

SENATE FINANCE COMMITTEE REPORT

DATE: 5/3/91

FURTHER:

DATE TURNED INTO OFFICE: 5-16-91

The Finance Committee considered SENATE BILL NO. 245

"An Act relating to state purchases of heavy trucks and heavy equipment."

and recommended:

[x] replace with CS SB 245 (FIN)
[] or adopt CS
[] attached amendment(s)
[] letter of intent adopted

[x] same title
[] new title
[] technical title change (HB only)

- [x] do pass
[] do not pass
[] no recommendation
[] individual recommendations
[] further referral to

ATTACHES NEW FISCAL NOTE(S):
[] fiscal note(s) Dept/Date:
[] zero fiscal note(s)
[] appropriation-no fiscal note

APPROVES PREVIOUS:
[] fiscal note(s) Dept/Date:
[x] zero fiscal note(s)
DOT 4/17/91

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Handwritten signatures of committee members.

Blank lines for other recommendations.

1. 2. Co-Chairs: Signatures and Recommendations

STATE OF ALASKA
1991 LEGISLATIVE SESSION

FISCAL NOTE

No.
Bill Version: SB 245
(S) Publish Date: 5/3/91

Revision Date: _____ Department Affected: DOT&PF
Title: State Purchase of Trucks/Heavy Equipment BRU: Admin. Services
Sponsor: Senate Finance Committee Component: SEF
Requestor: _____ Component Serial Number: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL FUNDING:	0	0	0	0	0	0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

No additional funding will be required to the Highway Equipment Working Capital Fund (HEWCF) as a result of this bill. Although the initial purchase cost of some equipment may be higher, the long-term cost will be lower because higher quality equipment will last longer, costs less to maintain, and has a higher resale value.

Prepared by: Robert N. Bartholomew Phone: 465-3911
Division: Administrative Services Division Date: April 17, 1991
Approved by Commissioner: Frank G. Turpin Phone: 465-3911
Agency: Department of Transportation and Public Facilities Date: April 17, 1991

Distribution By Preparer: Legislative Finance, Legislati

REV 2/7/91

Changes in 05 SB 245 (Fin)
reflect NO FISCAL CHANGE from the original
fiscal note. This fiscal note is appropriate.

5/16/91 date
JKL Comte Aide (initial)

s).

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5-16-91
Adopted

7-LS1167A.1
Bannister
05/16/91

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR SHULTZ

TO: SB 245

Page 3, following line 27:

Insert a new bill section to read:

"* Sec. 6. AS 36.30.990 is amended by adding a new paragraph to read:

(22) "heavy trucks and heavy equipment" means earth-moving, material handling, road maintenance, and construction equipment, including dump trucks, generators, track type tractors, motor graders, excavators, land fill compactors, wheel tractors, scrapers, wheel loaders, dozers, cranes, attachments, and specialty construction equipment."

CS SENATE BILL NO. 245 (Fin)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Introduced: 4/8/91
Referred: Transportation, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to state purchases of heavy trucks and heavy equipment."

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

3 * Section 1. LEGISLATIVE INTENT. It is the intent of the legislature that the state take into
4 account certain factors in addition to price when purchasing heavy trucks and heavy equipment. The
5 state should consider resale value, durability as measured by projected operating and maintenance costs,
6 and service requirements, including warranty, parts availability, and service locations. These factors
7 should be considered with the goal of acquiring the best value for the state considering the price and
8 quality of the equipment purchased.

9 * Sec. 2. AS 36.30.040(b) is amended to read:

10 (b) The commissioner shall adopt regulations pertaining to the following:

- 11 (1) suspension, debarment, and reinstatement of prospective bidders and
12 contractors;
13 (2) bid protests;
14 (3) conditions and procedures for the procurement of perishables and items for

1 resale;

2 (4) conditions and procedures for the use of source selection methods authorized
3 by this chapter, including sole source procurements, emergency procurements, and small
4 procurements;

5 (5) the opening or rejection of bids and offers, and waiver of informalities in bids
6 and offers;

7 (6) confidentiality of technical data and trade secrets submitted by actual or
8 prospective bidders or offerors;

9 (7) partial, progressive, and multiple awards;

10 (8) storerooms and inventories, including determination of appropriate stock levels
11 and the management of agency supplies;

12 (9) transfer, sale, or other disposal of supplies;

13 (10) definitions and classes of contractual services and procedures for acquiring
14 them;

15 (11) providing for conducting price analysis;

16 (12) use of payment and performance bonds in connection with contracts for
17 supplies, services, and construction;

18 (13) guidelines for use of cost principles in negotiations, adjustments, and
19 settlements;

20 (14) conditions under which an agency may use the services of an employment
21 program;

22 (15) a bidder's or offeror's duties under AS 36.30.115 and 36.30.210; [AND]

23 (16) the elimination and prevention of discrimination in state contracting because
24 of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, handicap,
25 or political affiliation; and

26 (17) the criteria to be considered when purchasing heavy trucks and
27 equipment.

28 * Sec. 3. AS 36.30.100(b) is amended to read:

29 (b) Competitive sealed bidding is not required

30 (1) when the commissioner determines in writing that food, clothing, or medical
31 supplies, or materials for use in laboratory or medical studies may be purchased otherwise to the

1 best advantage of the state;

2 (2) when rates are fixed by law or ordinance;

3 (3) for the purchase of products or services manufactured or provided by an
4 employment program;

5 (4) for the purchase of products or services provided by the correctional industries
6 program established under AS 33.32;

7 (5) for professional services; [OR]

8 (6) for concessions operated on state property; or

9 (7) for the purchase of heavy trucks and heavy equipment.

