure. Twelve are optional in accordance with each Division policy.
- 5.2 Evaluation Committees must be established to administer and evaluate Prequalification Submittals, Project Statements of Interest, Proposals, Interviews; and, to select Consultants for negotiation except as otherwise provided for in this procedure. Committees must be composed of a minimum of three persons appointed in writing by the Director or his designee.
  - 5.2.1 Divisions which use prequalification procedures must maintain a standing Prequalification Committee of three of the Department's professional level employees to evaluate general experience and competence and prequalify Consultants. Director's may coordinate between Division's for the appointment of appropriately experienced personnel for such committees.
  - 5.2.2 Except for Prequalification Committees, all other Evaluation Committees must include a Client/User Agency Representative (except if the Agency waives its participation in writing) and the Project Manager (if assigned at the time the Committee is established). The Project Manager, if assigned, must serve as the Committee Chairman.

5.2.3

When a single evaluation is conducted to identify Consultants for more than one contract, additional committees or subcommittees may be established after the evaluation of Project Statements of Interest and ranking of Consultants. Each subcommittee must then complete the selection process thru evaluation of proposals, interviews, etc. for each contract to be negotiated. Project Managers, if assigned, must be members of such subcommittees.

5.3

Prequalification (Division option) when used, must be accomplished as follows:

5.3.1

Identification of Services and Projects for Prequalification must be accomplished in accordance with Division policy.

5.3.2

Advertisements for Prequalification Submittals must be placed in newspapers and similiar media for Consultants to submit pertinent statements of qualifications to provide professional/technical services in broadly defined types of projects and project support services (Sample Advertisement at Appendix A). As a minimum, each Prequalification Submittal must contain a completed Federal Standard Form 254 (Architect-Engineer and Related Services Questionnaire), Federal Standard Form 255 (Architect-Engineer Related Services for Specific Project) and a State of Alaska Form 25A355 (Affirmative Action Certification).

5.3.3

The Division Director must designate a section to serve as office of record to maintain Consultant Qualification Files. In addition to a Prequalification Submittal, each Consultant's File may also contain performance evaluations (memo's, letters, or agency forms) for previous projects, selection evaluation reports for previous projects, and Consultant's comments concerning any evaluation.

5.3.4

Anyone may review specific Consultant Qualification Files, if identified in advance and by appointment only, during the Divisions normal working hours.

5.3.5

The assigned Prequalification Committee must, by methods of their choice, assign a numerical prequalification rating of 1 to 5 (5 is the best score) for each Consultant for each type of service/project for which the Consultant is generally qualified. The assigned prequalification ratings must be retained until the next quarterly or annual review.

5.3.6

Prequalification List - At least annually, the Division must make available a Prequalification List which includes the following information:

Categories of services and/or broadly defined types of projects;  
Consultants interested in providing services;  
Consultants prequalification ratings;  
DOT/PF region in which Consultants business office(s) are located.

5.3.7 Updated Prequalification - The Prequalification Committee must review each file at least annually and new or updated submittals at least quarterly. Consultants must be invited at least annually thru newspaper and similiar media advertisements, to update their Prequalification Submittals. Files containing submittals over 18 months old may not be used for prequalification.

5.4 Identification of Projects requiring contracted professional or technical services must be accomplished in accordance with Division policy.

5.5 Project(s) Statements of Interest are not required when:

- Estimated contract costs is less than \$10,000;
- Consultants have been prequalified and the estimated contract cost is less than \$20,000; or
- Procedures are waived by the Commissioner.

In such cases, the Consultant(s) may be selected by the operating section within the Division and approved by the Director or his designee.. In all other cases, the Evaluation Committee Chairman must prepare a Project Statement of Interest Form and an invitation to submit the Statement.

5.5.1 Invitations for Project Statement of Interest (Sample at Appendix B) must include the following items:

Definition of the project(s);

Scope of Contract Work;

Desired approach and anticipated disciplines to be involved;

Information and/or assistance to be furnished by the Department;

Division, other agency, or other Consultants under contract with the State;

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 Statement (include Federal Standard Form 254 (Architect-Engineer and Related Services Questionnaire), Federal Standard Form 255 (Architect-Engineer Related Services for Specific Project) for the Consultant and it's Subconsultants, when Prequalification is not used);

Department's Statement of Interest form (or instructions for obtaining such).

5.5.2 If Consultants are not prequalified or the cost of Consultants services is estimated to be \$100,000 or more, the invitation must be advertised in local papers, papers of state-wide circulation and appropriate professional publications. The advertisements must be placed at least once in a minimum of three publications, with the first advertisement appearing at least 15 calendar days before the submittal

deadline. Advertisements must indicate where copies of the Statement of Interest forms can be obtained.

- 5.5.3 If Consultants are prequalified and the estimated cost for Consultants services is \$100,000 or more, the invitation must also be direct mailed to all Consultants on the Prequalification List for providing the required services. Direct mailing must be accomplished at least 15 calendar days before the submittal deadline.
- 5.5.4 If Consultants are prequalified, and the estimated cost for Consultant Services is less than \$100,000 a Division has the following options:
  - 5.5.4.1 Direct mail and advertise the invitation.
  - 5.5.4.2 Direct mail the invitation to each Consultant on the Prequalification List for providing the required services without any publicity in advertising media.
  - 5.5.4.3 If estimated cost is less than \$20,000, forego both the direct mailing and advertising and select a Consultant(s) approved by the Director or his designee from among those on the Prequalification List.
  - 5.5.4.4 Negotiations begun under any of the provisions of this paragraph (5.5.4) which cannot be concluded within the specified dollar limitations, must be terminated. Contract cost estimate must then be re-evaluated and negotiations conducted accordingly.
- 5.6 Standard Project Statement of Interest for Negotiated Contracts - The Department's standard format (Appendix C) must be submitted by all Consultants interested in providing services. The Statement consists of numerical responses to several objective questions and narrative, project(s) specific responses to subjective questions. Committee evaluation of responses results in a numerical ranking of Consultants. Part A of the Statement is completed by the Evaluation Committee. Part B is completed by the Consultant.
  - 5.6.1 Weighting Coefficients - Numerical responses from Consultants and the average Committee ratings for each narrative response, are weighted to arrive at Consultant scores. Weighting Coefficients are determined by listing each applicable question on the Statement of Interest, in reverse order of significance, for the contract(s) to be negotiated ie, the least important question is assigned a Coefficient of one and the most significant question a Coefficient equal to the total number of applicable questions. Weighting Coefficients for the remaining questions must be a whole number between one and the total number of applicable questions, with no two Coefficients being the same. A Coefficient of zero indicates a question is not applicable to the contract and the Consultant should not respond; eg, if four of

the 15 possible questions are assigned a Weighting Coefficient or zero, there remain 11 applicable questions which must be assigned Coefficients of 1 - 11. (Note: If some Coefficients must be changed to zero after Statements are received, eg. question number one, remaining Coefficients must not be changed.

