

S B

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STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898
PHONE: (907) 465-3900

May 4, 1992

Senator Curt Menard
Chairman
Senate Transportation Committee
State Capital
Juneau, Alaska 99811

Dear Senator Menard:

We would like to take this opportunity to set the record straight regarding several points of testimony offered at the recent teleconference for Senate Bill 245. As you are aware, this bill would clarify the direction and intent of procurement of heavy trucks and heavy equipment, to include factors other than minimum specifications and price when making an award. Testimony of several members of the vendor community in opposition to SB 245 contained statements that I do not feel can be substantiated. I am writing this letter to address those issues and provide you with information from the Department of Transportation and Public Facilities.

1. The vendor community indicated the problem of addressing value and quality in equipment bids could be resolved through the specification process. To a point, we agree; and, it should be noted for the record that the State Equipment Fleet (SEF) has been very proactive in strengthening the specification process. This has included the use of longer term warranties requiring both parts and labor coverage beyond the normal manufacturer's warranty. Also, we have been working with vendors in public specification workshops to produce more precise specifications. However, these efforts still result in a minimum specification that judges a machine barely meeting the requirements, equal to a machine that exceeds the minimum requirements. The issues that SEF desires to address are those finer points of quality and value (some of which are relatively intangible and subjective) which are not easily credited given the non-restrictive specification provisions of the procurement code (AS 36.30.060). The intent language in SB 245 would have reinforced SEF's attempts to refine this process.
2. SEF has been more aggressive than other state procurement entities in taking a proactive approach to protecting the state's interests. For

example, SEF has disbarred two vendors from doing business with the state for up to a year because of their failure to deliver goods meeting specification requirements or for failure to meet delivery deadlines. To our knowledge, this type of action has not been taken by other state procurement groups. Additionally, on at least two occasions, SEF has recovered monies from vendors as penalties or judgements resulting from their failure to comply with SEF procurement requirements. This aggressive (and sometimes unpopular) approach has led to a fairer, more even-handed procurement process which has benefited vendors and manufacturers who fully comply with requirements, and has put less serious vendors on notice that material bid requirements must be met.

3. In spite of comments to the contrary during the teleconference, productivity of procurement has steadily increased during the last three years. At the beginning of 1989, replacement of heavy equipment was two to three years behind schedule, and replacement of light vehicles was nearly two years behind. This situation had increased the state's costs because older equipment is more costly to maintain. There was also an adverse impact on the ability of agencies to perform their work efficiently, because older equipment breaks down more often. In 1989, over 53 percent of the fleet was in extended life status, indicating the serious lag in equipment replacement. By July 1, 1991, this figure had been reduced to 38 percent. The graph shown in Exhibit 1 clearly indicates the upward trend in procurement replacement. The volume of bids being processed at the current time is equal to or better than SEF has ever done.
4. At least one vendor made a statement that "protests are at an all time high." The record shows this statement to be absolutely untrue. Alaska's procurement code was revised in 1986, and procurement authority for vehicles and equipment was transferred to DOT&PF. The new code (AS 36.30) contained provisions that were unfamiliar to both SEF staff and to the vendor community. As a result, protests began to increase as the code went into effect in 1987. This increase continued until it peaked in 1989, as provisions of materiality and independent verification were challenged in the protest process. During this two year learning process, SEF's applications of the new code was sustained by Hearing Officers from the Department of Administration and independent private attorneys. Vendors became accustomed to the new provisions, and SEF became more adept at applying the new code. These efforts were enhanced by SEF's complete overhaul of outdated bid documents and beginning the practice of holding specification workshops with the vendor community prior to bid opening. Accordingly, protests dropped off substantially during 1990 and 1991, and to date, no protests have been filed at all in 1992. The graph and chart shown in Exhibit 2 reveals the true picture of protest activity since 1986. It should be

noted not only has the number of protests decreased, but during the same time, the number of bids processed increased nearly fourfold.

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7. Comments were also made that "the low bid was the standard of the industry," and "what all the other states are using." This is not necessarily the case. A review of the award language from all fifty states shows that most have less restrictive award language than Alaska. Many use terms like those found in Vermont's award language, which is worded in this fashion:

"...shall be awarded to the person whose bid or qualifications 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."