10 * Sec. 4. AS 36.30.200 is amended by adding a new subsection to read:

11 (d) Notwithstanding other provisions of this chapter, when a state agency procures heavy
12 trucks and heavy equipment, the agency may use competitive sealed proposals.

13 * Sec. 5. AS 36.30 is amended by adding a new section to read:

14 Sec. 36.30.215. EVALUATION FACTORS FOR HEAVY TRUCKS AND EQUIPMENT.

15 When a state agency uses competitive sealed proposals to procure heavy trucks and heavy
16 equipment, the following evaluation factors may be considered:

17 (1) the price;

18 (2) the quality of the article offered;

19 (3) the performance capabilities of the offerors and the manufacturers;

20 (4) the suitability of the articles for the intended use;

21 (5) the service requirements, including warranty, parts availability, and parts
22 locations;

23 (6) durability as measured by projected operating and maintenance costs;

24 (7) the resale value;

25 (8) the transportation charges;

26 (9) the date of delivery and performance; and

27 (10) other factors determined to be pertinent or peculiar to the procurement.

CS FOR SENATE BILL NO. 245 (FINANCE)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE FINANCE COMMITTEE

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- 19 settlements;
- 20 (14) conditions under which an agency may use the services of an employment
- 21 program;
- 22 (15) a bidder's or offeror's duties under AS 36.30.115 and 36.30.210; [AND]
- 23 (16) the elimination and prevention of discrimination in state contracting because
- 24 of race, religion, color, national origin, sex, age, marital status, pregnancy, parenthood, handicap,
- 25 or political affiliation; and
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31 tractors, motor graders, excavators, land fill compactors, wheel tractors, scrapers, wheel loaders,

1 dozers, cranes, attachments, and specialty construction equipment.

FOR THE PURCHASE OF EQUIPMENT OR SERVICES THAT ARE NOT LISTED IN THE
SCHEDULED LIST OF EQUIPMENT OR SERVICES
THE CONTRACTOR SHALL
SEE THE INSTRUCTIONS TO BIDDERS FOR THE SCHEDULED LIST OF EQUIPMENT OR SERVICES

Senator Udine

Diane Mayer Pearson, C.P.M.
4541 Sawa Circle
Juneau, AK 99801
789-4551 / 789-3772

Mitch
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May 7, 1991

Alaska State Legislature
Senate Finance Committee

Dear Colleagues,

Re: SB 245 on State purchases of trucks and heavy equipment

This intent of this bill is commendable, but its form is undeserving of the effort. The intent is to allow consideration of factors other than purchase price in the procurement of heavy trucks and heavy equipment. This procurement technique is called life cycle costing or total cost bidding. This considers factors such as costs of operation, maintenance, repair, disposal, trade-in allowances, repurchase guarantees, projected life, money costs, and other costs of ownership and operation in addition to the initial acquisition price in the evaluation of bids. Both techniques are specifically provided for use in State bids by AS 36.30.150.

Life cycle costing and total cost bidding have been used in the past by the State for heavy equipment, building construction and leasing, appliances, lighting, air charters, vehicle purchases and rentals, light bars, testing equipment, generators, and other goods and services. Both techniques are vital parts of the array of advanced procurement methods currently available to procurement professionals throughout the world.

There are two major problems with the bill. First, it excludes heavy trucks and heavy equipment from the article on competitive sealed bidding. The competitive sealed bidding article is the very one which allows total cost bidding and life cycle costing as part of the objectively measurable evaluation criteria to be set out in the invitation to bid. This criteria includes assigning reasonable equivalent value to performance, parts availability, service, warranty, delivery or performance delays, resale price, and other relevant factors affecting the total ownership and operating costs of an item or service.

Second, it includes heavy trucks and equipment in the article covering competitive sealed proposals. This is the method typically used for professional services such as consultants and engineers, when subjective evaluation factors such as aesthetics are required, when negotiations or best and final offers are required, and situations where competitive sealed bidding is impractical. While the statute does not require a minimum evaluation factor for cost, the regulations establish a minimum 10% evaluation factor applied to cost items. The remaining evaluation may be on subjective, rather than objective factors -- a move that could easily subvert the intent of the proposed bill.

SB 245 Comments
May 7, 1991

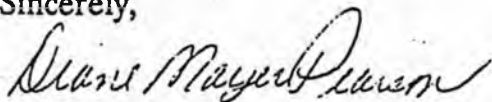
The intent of the existing procurement code is, in part,: "... to increase economy in state procurement activities and maximize to the fullest extent practicable the purchasing value of state funds; ... and permit the continued development of state procurement practices and policies." This intent is carried out in AS 36.30.150 which allows the desired specifications, terms, conditions, and evaluation factors for heavy trucks/equipment to be set out in invitations to bid and multi-step bids. It also allows the use of competitive sealed negotiations when competitive sealed bidding cannot be used.

By setting aside heavy trucks and equipment for special treatment, the bill excludes the named evaluation factors and procurement methods from being used for other procurement that are not separately set aside by law. This would be detrimental to all other purchases for which application of life cycle costing or total cost bidding could benefit. Additionally, excluding heavy trucks and equipment from bidding and including it in proposals removes the focus of reasonable and objectively measurable evaluation criteria required in bidding and instead promotes subjective criteria and the potential for individual preferences not related to utility or economy.