- 5.6.2 Weighting Coefficients are determined by the Committee Chairman in coordination with Client/User Agency. The Chairman must enter these Coefficients on the form before distribution to Consultants; to allow each consultant to stress those areas which are most important.
- 5.6.3 The Committee Chairman, in coordination with Client/User Agency, may add three project(s) specific questions in the space provided on the Statement before weighting and distributing it to Consultants.
- 5.7 Evaluation of Project Submittals - The Committee Chairman shall log in all submittals as received. Any submittal that is incomplete (in accordance with the invitation) must be rejected if not corrected prior to submittal deadline. Consultants whose submittal is rejected. must be advised in writing by the Chairman of the reason for rejection.
  - 5.7.1 If prequalification is not used, the Evaluation Committee must review the Federal Standard Forms 254 for the Consultant and, by methods of their choice, assign a numerical prequalification score of 1 to 5 (5 is the best score) for the Consultant. The Project Statement of Interest must then be evaluated in accordance with paragraph 5.7.3, below.
  - 5.7.2 If prequalification is used, the Chairman shall enter the Consultant's Prequalification Rating under Item 6 of Part A and the name and Prequalification Rating for the Consultant as obtained from the Prequalification List of Consultants, in Part A, Note 2, of each Consultant's Statement of Interest; make necessary copies; and distribute to Committee members for evaluation.
    - 5.7.2.1 If complete submittals and Federal Standard Forms 254 are received from new Consultants not on the Prequalification List, the forms and any additional statements of qualifications or promotional material provided must be sent to the office of record for establishment of the Consultants Qualification file. The standing Prequalification Committee must evaluate and assign a Prequalification Rating for each new (prime) Consultant prior to evaluation of their Statements of Interest.

- 5.7.2.2 If submittals are received from Consultants on the Prequalification List but not listed for providing the required services, they must be processed as new Consultants in accordance with paragraph 5.7.2.1.
- 5.7.3 Evaluation of Project Statement of Interest - Each Evaluation Committee member shall evaluate Part B of each Statement and enter rating of 1 thru 5 in Part A. Questions weighted zero do not apply, should not have received a response, and must not be rated. Questions which are weighted other than zero but have no response from the Consultant must be rated one (1). Numerical ratings should be based on the following: "X" = Disqualified Submittal must be rejected, 1 = Unacceptable, 2 thru 4 = Acceptable, 5 = Outstanding. Members shall return evaluated Statements to the Committee Chairman who will complete Evaluation Summary forms (Appendix D) for each Consultant. The final ranking of consultants will be determined by the committee. Generally, the top three Consultants are those considered for the remainder of the selection process. However, the number of top ranked firms considered may be appropriately increased if the selection procedure is conducted for several contracts. If a tie score occurs among the top ranked firms, the committee must conduct interviews with the tied Consultants and then jointly decide the ranking.
- 5.7.4 The original Committee score copies of all Project Statements of Interest, Evaluation Summary forms and related documents must be maintained in the files of the division or regional office which conducts the selection.
- 5.8 Personal References concerning project(s) for which the top ranked Consultants provided services may be contacted at the discretion of the Committee.
- 5.8.1 The Committee must develop a standard list of questions to be asked of the references, however this does not preclude discussion of other pertinent points.
- 5.8.2 References to be contacted will be selected by the Committee and assigned to each member by the Chairman. Personal reference contacts need not be those identified by the Consultant. If negative responses result, at least one additional reference must be contacted as determined by the Committee. If such negative recommendations cause the Committee to alter the ranking of Consultants as established by the evaluation of Projects Statements of Interest, interviews must be conducted with the Consultant.

5.9 Proposals - The Committee may request formal proposals from the top ranked Consultants at its discretion or as may be required by a funding agency.

5.9.1 Requests for Proposals (RFP's) must be written and include the following information:

Definition of the project(s);

Scope of Contract Work;

Desired approach and anticipated disciplines to be involved;

Assistance to be furnished by the Department, Division, other agency, or other firms or individuals under contract with the State;

Any pertinent, available, engineering information;

Practical, policy, technological and legal limitations;

Specific questions that need to be answered;

Time Constraints;

Number of Contracts proposed for negotiations;

Any additional items expected to be submitted with the Proposal;

Number of copies, time and place to be submitted;

Compensation, if any, for the Proposal.

5.9.2 Proposals may be requested in either a priced or non-priced format, except as may be prohibited by law or regulation, and in accordance with Division policy, the type and scope of services desired, and the common practice of Consultants which provide such services.

5.9.2.1 Priced Proposals must include a specific scope of services and provide a detailed estimate of the Consultant's direct and indirect costs for elements of the work and expected net fee.

5.9.2.2 Non-priced Proposals must include the Consultant's detailed evaluation of the services required, the proposed approach to performing the services, the firm's background and disciplines to support the effort, and estimated time frame to provide the services.

5.9.3 Evaluation of Proposals must be accomplished by the Committee and may be used exclusively or in combination with interviews to select a Consultant for contract negotiation.

5.10 Interviews are required with the top ranked firms when any of the following apply:

The nature of the project is such that a clearly defined scope of work for the Consultant is not available;

Tie score results among top ranked Consultants;

Negative recommendations from personal references alter ranking;

Requested by a simple majority of the Evaluation Committee.

- 5.10.1 If Interviews are to be held, the Committee must establish the time, place and order and develop a list of questions to be uniformly presented to each Consultant within an approximately equal amount of time for the interview. Consultants selected for Interviews must be notified by telephone and letter prior to the time established. All Interviews for any contract must normally be held on one day.
- 5.10.2 Following completion of all Interviews the Committee must jointly decide the final ranking of Consultants with a minimum of delay.
- 5.11 Federal Notification - If federal funding is involved, the Chairman must prepare a letter for the Director's or his designee's signature which notifies the appropriate Federal Agency of the proposed contract and Estimated Cost, if required.
- 5.12 Selection of Consultant(s) - Following evaluation of Project Statements of Interest, Personal References, Proposals and Interviews, the Committee must agree and list Consultants in a recommended order for negotiations. The Chairman will prepare a selection report which identifies all Consultant submittals rejected, and the top ranked Consultants and their total point scores based on the Project Statements of Interest. If Personal References, Proposals and/or Interviews were used in the selection, the report must also summarize the Committee's conclusions and basis or manner of evaluation.
- 5.13 Department of Administration Check - The Chairman must coordinate with the Department of Administration, Division of Finance, to confirm that the selected Consultants and their Subconsultants are independent vendors having an IRS tax identification number and that no tax payments are in arrears.
- 5.14 Negotiating Position - The Chairman must prepare a report to establish the State's negotiating position for the amount of the Consultant's Fees. The report must recommend a reasonable level of compensation which is based on scope of work, historical data such as fees for similar projects, project specific peculiarities, job market, design time frame, etc. Authority to negotiate may not be provided until the report is approved by the Division Director or his designee. Negotiations which result in compensation exceeding the approved fee structure must not be concluded without the written approval of the Director or his designee.
- 5.15 Authority to Negotiate (ATN) - The Chairman shall prepare a memorandum requesting authority to negotiate a contract in accordance with this Procedure, for the Deputy Commissioner's written approval. Copies of the selection report (paragraph 5.12) and the approved negotiating position (paragraph 5.14) must be attached. A brief statement acknowledging a Department of Administration Check (paragraph 5.13) and any discussion points concerning the attachments must also be included. Following receipt of the approval the Chairman

shall notify the selected Consultants in writing of their status for contract negotiations.