According to a study conducted by the National Association of State Purchasing Officials, at least half of the states in the nation use quality and criteria other than price in their contract award language.

Vendor testimony indicated a consensus that SEF could use criteria other than price under the current code, and a change was not required. Attempts to use variations of the low bid process in the past, have met with considerable resistance by the vendor community.

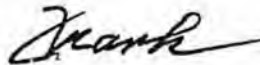
An attempt to use a guaranteed buy back approach for the purchase of graders two years ago received so much resistance from some vendors that SEF relented and used the standard invitation to bid process again. Because of this resistance, SEF has been hesitant to use other methods in the past. SEF will go forward, trying reasonable and fair approaches within guidelines of the procurement code, in its endeavor to obtain better quality equipment for the state's needs.

As new approaches are tried, even those vendors at the teleconference said were available within the current code, there is a high probability that vendor protest activity will increase.

Finally, I have attached a petition signed by a number of vendors. The petition came about as a result of the hearing on SB 245. The vendors are asking that the procurement code be amended to allow the state to be sued by a potentially aggrieved bidder and that punitive damages be awarded where the courts deem appropriate. They accuse the Attorney General of failing to uphold the current law because it won't take action against another agency. I question the motives of the vendors in making this request. Under the code as written today, potentially aggrieved bidders can appeal adverse decisions by the department to the Superior Court. To date, of all the wrongdoing the department has been accused of, only one bid has been appealed to the courts (bidder withdrew after TRO was refused). If vendors are not willing to appeal to the courts when they feel they have been damaged by an improper bid, what is their motivation for now wanting to be able to sue the state and get punitive damages? They seem more interested in trying to punish someone who allegedly wronged them than reaching and accepting the correct answer. This questionable motivation is further shown by the fact that some vendors will do anything, no matter how underhanded, to attack Mr. Langel; even to the point of changing the wording of a petition after people have signed it (see letter attached to petition).

If you would like to discuss these matters further, please contact me.

Sincerely,



Frank G. Turpin
Commissioner



April 30, 1991

Position Paper

SJR 23 - Transportation Fund

The Alaska Municipal League supports the purpose behind SJR 23; to ensure that Alaska's transportation system is adequately maintained. SJR 23 proposes that the Constitution be amended to allow that fees and taxes on fuel be dedicated to the maintenance and operation, as well as the construction, of transportation facilities. The AML requests that the resolution be amended to include that an equitable portion of the funds be returned to local governments for transportation purposes.

An adequate transportation system is critical to the economic and community development of the State. The origin and destination of most traffic, whether by surface, air or water, are the municipalities around the State. The majority of the fuel is purchased in municipalities. And, the network of transportation facilities within municipalities is a critical link in the State's transportation system.

While the majority of the State's transportation system is built and maintained by the State of Alaska, some of the system is built and/or maintained locally. The responsibility for local transportation system improvements and maintenance will undoubtedly increase as general state financial assistance to municipalities continues to decline. In order to provide funds for local improvements and maintenance and to gain additional support for the Constitutional amendment, the AML requests that SJR 23 be amended to provide for a equitable sharing in the dedicated funds. An equitable share to be returned to local governments, whether based on road miles, airport activity etc., can be determined upon implementation at a later date.

AML requests the following amendment on Page 1, line 15:

"...by law, shall be placed in a transportation fund. The transportation fund shall be used for the maintenance of all state-maintained Class 1, Class 2 and Class 3 roads in existence as of January 1, 1990, regardless of future ownership or maintenance responsibility. In addition, all municipal and state-owned airports and harbors, as well as the Alaska Marine Highway System, shall share equitably in the fund. The legislature may appropriate from the fund..."

sab6:tranfund

JAN 31 1992

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

HEADQUARTERS, STATEWIDE EQUIPMENT FLEET

WALTER J. HICKEL, GOVERNOR

4601 AIRCRAFT DRIVE
ANCHORAGE, ALASKA 99501
(907) 241-7671 (FAX 248-4550)

Notice of Intent to Award

Ref: ITB SEF-140

Date of Notice: January 30, 1992

Thank you for your response to the Invitation to Bid referenced above.