In summary, I urge you to retract the bill. If this bill passes, it could be to the exclusion of using the noted evaluation factors for other purchases; it implies life cycle costing and total cost bidding techniques cannot be fully utilized for heavy trucks and equipment; it impedes the use of advanced procurement techniques as they are developed in the profession; it promotes non-objective evaluation, negotiations and multi-offers when named in the competitive proposals article; and it causes unnecessary delays and burden in administrative regulations to implement a redundant law.

Since the procurement code already promotes the evaluation of factors other than initial acquisition price in order to achieve economy and maximum value of state funds, this bill is unnecessary and damaging. Perhaps a resolution would be suitable instructing procurement officers to use life cycle costing and total cost bidding to the extent practicable in all procurements, including but not limited to procurements of heavy trucks and heavy equipment.

Sincerely,



Diane Mayer Pearson, C.P.M.

(Certified Purchasing Manager, conferred by the
National Association of Purchasing Management, Inc.)



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: SB 245

APPROVED:

J. Randy Luman Sr FT

TITLE: State Purchases of Trucks/Heavy
Equipment

DATE: April 17, 1991

The Department of Transportation and Public Facilities has the statutory responsibility for management of the Statewide Equipment Fleet (SEF). SEF is responsible for procurement of new replacement equipment for the fleet in order to provide safe, reliable, and cost-effective vehicles and heavy equipment to state agencies.

The proposed bill responds to issues that were discussed in Senate Finance Committee budget hearings relative to the need for the state to purchase better quality equipment and apply accepted industry standardization principles. Resolution of these issues requires taking factors other than initial price into account when necessary. Current equipment awards are essentially made to the low bidder with little consideration given to the overall quality or resale value of the unit. In some instances, the low bid does not equate to the best value for the state. The legislative intent and the procurement flexibility provided by the proposed bill would enhance SEF's ability to purchase heavy trucks and heavy equipment that would perform better and give lower overall cost to the state in the long run.

The department supports this legislation as being in the best interests of the state by reducing long-term cost for the acquisition of heavy trucks and equipment while providing more reliable units for use in maintenance of airports, roads, and streets.

For Further Information contact Katy McHugh at 465-3900.



Alaska State Legislature

SENATOR DICK SHULTZ

P.O. Box V
Juneau, Alaska 99801,
(907) 465-4940
Home: P.O. Box 487
Tok, Alaska 99780

Member
Finance Committee
Transportation Committee
Special Committee on Oil & Gas

Senate
District J

MEMORANDUM

TO : Senate Finance Committee

FROM : Senator Dick Shultz *DS*

DATE : April 3, 1991

RE : Procurement of heavy trucks and heavy equipment.

District 17

- ALCAN BORDER
- ANDERSON
- BIG DELTA
- BOUNDARY
- CANTWELL
- CHICKEN
- CHISTOCHINA
- CLEAR
- COPPER CENTER
- DELTA JUNCTION
- DENALI PARK
- DOT LAKE
- DRY CREEK
- EAGLE
- EAGLE VILLAGE
- GAKONA
- GLENNALLEN
- GULKANA
- HEALY
- HEALY LAKE
- KENNY LAKE
- MENDELTONA
- MENTASTA LAKE
- NABESNA
- NELCHINA
- NENANA
- NORTHWAY
- PAXSON
- SLANA
- TANACROSS
- TAZLINA
- TETLIN
- TOK
- TOLSONA
- TONSINA

During operating budget hearings on the State Equipment Fleet and the Highway Working Capital Fund, several issues were raised regarding current practices of procurement that result in inefficiencies and unnecessary expense to the state of Alaska.

Heavy trucks and heavy equipment represents a significant investment for the maintenance of our transportation facilities and has a major impact on safety of our roads and airports.

Having the right equipment for the particular requirement and reducing costs of operations, is not always compatible with the method of awarding the lowest bid. "Buying the cheapest does not always buy the best value" for the state. Other factors need to be considered in evaluating the most appropriate equipment.

Considerations of life-cycle cost and even routine maintenance of the equipment are complicated and expensive in relation to the distance away from urban distribution centers. The public's reliance on the maintenance of roads and airports and other public facilities particularly in rural areas depends on efficient equipment operation. Many of us have heard reports of this problem from our constituents and those who use the equipment.

District 18

- BADGER ROAD
- EIELSON/MOOSE CREEK
- NEWBY
- NORTH POLE
- PLACK
- RICHARDSON
- SALCHA

While drafting this legislation, it became apparent that agencies in addition to DOT/PF procure heavy equipment, therefore this legislation has been drafted to apply to all state purchases of heavy trucks and heavy equipment.

This draft legislation seeks to address the procurement of the types of equipment that represent a high per unit cost, and also have a significant impact on the operating budget. It is intended that this legislation will address these specific needs, clarify the states best interest, and result in greater efficiency in terms of effort, operations, and cost.

I would like to ask for your consideration of this issue and would hope that the Senate Finance Committee would consider sponsoring this bill. Please contact me if you have any questions or have staff contact Steve Soenksen in my office at 4740.

Thank you for your consideration.

Collateral references. — Right of bidder for state or municipal contract to rescind bid on ground that bid was based upon his own mistake or that of his employee. 2 ALR4th 991.

Sec. 36.30.170. Contract award after bids. (a) Except as provided in (b), (c), and (d) of this section, the procurement officer shall award a contract based on the solicited bids with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid.