- 5.16 Pre-award audit evaluations are required on all negotiated contracts in excess of \$50,000 if federal aid highway funds are utilized. Internal Review shall be advised as soon as the consultant is selected in order for the results to be utilized during the negotiations as required by federal regulation. Consultants who have had recent audits by State or federal government agencies should be asked to provide those reports with their proposals.
- 5.17 Negotiations - The Committee Chairman will negotiate a contract with the selected Consultant(s) using the Department's Standard Agreement for Professional/Technical Services.
  - 5.17.1 During the negotiation period, the Consultant must provide a current copy of State of Alaska Form 25A355 (Affirmative Action Certification).
  - 5.17.2 Specific elements of the project to be established during negotiation include project schedule, manpower requirements, level of effort, complexity, avenues of research, areas of responsibility/liability and fee structure, amount and method of payment.
  - 5.17.3 If negotiations with the first Consultant fail, the Committee Chairman shall in writing notify the Director or his designee of the impasse and negotiate with successive firms in the order listed in the approved ATN, until an agreement is reached at a level of compensation which is within the approved negotiating position. In the event that negotiation attempts with three Consultants are unsuccessful, the general scope and negotiating position must be re-evaluated.
  - 5.17.4 The derivation of the negotiated compensation and all work-sheets and related papers for successful negotiations must be maintained in the project files for which the contract is negotiated.
- 5.18 Contract Review and Approval - Prior to execution, the negotiated contract must be reviewed and approved in accordance with Division procedures.
- 5.19 Execution of the Contract - Following execution by the Consultant, the Agreement must be executed by the State's Approving Officer, in accordance with current delegation of authority. Two copies (three for federally funded or partially funded projects) of the Agreement must be executed. Contract numbers must be assigned in accordance with Division procedures.
- 5.20 If Federal funding is involved, a copy of the executed Agreement must be provided to the Director or his designee for forwarding to the appropriate Federal Agency, if required.

## IMPLEMENTATION

6.1

Directors are responsible for establishing divisional procedures which are necessary to augment this Department Procedure as applicable to each Division's functions.

7.0

### APPENDICES

- A - Sample Advertisement for Annual Solicitation for Prequalification Submittals
- B - Sample Invitation for Project Statements of Interest
- C - Standard Project Statement of Interest
- D - Evaluation Summary Form
- E - CPM Diagram for Procedures

State of Alaska  
Department of Transportation and Public Facilities  
Division of (enter division)  
Public Notice  
for  
Professional and Technical Services

The Division of (enter division) is conducting its annual solicitation to update Consultants prequalification submittals for providing professional/ technical services in the following categories and for the following types of projects:

(list)

Those firms or individuals wishing to be considered for contracts to provide such services must establish a current Qualification File with this Division. Consultants will be prequalified and selected according to standard departmental policy and procedures.

Submittals must be addressed to:

(fill in name, address and phone number and indicate if questions are to be directed to someone else and if so, identify).

Prequalification submittals and updates may be submitted at any time; however, to be placed on the current Prequalification List and to receive direct mail invitations for specific contracts, Submittals must be received by:

(fill in time, date, place and indicate number of copies)

Submittals must contain the following items:

Federal Standard Form 254 (Architects - Engineers and Related Services Questionnaire)  
State of Alaska Form 25A355 (Affirmative Action Certification)

Any additional statements of qualifications or promotional material deemed appropriate by the Consultant.

(enter name)  
COMMISSIONER  
DEPARTMENT OF TRANSPORTATION  
& PUBLIC FACILITIES

AO # (enter number of Advertising Order)  
PUBLISH: (list dates)

Department of Transportation and Public Facilities  
Division of (enter division)  
Invitation  
for  
Project Statement of Interest

Alaska B

The State of Alaska, Department of Transportation and Public Facilities, Division of (enter division) intends to negotiate contracts for the purpose of (Define project(s), provide the scope of contract(s) work, time constraints and identify a desired approach and anticipated disciplines to be involved. Identify any information and/or assistance to be furnished by the Department, Division, other agency or other firms or individuals under contract with the State. Indicate number of contracts proposed for negotiations).

Consultants will be selected according to standard departmental policy and procedures.

(Indicate if formal Proposals will be required from top ranked Consultants and if Interviews are anticipated).

Submittals must be addressed to:

(enter name, address and phone number and indicate if questions are to be directed to someone else and if so, identify).

Submittals must be received by:

(enter time, date and place and indicate number of copies required).

Submittals must include the Department's Project Statement of Interest as prepared for this contract(s), and any other materials which may be solicited therein.

(If prequalification used, enter: "Consultants submitting a Statement of Interest, which do not have a current Prequalification File established with this Division should contact the Division for instructions. Submittals received from non-prequalified Consultants may be rejected").

(If no prequalification used, enter: "In addition to the Department's project Statement of Interest, Submittals must include a Federal Standard Form 254 (Architect - Engineer and Related Services Questionnaire) and Federal Standard Form 255 (Architect - Engineer Related Services for Specific Project) completed for the Consultant and each proposed Subconsultant. Additional statements of qualifications or promotional material may also be included as deemed appropriate by the Consultant").

Project Statements of Interest

(enter "are attached" or "may be obtained at (enter address)").

The right is reserved by the Department to reject any and all submittals.

(enter name)  
COMMISSIONER  
DEPARTMENT OF TRANSPORTATION  
& PUBLIC FACILITIES

AO #

PUBLISH: (enter Advertising Order number and list dates to be published if Invitation is publicized.

CONSULTANTS  
PROJECT STATEMENT OF INTEREST  
STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

APPENDIX C

PART A  
PROJECT(S) IDENTIFICATION AND CONSULTANT EVALUATION  
(completed by state personnel)

PROJECT TITLES(S):  
TYPE OF SERVICE:  
PROJECT NUMBER(S):  
DOT/PF DIVISION & ADDRESS:

EVALUATION COMMITTEE CHAIRMAN & PHONE NO:

CONSULTANT:

Item No	Item Description	Weighting Coefficient	Rating (Note 1)
1	Alaska Residents		
2	Professional Liability Insurance		
3	State Funded Contracts		
4	Follow on Project		
5	Distance between Offices		
6	Minority Business Enterprise (Note 2)	1	
7	Prequalification Rating - Consultant		
8	Production Capabilities		
9	Project Concept and Experience		
10	Project Manager		
11	Project Team and Schedule		
12	Geographical Experience		
13			
14			
15			

- NOTES:
1. Blocks 1 thru 6 not completed by Committee. Block 7 rating entered by Chairman if prequalification procedure used; by rater's if no prequalification procedure. Others rated in accordance with the following: "X" = Disqualified, Submittal must be rejected, 1 = Unacceptable, 2 - 4 = Acceptable, 5 = Outstanding.
  2. Weighting coefficient for this item will always be one.