The enclosed abstract and summary indicate to whom FINAL AWARD is pending. An aggrieved bidder may appeal the award by submitting a protest in writing within ten (10) days of the date of this notice.

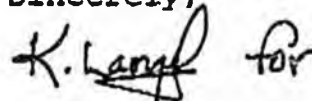
Should a protest be filed relative to any item/lot of this award, all bidders affected by that protest will be notified by this office.

Any item/lot not pertinent to the protest may be awarded.

All bidders are cautioned against taking action relative to satisfying an anticipated award prior to receipt of Final Award which will be in the form of purchase order(s), delivery order(s) or contractual document(s).

Your continued interest in fulfilling the needs of the State Equipment Fleet is appreciated. If we can be of further service, please advise.

Sincerely,



Jess L. Bulkley
Procurement Officer
Statewide Equipment Fleet

STATE OF ALASKA
Department of Transportation & Public Facilities
Statewide Equipment Purchasing

S U M M A R Y O F I N T E N T T O A W A R D

** DATE OF THIS SUMMARY OF INTENT: January 07, 1992 **

Page 1 of 2

ITB NUMBER	AWARD DATE	SUBJECT	PROCUREMENT OFFICER
SEF-140	2/11/92	TRACTOR MOUNTED MOWERS & ROTARY MOWER	Jess L. Bulkley <i>K. Lang for</i>

The figures shown on the attached bid abstract indicate the low responsive bidder(s). This summary explains the basis for designating awards as noted. If no protest of award is received from an aggrieved bidder within ten (10) days following the date of this notice, final awards will be executed. Any bidder for which an award is shown is hereby instructed not to proceed prior to receipt of purchase order(s) or contract document(s).

LOT 1:

First Low Bidder: Craig Taylor Equipment Co. offered a new 1992 John Deere 2955 Tractor with a Morrim LMT-21-5R Mower for delivery to Anchorage, Alaska for a total lot price of \$188,610.00. The bidder failed to address product information requirements of specification item 13.3. This was an astrisked item requiring clarification of the cutterhead below ground reach. Accordingly, their bid is Non-Responsive per Section II, para 8 of the ITB.

Second Low Bidder: Alaska Truck Center offered a new 1992 Ford 7740SLB tractor with an Alamo AB20 mower for delivery to Anchorage, Alaska for a total lot price of \$196,697.07. The bidder failed to address product information requirements of specification item 3.5. This was an astrisked item requiring clarification of the tractor weight. Accordingly, their bid is Non-Responsive per Section II, para 8 of the ITB.

Third Low Bidder: Sahlberg Equipment Co. offered a new 1992 Case Maxxum 1-5130 Tractor with a Tiger TRB-50C mower for delivery to Anchorage, Alaska for a total lot price of \$199,218.00.

Since no exceptions or deviations were taken nor discovered during bid analysis, Sahlberg Equipment Co.'s offer is found to be fully responsive and is accepted.

Final award of lot 1 will therefore be issued to Sahlberg Equipment Co.

This Intent to Award is subject to protest.

In order to be considered, a protest of this Intent to Award must be received in this office prior to close of business, February 11, 1992, with protest documentation in full compliance with AS 36.30.560.

T/C NO: 92-04-010
 DATE: MAR. 9, 1992
 SPONSOR: (S) TRANSPORTATION
 SUBJECT: SB245
 MODERATOR: ROSETTA
 SITE: ANCHORAGE

PARTICIPANT LIST

CHUCK
 PARKER
 SBA

"ADMINISTRATION"

 TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
✓ 1. LARYL METHEID			SB245
2. MIKE HUSTON/V.P. TOTEM EQUIP			SB245
3. WILLIAM ANGLIN/AK SALES AND SER			SB245
4. KEN LANGE			SB245
5. FRED S. GAYTON/MCDONALD IN-AK			SB245
6. KEITH HELSON/DOT PF			SB245
7. MORRY HOLLOWELL			SB245
8. JOHN P. SNOW			SB245
9.			