(b) The procurement officer shall award a contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent and an Alaska products preference as described in AS 36.30.322 — 36.30.338 have been applied. In this subsection, "Alaska bidder" means a person who

(1) holds a current Alaska business license;

(2) submits a bid for goods, services, or construction under the name as appearing on the person's current Alaska business license;

(3) has maintained a place of business within the state staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the date of the bid;

(4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship, and the proprietor is a resident of the state or is a partnership, and all partners are residents of the state; and

(5) if a joint venture, is composed entirely of ventures that qualify under (1) — (4) of this subsection.

(c) If a bidder qualifies under (b) of this section as an Alaska bidder, is offering services through an employment program as defined under AS 36.30.100(c), and is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid of a nonresident, the procurement officer shall award the contract to that bidder.

(d) The procurement officer shall award an insurance-related contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent. In this subsection, "Alaska bidder" means a person who meets the criteria set out in (b)(1) — (5) of this section and who is an Alaska domestic insurer. (§ 2 ch 106 SLA 1986; am §§ 7 — 9 ch 65 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, in subsection (a) inserted "(c), and (d)"; in subsection (b) substituted the first sentence for "Notwithstanding an Alaska product preference under AS 36.30.322 — 36.30.338, the procurement officer shall

award a contract based on solicited bids to the lowest responsible and responsive Alaska bidder if the bid is not more than five percent higher than the lowest nonresident bidder's"; and added subsection (d).

for public inspection until after the notice of intent to award a contract is given. To the extent the bidder designates and the procurement officer concurs, trade secrets and other proprietary data contained in a bid document are confidential. (§ 2 ch 106 SLA 1986; am § 6 ch 65 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, in subsection (a) deleted "publicly in the presence of one or more witnesses" following "open bids" in the first sentence and added the second sentence.

Sec. 36.30.150. Bid acceptance and bid evaluation. (a) Bids shall be unconditionally accepted without alteration or correction, except as authorized in AS 36.30.160. The procurement officer shall evaluate bids based on the requirements set out in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, delivery, and suitability for a particular purpose. The criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation to bid must set out the evaluation criteria to be used. Criteria may not be used in bid evaluation if they are not set out in the invitation to bid.

(b) A contract based on total or life cycle costs may be awarded only when the chief procurement officer or, for construction contracts or procurements for the state equipment fleet, the commissioner of transportation and public facilities, determines in writing at the time of contract solicitation that the contract promotes overall economy for the purposes intended, encourages competition, is not unduly restrictive, and is in the best interests of the state. (§ 2 ch 106 SLA 1986)

Sec. 36.30.160. Late bids; correction or withdrawal of bids; cancellation of awards. (a) Bids received after the bid due date and time indicated on the invitation to bid may not be accepted unless the delay was due to an error of the contracting agency.

(b) Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on bid mistakes may be permitted in accordance with regulations adopted by the commissioner. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may not be permitted. Except as otherwise provided by regulation, a decision to permit the correction or withdrawal of a bid, or to cancel an award or contract based on bid mistake, shall be supported by a written determination made by the procurement officer. If a bidder is permitted to withdraw a bid before award, an action may not be maintained against the bidder or the bid security. (§ 2 ch 106 SLA 1986)

2 AAC 12.090. NO RESTRICTIVE SPECIFICATIONS. All specifications must describe the requirements to be met without having the effect of exclusively requiring a proprietary supply, service, or construction item, or procurement from a sole source, unless no other manner of description will suffice. (Eff. 1/1/88, Reg. 104)

Authority: AS 36.30.040
AS 36.30.060

2 AAC 12.100. BRAND NAME SPECIFICATION. A specification that limits the procurement of items to a specific manufacturer's name or catalog numbers may be used only if the procurement officer makes a written determination that only the identified brand name item or items will satisfy the state's needs. (Eff. 1/1/88, Reg. 104)

Authority: AS 36.30.040
AS 36.30.060

2 AAC 12.110. QUALIFIED PRODUCTS LIST. (a) A qualified products list may be developed with the approval of the chief procurement officer, or the commissioner of transportation and public facilities, if testing or examination of the supplies or construction items before issuance of the solicitation is desirable or necessary in order to best satisfy state requirements.

(b) When developing a qualified products list, a representative group of potential suppliers must be solicited, in writing, to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration.

(c) Inclusion on a qualified products list must be based on results of tests or examinations conducted in accordance with state requirements. Test results may be made public in a manner that protects the confidentiality of the identity of the competitors, such as using numerical designations. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential if requested in writing by the supplier.

(d) The existence of a qualified products list

does not constitute prequalification of any prospective supplier of prequalified products. (E 1/1/88, Reg. 104)

Authority: AS 36.30.0
AS 36.30.0

ARTICLE 3. COMPETITIVE SEALED BIDDING; MULTISTEP BIDDING

Section

- 120. Invitations for competitive sealed bids
- 130. Public notice
- 140. Pre-opening correction or withdrawal of bids
- 150. Receipt, opening, and recording of bid
- 160. Late bids, late corrections, and late withdrawals
- 170. Inadvertent errors discovered after opening but before award
- 180. Bid evaluation and award
- 190. Only one responsive bid received
- 200. Documentation of award
- 210. Notice of intent to award

2 AAC 12.120. INVITATIONS FOR COMPETITIVE SEALED BIDS. (a) An invitation bid must include the following:

(1) instructions and information to bidders concerning the bid submission requirements, the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the state, and any other special information;