\_\_\_\_\_  
Rater's Signature, date

\_\_\_\_\_  
Rater's Name (typed or printed)

PART B  
CONSULTANTS QUESTIONNAIRE

The purpose of this proposal is to rank interested Consultants for the purpose of entering into negotiations resulting in an Agreement for required services. Consultant evaluation and selection must be accomplished in accordance with DOT/PF Policy and Procedures.

Incomplete submittals (in accordance with the invitation to submit this Statement) may be rejected.

This standard form consists of numerical responses to several objective questions and narrative, contract specific, responses to subjective questions. Committee evaluation results in a numerical ranking of Consultants for the purpose of contract negotiations. Part A of the form is completed by the Evaluation Committee. Part B is completed by the Consultant.

Numerical responses from the Consultants and the average Committee rating for each narrative response are weighted to arrive at Consultant's total point score.

Questions are weighted by listing in reverse order of significance; i.e., the least important item is assigned a Weighting Coefficient of one. A Coefficient of zero indicates the question is not applicable and the Consultant should not respond.

Weighting Coefficients are entered in Part A of the form before distribution to Consultants to allow each Consultant to stress those areas which are most important. If these Coefficients are not shown in Part A, contact the Evaluation Committee Chairman before completing the Statement.

All responses are limited to the space provided for each. Only this form and specifically solicited items should be submitted. Letters of transmittal and promotional or other unsolicited material will not be considered in the selection.

If selected, Consultant's business records may be subject to audit by the Department to verify submitted information as a condition of negotiations and execution of a contract.

Alaska Residents



If Alaska residents are available and qualified, AS 36.10.010 requires ninety percent (ninety five percent if more than ten persons employed under a contract) of total services to be performed by Alaska residents. Enter "X" or a number from the following table, which reflects the resident status of your intended project team. Failure to meet this requirement disqualifies the Consultant and the submittal must be rejected (except as noted below).

Percentage of Residents

<u>10 or less employed</u>	<u>more than 10 employed</u>	<u>Rating</u>
less than 90%	less than 95%	X
90% or greater	95% or greater	5

Note: this item is not applicable to projects supported by Federal Funds or if qualified residents are not available to any Consultant. In such cases, the Weighting Coefficient must be zero for all Consultants submitting.

2. Professional Liability Insurance



If a Weighting Coefficient, other than zero is entered in Part A for this item, professional liability insurance for errors and omissions is required for the contract. Failure to have coverage or to obtain coverage, at no direct expense to the State, disqualifies the Consultant and the submittal must be rejected. Enter "X" or a number from the following table as applicable to your coverage or willingness to obtain such, at no expense to the State. (Generally, for contracts estimated to cost less than \$100,000, and if the State's potential liability under the contract is minimal, a Weighting Coefficient of zero is assigned).

<u>Coverage Per Claim</u>	<u>Rating</u>
less than 100,000	X
\$100,000 - 199,999	1
200,000 - 299,999	2
300,000 - 399,999	3
400,000 - 499,999	4
500,000 - or more	5

If selected for contract negotiations, the Consultant shall be required to provide a Certificate of Insurance which identifies the limit per claim, amount of any deductible and the period of coverage, as a condition of contract negotiations.

State Funded Contracts

If not awarded any state funded contracts during the last three years enter "5". (State funded contracts include work and services for all departments and agencies of the State and State school districts) If awarded State funded contracts, enter "1".

4. Follow on Project

If this project is a "follow-up" of a previous state project (eg. remodel of a facility or update or implementation of a plan or study) enter the indicated number from the following table.

<u>Criterion</u>	<u>Rating</u>
No Previous Association	1
Original Subconsultant	2
Original Consultant w/o original Subconsultant	3
Original Consultant with original primary Subconsultant	4
Original Consultant with all original Subconsultants	5

5. Distance from State Office Administering Project

Enter a number from the following table based on the approximate radial distance between your work location and the State's office which will manage the project. (Consultants not having an office within the State of Alaska, if awarded a contract, must establish and maintain a local office and obtain an Alaska Business license during the life of said contract)

<u>Distance (Miles)</u>	<u>Rating</u>
600 or more	1
300 - 599.9	2
100 - 199.9	3
50 - 99.9	4
0 - 49.9	5

6. Minority Business Enterprise

If Consultant is a Minority Business Enterprise as recognized by the DOT/PF MBE Listing, enter 5, otherwise enter 0. (For MBE firms not listed in the DOT/PF MBE Listing, include a current MBE Directory Questionnaire (DOT/PF Form 25A323.))

7. Prequalification Rating - Consultant

(will be entered in Part A by Contract Administrator)

8. Production Capabilities

Describe facilities, manpower and production capabilities of your Alaska business office and that of any subconsultants which would provide required services for this project.

Project Concept and Experience

Summarize your concept of the project, as derived from the invitation to submit this Statement of Interest, and discuss similar projects and any special or unique capabilities of your firm for this contract. Include any special qualifications required for this project which may have been identified in the invitation. Complete Federal Standard Form 255 (Architect-Engineer Related Services for Specific Project) listing Alaska projects first.

Project Manager

The Consultant's Project Manager is defined to be the individual within the Consultant's firm who is directly responsible and engaged in performing the required services. The Project Manager is the most knowledgeable individual regarding all aspects of the project, i.e., not necessarily a principal of the firm. Discuss your intended Project Manager's experience and relate that experience to this project.

Project Team and Schedule

List your intended project team by discipline and name (individual within the Consultant's firm or if a Subconsultant, the firm(s) as identified in Item 8). Discuss your intended project team's experience, relate that experience to this project, and discuss ability to provide requested services within time constraints.

Geographical Experience

Discuss your recent knowledge or experience with local conditions (regulatory, environmental, logistic) in the proposed geographical area for this project.

Item numbers 13, 14 & 15 (if included below) were developed by the selection committee for this contract. Questions and responses are limited to space provided unless noted otherwise.

13.

15.

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Signature, Date

Firm Name, Address, Phone No.

Average rating for Committee scored items, Consultants rating for objective questions, carried to one decimal place (tenths). Shaded blocks not completed by Committee.