(2) a purchase or project description, evaluation factors, delivery or performance schedule and the inspection and acceptance requirements that are not included in the purchase or project description;

(3) a description of all applicable contract terms and conditions, including warranty, bonding or other security requirements;

(4) a requirement for certification by bidder that it complies with the applicable provisions of 42 U.S.C. 1971, 1975, and 2000 (Federal Civil Rights Act of 1964), AS 18, and regulations adopted or promulgated under those laws by the federal government and the state, as applicable; and

Table 3. Requirements for Sealed Bids

- (16) Is there a requirement in the state's purchasing law for sealed bids, publicly opened?
- (17) Above what dollar amount are you required to use sealed bids?
- (18) Below this dollar amount, do your small purchase procedures usually require competitive quotations?
- (19) What is the usual dollar amount below which agencies are authorized to obtain their own quotations locally?
- (20) Can state agencies obtain quotations for local purchase of items or types of items that are available under a contract issued by the central purchase office?
- (21) What are the statutory criteria for evaluating sealed bids (IFB's) and awarding contracts? Please quote from the relevant statutory provision(s) and provide a complete citation. (Printed in italics under states' names.)

TABLE 3

STATE	Public Opening of Sealed Bids Requirement	Dollar Amount Required for Sealed Bids	Competitive Quotations Required for Small Purchases	Dollar Amount Allowed for Agencies to Obtain Own Quotations	Authorizations for Independent Agency Quotation if Central Purchasing Contract Ex:
ALABAMA	Y	2,000	Y	100	N
	<i>"... award shall be made to the lowest reasonable bidder taking into consideration the qualities of the commodities proposed to be supplied, their conformity with specifications, the purpose for which required, the terms of delivery, transportation charges, and the dates of delivery." Title 11-16-32</i>				
ALASKA	Y	5,000	Y	5,000	N
	<i>The procurement officer shall award a contract "... to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid." A.S. 36.30.170</i>				
ARIZONA	Y	10,000	Y	750	N
	<i>"The contract shall be awarded to the lowest reasonable and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the invitation for bids." (A.R.S. §41-2533.G.)</i>				
ARKANSAS	Y	5,000	Y	5,000	N
	<i>"The contract shall be awarded with reasonable promptness by written notice to the lowest responsive and reasonable bidder whose bid meets the requirements and criteria set forth in the invitation for bids, and all other bidders requesting to be notified of the award decision shall be promptly notified of said decision." Arkansas Statutes 1947 Annotated Sec. 14-254(H)</i>				
CALIFORNIA	Y	10,000	Y	960	N
	<i>Award to "lowest responsible bidder meeting specifications". (Public Contract Code Section 10301)</i>				
COLORADO	Y	3,000	Y	500	N
	<i>"All orders awarded or contracts made by the state purchasing director shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with the specifications, the purposes for which they are required, and the date of delivery." Colorado 24-103-202</i>				
CONNECTICUT	Y	7,500	Y	400	N
	<i>"All ... contracts shall be awarded to the lowest responsible qualified bidder, the quality of article to be supplied, their conformity with the specifications, their suitability to the requirements of the state government and the delivery terms being taken into consideration and, at the discretion of the commissioner of administrative services, trade-in or resale volume of the articles may be considered where it appears to be in the best interests of the state." Conn. General Statutes, Section 4-114</i>				
DELAWARE	Y	5,000	N	5,000	Y
	<i>"... shall be awarded ... by the agency or a representative delegated by the agency, in accordance with regulations prescribed by the agency, to the lowest responsible vendor unless, in the opinion of the agency or its delegated representative, the interest of the State ... shall be better served by the awarding of the contract to some other vendor, which may then be done, provided the agency shall set down in its minutes the reason or reasons for granting the contract to the person other than the lowest responsible vendor, and clearly describing how the interest of the State or the contracting county shall be better served by awarding the contract to other than the lowest vendor. In determining how the interest of the State or contracting county is better served in making an award to other than the lowest responsible vendor, the agency may take into consideration unsatisfactory performances on any previously awarded contract by the vendor being rejected." Chapter 69, ss 6907, Title 29 of the Delaware Code</i>				
FLORIDA	Y	3,000	Y	3,000	N
	<i>Laws: None. Regulations: 13A-1.02(9) - "Determination of Best Bid - It shall be the responsibility of the agency to determine the lowest responsive bidder meeting specifications and conditions of a bid invitation. In any case where an agency makes a determination to award to a bid other than the low bid meeting specifications, it shall first submit to the Division of Purchasing its complete file containing all information available to that agency, including reasons for recommending a bid other than the low bid."</i>				
GEORGIA	Y	5,000	Y	5,000 (6)	N
	<i>"... shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied and conformity with the standard specifications which have been established and prescribed, the purpose for which said articles are required, the discount allowed for prompt payment, the transportation charges and the date or dates of delivery specified in the bid." GA Laws 1937 pp. 503, 508; 1939, pp. 160, 165 (GA Code Ann. ss40-1910)</i>				
HAWAII	Y	4,000	N	(1)	N
	<i>"All contracts ... shall be made with the lowest responsible bidder..." Section 103-32, Hawaii Revised Statutes</i>				

TABLE 3 (Continued)