\*\* Rounded to next whole number

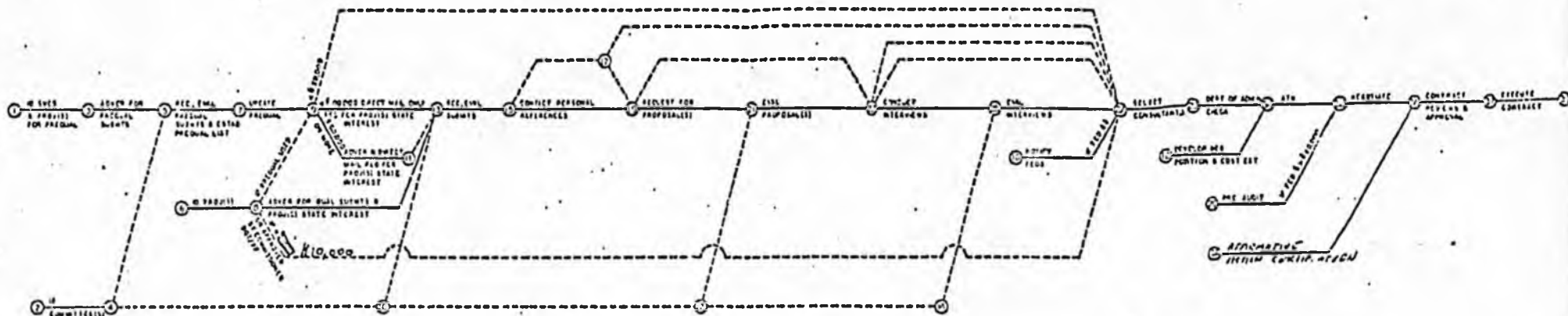
CONSULTANT:

ITEM #	RATER'S NAME/RATING					* RATING	WGTING COEF	** WEIGHTED RATING	
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
TOTAL POINT SCORE (SUM)									

CONSULTANT:

ITEM #	RATER'S NAME/RATING					* RATING	WGTING COEF	** WEIGHTED RATING	
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
TOTAL POINT SCORE (SUM)									

## CONSULTANT SELECTION AND CONTRACTING FOR PROFESSIONAL OR TECHNICAL SERVICES



ACTIVITY #	ACTIVITY	REFERENCE PARAGRAPH
* 1-3	ID SVCS/PROJ(S) FOR PREQUAL	5.3.1
* 3-5	ADVER FOR PREQUAL SUBMTS	5.3.2
* 5-7	REC, EVAL PREQUAL SUBMTS & ESTAB PREQUAL LIST	5.3.5 & 5.3.6
* 7-9	UPDATE PREQUAL	5.3.7
* 9-11	ADVER & DIRECT MAIL REQ FOR PROJ(S) STATE INTEREST	5.5.3
* 9-13	DIRECT MAIL ONLY REQ FOR PROJ(S) STATE INTEREST	5.5.4
13-15	REC, EVAL SUBMTS	5.7
* 15-19	CONTACT PERSONAL REFERENCES	5.8
* 19-21	REQUEST FOR PROPOSALS	5.9
* 21-23	EVAL PROPOSALS	5.9.3
* 23-25	CONDUCT INTERVIEWS	5.10.1
* 25-27	EVAL INTERVIEWS	5.10.2
27-29	SELECT CONSULTANT(S)	5.12
29-31	DEPT OF ADMIN CHECK	5.13
31-33	ATH	5.15
33-35	NEGOTIATE	5.17
35-37	CONTRACT REVIEW & APPROVAL	5.18
37-39	EXECUTE CONTRACT	5.19
* 2-4	ID COMMITTEE(S)	5.2
* 6-8	ID PROJ(S)	5.4
* 8-13	ADVER FOR QUAL SUBMTS & PROJ(S) STATE INTEREST	5.5.2
* 16-27	NOTIFY FEES IF FED \$	5.11
18-31	DEVELOP NEG POSITION & COST EST	5.14
20-33	PREAUDIT IF FED \$ GREATER THAN \$50,000	5.16
22-35	APPROVALS FROM CUSTOMER	5.17.1

NOTES: 1. ACTIVITIES MARKED WITH AN ASTERICK (\*) ARE OPTIONAL IN ACCORDANCE WITH DIVISION POLICY.\*

2. START POINTS ARE EVENT NUMBERS 1 or 6.

STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES <b>POLICY AND PROCEDURES</b>		P & P No. 10-0006	Page 1 OF 5
		Effective Date October 1, 1978	
SUBJECT CONSULTANT SELECTION DESIGN AND CONSTRUCTION PROJECTS		Supersedes P & P No. dated 12-1-74 Hwy SOP 0000-13	Dated 10/17/78
		APPROVED BY <i>Donald Hamer</i>	
DIVISION Commissioner	SECTION Commissioner	CHAPTER TITLE Policy	
PURPOSE:  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.			
DISTRIBUTION:  All Procedure Manual Holders.			
PROCEDURE:			
<ol style="list-style-type: none"> <li>1. The contracts section of each division will maintain a permanent file for each consultant firm that has indicated an interest in performing work funded by the State. The file will contain the GSA Form 254, technical reviews filled out by the project administrator for each phase of work (design, construction, etc.) and a copy of each selection evaluation, whether successful or not.</li> <li>2. A Project Manager shall be appointed <ol style="list-style-type: none"> <li>a) By the Director of the Division responsible for the project when the project is of a Statewide nature, or</li> <li>b) By the Regional Chief of the Division when the project is totally within one region.</li> </ol> </li> <li>3. The Project Manager who desires to retain a consultant shall prepare a complete description of the work to be performed. Where warranted, maps, drawings and summaries of available existing data such as traffic information or a compilation of previous studies should be made a part of the description of work. The Project Manager shall transmit this information to the division director.</li> <li>4. The director of the responsible division or his designee will review the submittal for appropriate format, attachments, etc., to ascertain that it is in proper form. Pursuant to requirements of A.S. 44.44.030, the Director (or his designee) advertises the project in appropriate local papers, papers of statewide circulation and/or other appropriate national newspapers or professional publications, requesting interested professional consultants to submit their letters of interest and qualification statements to the Project Manager. The advertisement must include a clear, brief statement of the work scope.</li> <li>5. The proposals shall contain the following information together with any other pertinent information as necessary: <ol style="list-style-type: none"> <li>(a) A federal form 255 and a form 254, if a recent copy is not already on file with the Department.</li> </ol> </li> </ol>			

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October 1, 1978	
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dated 12-1-74	10/2/78
Hwy SOP 0000-13	
APPROVED BY	
<i>Donald James</i>	

SUBJECT  
CONSULTANT SELECTION  
DESIGN AND CONSTRUCTION PROJECTS

DIVISION	SECTION	CHAPTER TITLE
Commissioner	Commissioner	Policy

- (b) The time schedule proposed by the consultant
  - (c) The method to be used and general scheduling of the work. To insure coordination, the location at which work is to be done shall be stated.
  - (d) The name of a qualified project manager with full authority to act for the consultant.
  - (e) The ability of the consultant to furnish sufficient manpower and facilities to perform the required work with accuracy and dispatch.
  - (f) Special conditions or requirements proposed by the consultant.
  - (g) The familiarity of the consultant with locale, terrain and special problems of the project.
  - (h) On Federal-aid projects, the consultant shall submit an EEO self-evaluation on the Department's approved form (DOT/PI: 25A-355).  
**25A355**
6. During time of advertisement and before receipt of letters of interest, the Project Manager obtains names for a Selection Committee by contacting appropriate persons. The Selection Committee is to be composed of a minimum of three persons (Persons a, b and c are MANDATORY.)
- a. A representative from the Client Agency
- NOTE: The Client Agency is that agency (Department, School District, Municipality, etc.) who will be responsible for the maintenance, use or occupancy of the completed project after construction is completed.
- b. The Project Manager
  - c. A representative from Facility Procurement Policy Division, unless this representation is waived by Facility Procurement Policy Division Director
- NOTE: waiver will be contingent upon the project division following the procedures described in this P&P.
- (one or more of the following may also be used on larger projects where it is desirable to have a larger selection team)
- d. A Construction Manager
  - e. A Design Manager
  - f. A Maintenance and Operations Manager
  - g. One uninvolved representative from another Division.

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SUBJECT CONSULTANT SELECTION  
DESIGN AND CONSULTATION PROJECTS

Supersedes P & P No. dtd 12-1-74  
Hwy SOP 0000-13  
APPROVED BY *[Signature]* Dated 10/27/78

DIVISION Commissioner SECTION Commissioner CHAPTER TITLE Policy

All committee members shall be from the same region unless:

- 1) Those positions do not exist in that region, or
  - 2) The project is of a Statewide, or multi-region nature.
7. The Project Manager drafts for the Director's signature, a memo to the appropriate Deputy Commissioner containing the following information:
- a. Brief statement of the scope of services advertised for,
  - b. Identification of funding,
  - c. Statement that services were properly advertised and that responses were received from: (list the firms)
  - d. Recommendation of Selection Committee composition: (list each name and organization)
8. Receipt of each consultant's qualifications and/or letter of interest packet will be acknowledged in writing by the project manager. The acknowledgement will include an estimate of the expected selection date. If the selection process is delayed each responding consultant will be informed of the delay and a new estimated selection date.
9. Upon receipt of approval of composition of the Selection Committee, the Project Manager calls a meeting of the committee and provides each member with instructions for selection procedure, the evaluation criteria and the score sheets. The Project Manager provides a copy of the firm's responses and the qualification criteria, for review at the meeting. The members are to score their evaluations independently.
10. The Project Manager is Chairperson.
11. Each committee member scores each of the responsive firms on the forms provided in accordance with the established criteria. When a member is unable to evaluate a firm in a specific area, that blank should be marked with an X.
12. Each evaluator should sign the score sheet and return it to the chairperson for tabulation. The average score for all committee members in each category is used in tabulating the final score. When a member has been unable to score a particular category, the remaining members' average scores are used for scoring purposes.

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		APPROVED BY <i>Harold James</i>	
DIVISION Commissioner	SECTION Commissioner	CHAPTER TITLE Policy	

13. The Project Manager drafts, for the Director's signature, a memo transmitting the Selection Committee's recommendations to the appropriate deputy Commissioner, with copies of the average score tabulation, a listing of any discussion points or minority opinions to the final recommendations, and a completed Authority to Enter Contract Negotiations form.

NOTE: Oral interviews are required:

- 1) When the project is of a significant scale, or
- 2) When the implications of the project will be greater than a traditional design and construction project, or
- 3) When the nature of the project is such that a clearly defined scope of work for the consultant is not attainable at that time.

(If the oral interview phase is used, proceed with Step 14, if not, by-pass this step.)

14. The Project Manager contacts the firms listed and arranges appointments for oral interviews. The Project Manager develops a list of questions and reviews same with the members of the Selection Committee. The interview questions shall be applied uniformly to all firms and each firm shall be given an equal amount of time for their total interview.

Upon completion of each interview, each member individually writes a short evaluation (or score) of the firm. At completion of all interviews, the committee jointly reaches a list of the top three firms. The Project Manager drafts, for the division Director's signature a memo to the Commissioner thru the Deputy Commissioner notifying them of the final selection list and requesting final approval to enter contract negotiations.

15. Receipt of the Commissioner's approval on Authority to Enter Contract Negotiation form, shall constitute authority to negotiate with the top ranked consultant. Upon receipt of this notification, the Project Manager shall notify the consultant in writing. The Project Manager plus one other State representative shall then negotiate the contract utilizing the State's standard contract form (Attention is directed to FHWV Program Manual Vol. 6 Ch. Sec. 2 Sub. Sec. 2 for requirements which must be met on federally assisted contracts. Refer to Vol. 1 Ch. 7 Sec. 2 for those contracts which are expected to exceed \$50,000. The provisions of Title IV, Civil Rights Act of 1964 must also be included in the contract format). Concurrent with commencing contract negotiations, the Project Manager notifies the firms not selected for negotiation, thanking them for their interest and indicating the name of the successful firms.

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Hwy SOP 0000-13	
APPROVED BY <i>[Signature]</i>	

SUBJECT  
CONSULTANT SELECTION  
DESIGN AND CONSTRUCTION PROJECTS

DIVISION Commissioner	SECTION Commissioner	CHAPTER TITLE Policy
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If a satisfactory contract cannot be negotiated with the first listed firm, the Project Manager prepares a report for the Division Director documenting why the negotiations failed and, after concurrence by the Director, enters negotiations with the next listed firm on the Authority to Enter Contract Negotiations form.

16. When negotiations have been completed, the Project Manager prepares three (3) copies of the contract, obtains the Consultant signature and then completes, for the Director's signature, a memo to the Commissioner recommending acceptance of the attached contract. The text of such transmittal shall include statements that the contract is concurred with by the Client Agency, is within the approved budget, and the amount of the fee (and what percent this fee represents of the estimated construction contract value, if appropriate).
17. The original and two copies of the executed consultant contract and the data necessary to support the consultant's fee shall be transmitted to the Commissioner. After execution by the Commissioner of the contract for federally assisted work, the Department shall transmit the original and two (2) copies of the contract to the appropriate federal agency for their final review and approval (except in case of all ADAP federally funded projects, Federal-aid projects under the Secondary Road Plan or approved Certification Acceptance procedures). Upon receipt of approval, the Project Manager shall notify the consultant to proceed with the work and provide a copy to the department's contract section and to Financial Management.
18. If a modification of the agreement is required, the Project Manager shall prepare the necessary documents and process in the same manner as the original agreement. In no case is the consultant to be authorized to proceed with the work until Commissioner and Federal agency approval is received.
19. In those instances where a division has need of professional services for small contracts (\$10,000.00 per project, or under), the selection may be made utilizing this same procedure but writing a general scope of work for the advertisement and having a contract cover the Fiscal Year for that type of service. Then the division may authorize work under that contract for specific projects during that Fiscal Year for which it is valid (use Department's standard contract form).

STATE OF ALASKA  
 DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES  
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10-0007

1 OF 4

Effective Date

October 1, 1978

SUBJECT

CRITERIA FOR THE EVALUATION OF CONSULTANTS  
 (For Design & Construction Projects)

Supersedes P & P No.