STATE	Public Opening of Sealed Bids Requirement	Dollar Amount Required for Sealed Bids	Competitive Quotations Required for Small Purchases	Dollar Amount Allowed for Agencies to Obtain Own Quotations	Authorizations for Independent Agency Quotation if Central Purchasing Contract Exists
IDAHO	Y	5,000	Y	500(2)	Y
	<i>"Lowest Responsible Bidder. The reasonable bidder whose bid reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed as set out in the specifications, in determining the lowest acquisition price." ID</i>				
ILLINOIS	Y	5,000	Y	2,500	N
	<i>"That all purchases, contracts and expenditure of funds shall be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, quality and serviceability..." Chapter 127, para. 1321, section 6a, Illinois Revised Statutes.</i>				
INDIANA	Y	5,000	Y	50	Y
	Sec. 1. (a) <i>"Contracts for supplies must be awarded under section 2 (competitive sealed bidding)"</i> of this chapter. (b) <i>"Contracts for services are not required to be awarded under this chapter."</i> Indiana Code 4-13.4-5-1 Sec. 2. (a) <i>"A contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids."</i> Indiana Code 4-13.4-5-2				
IOWA	Y	5,000	Y	500	Y
	<i>"... Contracts for the purpose of items shall be awarded on the basis of the lowest competent bid. Contracts not based on competitive bidding shall be awarded on the basis of bidder competence and reasonable price." Code of Iowa, 1979 edition, Section 18.6, pp. 72-73.</i>				
KANSAS	Y	5,000	Y	2,000	N
	<i>"... shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids." KSA 75-3740(a)</i>				
KENTUCKY	Y	1,000	Y	1,000	N
	<i>"The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or lowest evaluated bid price." Kentucky Model Procurement Code 45A.080(5)</i>				
LOUISIANA	Y	5,000	Y	(8)	N
	<i>"The contract shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation To Bid" (LRS 39:1594G)</i>				
MAINE	Y	2,500	Y	250	N
	<i>"Except as otherwise provided by law, orders awarded or contracts made shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the services, supplies and materials..." Maine R.S. 5-1816 (7)</i>				
MARYLAND	Y	10,000	Y	1,000	N
	<i>The Department shall make awards on the basis of competitive sealed bidding. "Lowest bid price or the lowest evaluated bid price, whichever is applicable."</i>				
MASSACHUSETTS	Y	500	N	500	Y
	<i>"No criteria defined or set forth."</i>				
MICHIGAN	N	9,999	Y	1,000	N
	<i>"Lowest responsive and responsible bidder meeting specifications" - Rule</i>				
MINNESOTA	Y	15,000	Y	100/1,500 (10)	N
	<i>"All contracts and purchases made by or under the supervision of the commissioner or any state department or agency for which competitive bids are required shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids." Minnesota Statutes 16.08</i>				
MISSISSIPPI	Y	2,500	Y	500	N
	<i>"Awards shall be made to the lowest and/or best bid meeting all requirements of the specifications." Chapter 7, "Public Purchasing Section 31-7-13, Regulation 6 - Purchasing Division Regulation</i>				
MISSOURI	Y	2,000	Y	2,000	N
	<i>"The contract shall be let to the lowest and best bidder." Missouri Revised Statutes 1969, Section 34.040</i>				
MONTANA	Y	2,000	Y	500	N
	<i>"In awarding contracts for purchase of products, materials, supplies, or equipment such board, commission, officer, or individual shall award the contract to any such resident whose offered materials, supplies, or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than 3% higher than that of the lowest responsible bidder whose offered material, supplies, or equipment are not so manufactured or produced, provided that such products, materials, supplies and equipment are comparable in quality and performance." Montana Code Annotated, 1978, Title 18, Chapter 1, Part 1; 18-1-102</i>				
NEBRASKA	Y	5,000	Y	35	N
	<i>"(award) ... shall be made to the lowest responsible bidder, taking into consideration the best interest of the state, the quality or performance of the articles or property proposed to be supplied for which required, and the times of delivery;" Nebraska Revised Statutes 81-161</i>				
NEVADA	Y	7,500	Y	500	N
	<i>"Every contract or order shall be awarded to the lowest responsible bidder, taking into consideration: (1) The location of the using agency to be supplied; (2) The qualities of the articles to be supplied; (3) Their conformity with the specifications; (4) The purposes for which they are required; (5) The dates of delivery;" Nevada R.S. 333.340</i>				
NEW HAMPSHIRE	N	2,000*	Y(3)	100	N
	None				

TABLE 3 (Continued)