Dated

New

10/10/78

APPROVED BY

*Richard Blomquist*

DIVISION

Commissioner

SECTION

Commissioner

CHAPTER TITLE

Policy

In accordance with A.S. 36.10.010 the firm must have the capabilities of performing a minimum of 90% of the services with Alaskan residents. If firm cannot meet this requirement then their proposal is to be recorded as non-responsive and not given further evaluation. (NOTE: on projects with Federal funds delete this restriction).

The following items will comprise the basic qualitative criteria for the evaluation of firms for performance of professional architectural and engineering design and other related services. Any firm offering professional services for a project must submit a complete team providing all basic services required for the project, otherwise they may be considered non-responsive. The evaluation will be based upon consideration of the qualifications of the sponsoring firm, its affiliated consultants, and the assembled team as a whole. When it is in the State's best interest, the qualitative data will be augmented by personal interviews with the top-ranking firms. In these interviews such aspects as time schedule, responsiveness, specific project staff, etc., can be evaluated. Point weights are included in parenthesis.

A. PHYSICAL PLANT AND MANPOWER RESOURCES

The facility and manpower (capability of the firm related to the size of the project). (0-10 points)

Criteria:

Higher score if the firm has adequate facilities and staffing in-house, prorate accordingly if the firm anticipates staffing-up to handle the job award of contract.

B. EXPERIENCE OF PROJECT TEAM

Qualifications of principle team firms for the work each is expected to perform. (0-10 points)

Criteria:

Higher score if all firms have adequate training and experience; prorate accordingly if not.

C. RELEVANT EXPERIENCE

The background of experience related to the particular facility type for the project, such as highway, airstrip, school, office building, airport terminal, hatchery, housing, etc. (0-10 points)

Criteria:

Consider the firm's previous design work similar to the project - give a maximum score when the firm (including subconsultants) has had specific experience: Zero score for no experience. Allow points for special educational courses relevant to this project scope.

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2 OF 4

Effective Date  
October 1, 1978

SUBJECT

CRITERIA FOR THE EVALUATION OF CONSULTANTS  
(For Design & Construction Projects)

Superseded F & P No.

New

Dated

10/27/78

APPROVED BY

*[Signature]*

DIVISION

Commissioner

SECTION

Commissioner

CHAPTER TITLE

Policy

D. EXPERIENCE OF PROJECT MANAGER

Qualifications of the project manager.

(0-10 points)

Criteria:

Higher score if manager has substantial previous experience managing projects of similar scope and type. Prorate score accordingly, if not.

E. GEOGRAPHIC PROXIMITY

The professional's office location and major work should be performed in close geographic proximity to that of project. (0-15 points)

Criteria:

If in the same City, in the same geographic area (depending upon accessibility and communications), or if outside geographic area (depending upon accessibility and communications): prorate accordingly, least score for the latter.

F. DESIGN AND LOGISTIC CONSTRAINTS

(If, for example, thorough knowledge of arctic design requirements is desired, give heavier point weight to this criteria)

Design professionals should have previous successful experience working under design and logistic constraints equivalent to those of the project. (0-10 points)

Criteria:

Consider contemporary experience with several projects, contemporary experience with one or two projects, noncontemporary experience, or no experience: Prorate accordingly, with zero points for the latter.

G. ORIGINAL DESIGN PROFESSIONAL (this criteria is optional)

If the project is an addition or major remodeling, preference is given to the original design professional used on the existing project. If project is a follow-up of a master plan or study, partial preference may be given to the firm who performed the master plan or study. (0-10 points)

H. COMPLIANCE WITH MINORITY HIRE REGULATIONS

Extent to which firm has hired minorities and women (0-5 points)

Criteria:

Five (5) points if firm has federal or State approved plan of minority hire.

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APPROVED BY <i>Richard Danvers</i>	

SUBJECT  
CRITERIA FOR THE EVALUATION OF CONSULTANTS  
(For Design & Construction Projects)

DIVISION Commissioner	SECTION Commissioner	CHAPTER TITLE Policy
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**I. PREVIOUS PERFORMANCE (DESIGN)**

This is a measure of the firm's (or individual members of the "team's") previous performance in the design function. (0-20 points)

**Criteria:**

Consider ability to assimilate program data and develop alternative design options; organize and manage subconsultant's work; ability and willingness to respond and conform to the State's procedure and standards; and to fiscally manage (i.e., adhere to negotiated fee and schedule) and timely compensate subconsultants. Lastly, but certainly not least, ability to maintain the established time schedule and design the project within the established construction budget. Place an "X" on the score sheet in this category if no previous State experience; however, the experience of individual members of the firm or team with another firm or team should be prorated accordingly.

**J. PREVIOUS PERFORMANCE (CONSTRUCTION)**

This is a measure of the firm's (or individual members of the team's) previous performance in the construction phase. (0-10 points)

**Criteria:**

Consider willingness to perform all required phases of the post-bid services including:

- a. Timely review and approval of submittals and shop drawings, Contractor Pay Estimates, perform construction administration and inspection as required and respond during warranty period. Also, consider the quality of contract documents provided for previous projects. Place an "X" on the score sheet if no previous State experience; however, the experience of individual members of the firm or team (with another firm or team) should be prorated accordingly.

**K. POST CONSTRUCTION**

This is a measure of the effectiveness and efficiency of the facilities previously designed by the firm for the State. (0-10 points)

**Criteria:**

Prorate accordingly with a maximum score for a superior facility and minimum score for the other extreme. Both maintenance and operational costs should be considered in the proration. Place an "X" on the score sheet for a firm with no previous experience.

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Supersedes P & P No. New	Dated 10/2/78
APPROVED BY <i>Lowell Lamer</i>	

SUBJECT  CRITERIA FOR THE EVALUATION OF CONSULTANTS (For Design & Construction Projects)		
DIVISION Commissioner	SECTION Commissioner	CHAPTER TITLE Policy

L. MANAGEMENT STRUCTURE OF FIRMS - assuming technical capabilities the same.

Office location of team firm(s) (0-30 points)

Criteria:

Office location(s) listed for team member(s); and where the decisions are being made.

- 25-30    entire team in Alaska
- 16-24    managing team in Alaska/support firm outside Alaska
- 11-15    managing team outside Alaska/support firm in Alaska
- 0-10     entire team outside Alaska

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT.

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		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 W. Ward</i>	
DIVISION Support Services	SECTION Contracts Administration	CHAPTER TITLE Procedure	
<p>1.0 PURPOSE</p> <p>1.1 To promulgate standard departmental procedures for the selection of Contractors to provide exempt professional or specialty services.</p> <p>2.0 POLICY</p> <p>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.</p> <p>3.0 DISTRIBUTION</p> <p>3.1 All holders of the Policy and Procedures Manual.</p> <p>4.0 DEFINITIONS</p> <p>4.1 <u>Professional/Specialty Services</u> - 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.</p> <p>4.2 <u>Exempt Services</u> - 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:</p> <p style="padding-left: 40px;">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.</p> <p>4.3 <u>Contractor</u> - Firm (person or any business combination) providing services.</p> <p>4.4 <u>Prequalification</u> - General evaluation of Contractor capability to provide broadly defined types of services.</p>			

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<p>4.5 <u>Qualification</u> - Formal evaluation of a Contractor's capability to provide specific services.</p> <p>4.6 <u>Expression of Interest</u> - Questionnaire for specific contract(s) which contains questions and space for each response by interested Contractors (prepared in accordance with Division procedures).</p> <p>4.7 <u>Divisional Procedures</u> - Written supplemental procedures as required by reference in this document.</p> <p>4.8 <u>Short List</u> - Contractors to be considered for negotiations in the order listed, or from which technical and/or priced proposals may be solicited.</p> <p>4.9 <u>Term Contract</u> - Agreement to provide identified types of services when authorized by Notice to Proceed for specific projects.</p> <p>5.0 USE</p> <p>5.1 This Procedure applies to all contracts for exempt professional or specialty services.</p> <p>5.2 When determined by the Commissioner of DOT/PF to be in the best interest of the State, this procedure may be waived.</p> <p>6.0 SUMMARY OF PROCEDURE</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Action</u></th> <th style="text-align: right;"><u>Paragraph</u></th> </tr> </thead> <tbody> <tr> <td>Identify services required.</td> <td style="text-align: right;">7.1</td> </tr> <tr> <td>Prequalification of Contractors (Division Option).</td> <td style="text-align: right;">7.2</td> </tr> <tr> <td>If cost less than or equal to \$2,500, select Contractor (proceed to paragraph 7.16).</td> <td style="text-align: right;">7.3</td> </tr> <tr> <td>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).</td> <td style="text-align: right;">7.4</td> </tr> <tr> <td>If cost greater than \$2,500 (\$20,000 if Contractors Prequalified), Committee Selection required.</td> <td style="text-align: right;">7.5</td> </tr> <tr> <td>Establish Selection Committee.</td> <td style="text-align: right;">7.6</td> </tr> <tr> <td>Prepare Expression of Interest questionnaire.</td> <td style="text-align: right;">7.7</td> </tr> <tr> <td>Prepare Invitation.</td> <td style="text-align: right;">7.8</td> </tr> </tbody> </table>				<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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<p>Distribute Invitation and Expression of Interest. 7.9</p> <p>Log in responses. 7.10</p> <p>Score responses. 7.11</p> <p>Establish Short List. 7.12</p> <p>Prepare Evaluation Report. 7.13</p> <p>Obtain Approval for Negotiations (AFN). 7.14</p> <p>Mail Short List to all respondents. 7.15</p> <p>Negotiate (technical and or priced proposals, as appropriate). 7.16</p> <p>Select Contractors, prepare and execute contract. 7.17</p> <p>7.0 PROCEDURE</p> <p>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.</p> <p>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;</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>1. The Committee must review each file at least annually and new or updated submittals at least quarterly.</p>			

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

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

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- 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 100 and the sum of all weights must equal 100 (i.e. 100%). Minimum Weight of the mandatory FMBE Question is "5". If some questions are deleted from consideration by the Committee after responses are received, the assigned Weight for other questions will not be changed.
- B. Each Committee member shall rate Contractor response for each question as follows: "X" = Disqualified (submittal must be rejected) or a whole number from 0 to 5 where 0 = Unacceptable, 1 through 4 = Acceptable and 5 = Outstanding. Responses to the mandatory FMBE Question must be rated as follows: 0% = 0, 1 - 20% = 1, 21 - 40% = 2, 41 - 60% = 3, 61 - 80% = 4, 81 - 100% = 5.
- C. Committee members' ratings for Contractor responses to each question must be multiplied by the assigned weight and the products summed to obtain the member's score for each Contractor. Example (3 questions):

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

- D. A Contractors total score shall be equal to the sum of each member's score (Do not average member ratings to obtain a Committee rating for each response or manipulate this scheme in any other way).
- 7.12 Establish Short List for negotiations based on one or any combination of the following:
  - A. Highest numerical score for responses in the Expressions of Interest.
  - B. Interviews with highest scored Contractors. (Committee must develop a list of questions to be uniformly presented to each Contractor with 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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- 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.

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

8.0 IMPLEMENTATION

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

Introduced: 4/28/81  
Referred: Transportation

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE  
BY REQUEST

2 HOUSE BILL NO. 537

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the authority of the Department of  
7 Transportation and Public Facilities to enter into  
8 professional services contracts; and providing for an  
9 effective date."

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

11 \* Section 1. AS 44.42.020(a)(6) is amended to read:

12 (6) cooperate and coordinate with and, subject to AS 44.42.-  
13 035, enter into agreements with federal, state and local government  
14 agencies and private organizations and persons in exercising its powers  
15 and duties; *defin.*

16 \* Sec. 2. AS 44.42 is amended by adding a new section to read:

17 Sec. 44.42.035. CONTRACTS OF THE DEPARTMENT. (a) Regulations  
18 and procedures adopted by the commissioner of administration, whether  
19 or not adopted in accordance with the Administrative Procedure Act  
20 (AS 44.62), apply to contracts for professional services proposed to be  
21 entered into by the department.

22 (b) For purposes of this section, "contracts for professional  
23 services"

24 (1) means a contract for professional, technical, or consul-  
25 tant's services which are predominantly intellectual in character and  
26 which

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

29 (B) result in the production of a report or the comple-

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tion of a task;

(2) includes but is not limited to design and engineering services and surveys in conjunction with the construction of a highway or public facility by the department.

*wording*

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

OFFICE OF THE OMBUDSMAN  
STATE OF ALASKA

SPECIAL REPORT 81-3

PROPER USE OF  
PROFESSIONAL SERVICES CONTRACTS

MARCH 27, 1981

*Frank Flavin*

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FRANK FLAVIN  
OMBUDSMAN

*Town Meetings  
held in  
fall of '79*

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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 issue areas 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, commissior, 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

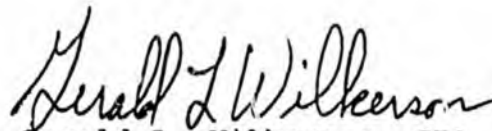
April 25, 1978

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 37.05.250(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.

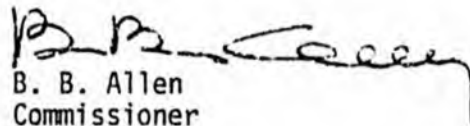
If professional contracts were negotiated and initiated by my department (such as purchase orders and leases) the function would be in the Division of General Services and Supply. Professional contracts, however, are negotiated by the agencies. The Department of Administration determines that prescribed 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. Allen  
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 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 1, 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.

SEARCHED	INDEXED
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FBI - ANCHORAGE	

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 (1977) 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:

---

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;

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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;

*stat. interp. question*

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.

March 23, 1979

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 concerning the state museum from the office of the governor to the Department of Education designated as Executive Order No. 34 on the interpretation that the number should follow the last executive order actually perfected. The executive order was incorporated in 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. 297, 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 Concurrent 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

B. B. 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 the 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:am