STATE	Public Opening of Sealed Bids Requirement	Dollar Amount Required for Sealed Bids	Competitive Quotations Required for Small Purchases	Dollar Amount Allowed for Agencies to Obtain Own Quotations	Authorizations for Independent Agency Quotation if Central Purchasing Contract Exists
NEW JERSEY	Y	2,500	Y	1,500	N
	"... award shall be made ... to that reasonable bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered." New Jersey Statutes Annotated 52:34-12				
NEW MEXICO	Y	5,000	Y	250	N
	"Awards for all material and services are awarded based on the lowest responsible bid meeting the minimum specifications and delivery requirements."				
NEW YORK	Y	5,000	Y	5,000	N
	"Contracts ... shall be let to the lowest responsible bidder, as will best promote the public interest, taking into consideration the reliability of the bidder, the qualities of the articles proposed to be supplied, their conformity with the specifications, the purposes for which required and the terms of delivery ..." N.Y.S. Finance Law, Article XI, Section 174				
NORTH CAROLINA	Y	5,000	Y	5,000	N
	"... acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the article offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use, the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factors) deemed pertinent or peculiar to the purchase in question which if controlling shall be made a matter of record." GS 143-52, pp. 2-3 Public Laws Relating to the North Carolina Purchase and Contract Division				
NORTH DAKOTA	Y	2,000*	Y	300	N
	"... purchasing contracts shall be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability." SB 2048 Section 5				
OHIO	Y	1,000	N	1,000	N
	"Contracts shall be awarded to the lowest and best bidder on each item and the Department of Administrative Services may accept or reject any or all bids in whole or by item." Ohio Revised Code Section 125.11				
OKLAHOMA	Y	500	N	500	N
	"Award shall be made to the lowest and best bidder ..." Oklahoma State Purchasing Act, Section 85.5				
OREGON	Y	15,000	Y	5,000	N
	"... shall award the contract to the lowest responsible bidder." ORS 279.029				
PENNSYLVANIA	Y	300	Y	5,000	N
	"... award the contracts to the lowest responsible bidder ..." The Administrative Code of 1929 of the Commonwealth of Pennsylvania, as amended, Section 2409				
RHODE ISLAND	N	*(4)	Y	100	N
	"Awards will be made to the lowest responsible bidder, as will best promote the public interest, taking into consideration the reliability of the bidder, the qualities of the materials, equipment or supplies to be furnished, their conformity with the specifications, the purpose for which required and the terms of delivery." State of Rhode Island Division of Purchases, General Specification for all quotations and contracts, paragraph 25, Title: Award				
SOUTH CAROLINA	Y	2,500	Y	2,500	N
	"The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids ..." (IFB) Section 11-24-1530(7)				
SOUTH DAKOTA	Y	3,000	Y	500	N
	"In determining the successful bidder, the lowest or most advantageous price upon grade, quality, or quantity and general conditions specified, shall be the determining factors." S.D. Code 5-23-11.1				
TENNESSEE	Y	2,000	Y	1,000	N
	"Each contract shall be awarded and let by the commissioner in the name of the State of Tennessee with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid."				
TEXAS	Y	(5)	Y	1,500	(9)
	"The Commission shall award contracts to the bidder submitting the lowest and best bid conforming to the specifications required." Section 3.11(e), Article 601b, V.T.C.S.				
UTAH	Y	10,000	Y	1,000	N
	"The contract shall be awarded ... to the lowest responsive and responsible bidder whose bid meets the requirement and criteria set forth in the invitation For Bids." Utan 63-56-20				
VERMONT	N	10,000*	Y	200	N
	"... shall be awarded to the person whose bid or quotation is in the best interest of the state ... in his determination of the best interest of the state shall consider (1) specified quality (2) price (3) ease of access of supplies (4) incidental administrative costs (5) proven reliability of bidder." Requisition for supplies and materials (T. 29, Sec. 903)				
VIRGINIA	Y	10,000	Y	1,200	N
	"... the contract shall be let to the lowest responsible bidder, taking into consideration the quality of the articles proposed to be supplied, their conformity with specifications, the purposes for which required, and the times of delivery provided however that whenever the Division has reason to believe that the low bid is not the best price, it shall have authority to enter into further negotiations with the apparent low bidder to the end that the price paid shall be the best price obtainable." Code of Virginia 2.1-42				

TABLE 3 (Continued)

STATE	Public Opening of Sealed Bids Requirement	Dollar Amount Required for Sealed Bids	Competitive Quotations Required for Small Purchases	Dollar Amount Allowed for Agencies to Obtain Own Quotations	Authorizations for Independent Agency Quotation if Central Purchasing Contract Exists
WASHINGTON	Y	5,000	Y	2,500	N
<p>"... the contract shall be let to the lowest responsible bidder... In determining 'lowest responsible bidder' in addition to price, the following elements shall be given consideration: (1) The ability, capacity and skill of the bidder to perform the contract or provide the service required; (2) The character, integrity, reputation, judgment, experience and efficiency of the bidder; (3) Whether the bidder can perform the contract within the time specified; (4) The quality of performance of previous contracts of services; (5) The previous and existing compliance by the bidder with laws relating to the contract or services; (6) Such other information as may be secured having a bearing on the decision to award the contract." 1965 c 8 ss 43.19.1911</p>					
WEST VIRGINIA	Y	5,000	Y	5,000	N
<p>"... shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the state government and the delivery terms." W. VA Code ss 5A-3-14 (1972)</p>					
WISCONSIN	Y	10,000	Y	5,000	N
<p>"All orders awarded or contracts made by the department for all materials, supplies, equipment and contractual services, except as otherwise provided in subs. (2), (6) and (7), shall be awarded to the lowest responsible bidder, taking into consideration the location of the institution or agency, the quantities of the articles to be supplied, their conformity with the specifications, the purposes for which they are required and the date of delivery; but preference shall always be given to materials, supplies, equipment and contractual services of Wisconsin producers, distributors, suppliers and retailers." Subchapter IV, Section 16.75-1</p>					
WYOMING	Y	1,500	Y	1,000	N
<p>"... award on the basis of lowest evaluated price..." WS 9-2-101b (XIV) (A)</p>					

KEY: *Even though there is no legal requirement, by policy above this amount sealed bids are used.

- (1) Agencies are not mandated to buy them through Central Purchasing.
- (2) No bidding requirements; some agencies given authority of \$1,000, \$2,500 or \$5,000 of which certain requirements have to be met, including monthly reports.
- (3) At buyers' discretion.
- (4) All solicitations.
- (5) No specified amount.
- (6) Four major universities up to \$5,000.
- (7) Agencies listed in Question 4 have same purchase authority as state purchasing office, all other agencies and boards can go up to \$500.
- (8) Depends on Delegated Purchasing Authority which varies from \$250 - 5,000.
- (9) Unless the order is under the contract minimum order quantity, then agencies may purchase on a SPOT basis.
- (10) Two levels of local Purchase Authority.

SOURCE: November 1987 Survey by The Council of State Governments for the National Association of State Purchasing Officials.

It is the intent of the Legislature that, to the maximum extent allowable under existing law, the State Equipment Fleet take factors other than lowest price into account when making bid awards for heavy equipment. These factors should include resale value; service as measured by warranty, parts availability, and service locations; and durability as measured by projected operating and maintenance costs. This should be done with the goal of acquiring the best value considering the price and the quality of equipment purchased.

B R I E F I N G P A P E R

X-CLASS EQUIPMENT (Non-replaceable with HEWCF Funds)

INTRODUCTION

There are certain pieces of equipment designated as "X-Class" which are not replaceable under the authority of the Highway Equipment Working Capital Fund (HEWCF). Generally, units in this category represent equipment that has been replaced, but the old unit is in good enough condition to remain in service for awhile longer. Agencies have turned to vehicles and equipment in this category as a way to field equipment needed to cover expanding services. This works well to fill short term needs until funding can be secured to purchase the needed additional equipment. But when funding is not available, these units are kept in service on a more or less permanent basis. This leads to old, unreliable equipment kept in use which has no replacement funds set aside, and which has a higher maintenance cost.

The purpose of this briefing paper is to provide an overview of the status of the X-Class fleet.

1. X-CLASS DEFINITION

A unit which has been replaced but is still in use by the agency. They pay 25% of the regular replacement fee to recover the loss of salvage or sale value. This vehicle is intended to be for a short term need or a special project only. It is not intended to be an addition to the number of vehicles an agency has.

2. SIZE OF X-CLASS FLEET

Because of effort expended by SEF to accelerate the lagging replacement program, the number of units in X-Class status has declined somewhat in the last year. Currently, approximately 12% of the fleet is in X status. The numbers of units in each major equipment category is shown below.

Light Vehicles	315
Heavy Trucks & Equipment	109
Attachments	77
Other	<u>35</u>
TOTAL UNITS	536

3. POTENTIAL COST OF REPLACING X-CLASS EQUIPMENT

There is a legitimate use and place for X-Class units in a fleet, so not all units in this category would be considered as needing replacement. A rough order of magnitude (ROM) estimate to replace all units is shown below. Of this amount, only a portion of the heavy truck and equipment area would need serious consideration for actual replacement with a permanent unit. ROM costs to replace all units is shown below.

Light Vehicles

315 units @ \$20K avg repl cost = \$ 6.3M

Heavy Trucks & Equip

109 units @ \$100K avg repl cost = \$10.9M

Attachments

77 units @ \$ 15K avg repl cost = \$ 1.2M

Other

35 units @ \$ 20K avg repl cost = \$ 0.7M

Total = \$19.1M

Of this amount, probably only \$5M is really needed to address the most critical needs.

4. COST OF MAINTENANCE

SEF does not have detailed computer records to accurately analyze the additional maintenance cost for the older X-Class units. But a cursory review does reveal that it costs the state more money to keep these older units in service.

5. SUMMARY

Agencies need to identify X-Class vehicle and equipment units that are needed on a permanent basis and request funding so replacements can be made and set up in the HEWCF.

FISCAL NOTE

Revision Date: 05/16/91
Title: State Purchase of Trucks/Heavy Equipment

Department Affected: DOT&PF
BRU: Administrative Services

Sponsor: Senate Finance Committee
Requestor:

Component: State Equipment Fleet
Component Serial Number: 539

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY93	FY94	FY95	FY96	FY97	FY98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING:	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE	0	0	0	0	0	0
TOTAL FUNDING:	0	0	0	0	0	0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

No additional funding will be required to the Highway Equipment Working Capital Fund (HEWCF) as a result of this bill. Although the initial purchase cost of some equipment may be higher, the long-term cost will be lower because higher quality equipment will last longer, costs less to maintain, and has a higher resale value.

Prepared by: Robert N. Bartholomew, Director

Phone: 465-2951

Division: Administrative Services Division

Date: January 9, 1992

Approved by Commissioner: *Frank G. Turpin*
Frank G. Turpin

Phone: 465-3900

Agency: Department of Transportation and Public Facilities

Date: January 9, 1992

Distribution By Preparer: Leg. Finance, Leg. Sponsor, Requestor, OMB/DBR, Gov. Leg. Office, Impacted Agency(ies).

58 2/15

SENATE COMMITTEE REPORT
(FIRST COMMITTEE OF REFERENCE)

DATE: 4/8/91

FURTHER: Finance

Date of 5-Day Notice: 4/18/91
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 5-2-91

Transportation Committee considered SB 245

State purchases of heavy trucks and heavy equipment.

and report it back as follows

and recommended:

- replace with _____ CS _____ same title
- attached amendment(s) new title
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

DFM

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) _____

zero fiscal note(s) DEPT-OF
TRANS 4/17/91

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

(1) Dick Shulley

(2) Department No Not Pass
(3) Finance (no rec)

(1) [Signature]
Chair: Signature and Recommendation