*

*

SUBJECT LINE TO READ: TC NO.; PL NO. OR FS; SHORT SUBJECT; DATE

JNU MOD: LIOCSEA

T/C NO: 92-04-010
 DATE: THURSDAY, APRIL 9, 1992
 SPONSOR: SENATE TRANSPORTATION COMMITTEE
 SUBJECT: SB 245 - STATE PURCHASE OF TRUCKS/HEAVY EQUIP.
 MODERATOR: CHRISTI
 SITE: FAIRBANKS

PARTICIPANT LIST

TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. JACK RICHARDSON			SB 245
2. RICHARD GADBURY			SB 245
3.			
4.			

T/C NO: 92-04-010
DATE: 4/9/92
SPONSOR: S TRA
SUBJECT: SB 245-STATE PROCUREMENT TRUCKS
MODERATOR: CHARLOTTE
SITE: MATSU LIO

PARTICIPANT LIST # 1 FROM MATSU

TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. LOU HOLZKNECHT			
2.			
3.			
4.			
5.			

OBSERVER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			

**AMENDMENT TO CS FOR SENATE BILL
NO. 245 (FINANCE)**

AMEND THE DEFINITION OF "HEAVY EQUIPMENT AND HEAVY TRUCKS" IN SEC. 6, PAGE 3, LINE 30 TO READ AS FOLLOWS:

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

New Text Underlined [DELETED TEXT BRACKETED]

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898
PHONE: (907) 465-3900

May 4, 1992

Senator Jalmar M. Kerttula
Co-Chairman
Senate Finance Committee
State Capital
Juneau, Alaska 99811

Dear Senator Kerttula:

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If you would like to discuss these matters further, please contact me.

Sincerely,



Frank G. Turpin
Commissioner

STATEWIDE PETITION

TITLE 36

To; All State Senate, and House members: April 10, 1992

We the voters, and business community request the following actions be taken by the Governor, and Legislature for the Department of Transportation.

On April 09, 1992 the Senate Transportation sub-committee held a teleconference on S/B-246. This committee wanted input as to how to handle procurement problems within DOT/PF. DOT/PF appointee Randy Simmons stated that they wanted guidance from the legislature.

The input was clear;-

A. DOT/PF had no procurement problems with title 36 up to January 1988.

B. Contrary to the testimony of DOT's Mr. Bartholomew, and Langel that they had to award to low bid. Title 36 actually requires that you must award to the responsive, and responsible bidder who complies with the terms, and conditions of the contract, and meets, or exceeds all specifications. Buying low bid as they are, constitutes class C felonies of, and per title 36. The Attorney General will not take action against its own client. Mr. Langel is continually violating title 36 by disregarding terms & conditions, and contract specifications.

The following required changes are in the states best interests;

- 1. Add to title 36 under Enforcement as paragraph (b)- THE STATE MAY BE SUED FOR VIOLATIONS OF THIS CHAPTER. PUNITIVE DAMAGES MAY BE AWARDED.
2. Don't allow DOT/PF to pass Bill #245 via regulation.

Table with 3 columns: NAME, ORGANIZATION, PHONE NUMBER. Contains handwritten entries for various individuals and organizations like Yukon Equipment Inc, Valdez Equipment, Inc, and others.

SERVING ALASKA SINCE 1945



YUKON EQUIPMENT, INC.

ANCHORAGE
FAIRBANKS

April 23, 1992

Statewide Equipment Fleet
P.O. Box 196900
4601 Aircraft Drive
Anchorage, AK 99519

Attention: Mr. Kenneth L. Langel,
Manager Statewide Equipment Fleet

Dear Mr. Kenneth L. Langel:

You were sent a copy of the enclosed petition in regards to the DOT/PF Statewide Equipment Fleet.

The petition you received is not the one that myself and Mr. Earl Lackey signed in our office. One sentence was added after the fact and we object to the statement as well as adding to this petition after the fact.

What was added under "B": "Mr. Langel is continually violating title 36 by disregarding terms and conditions, and contract specifications"

The petition we signed addressed the issues, not individuals. It is not our purpose or position to try and dictate who manages the S.E.F.

Having stated this -- please disregard the added statement on the petition signed by myself and Earl Lackey and focus, if you will, on the issues of the petition.

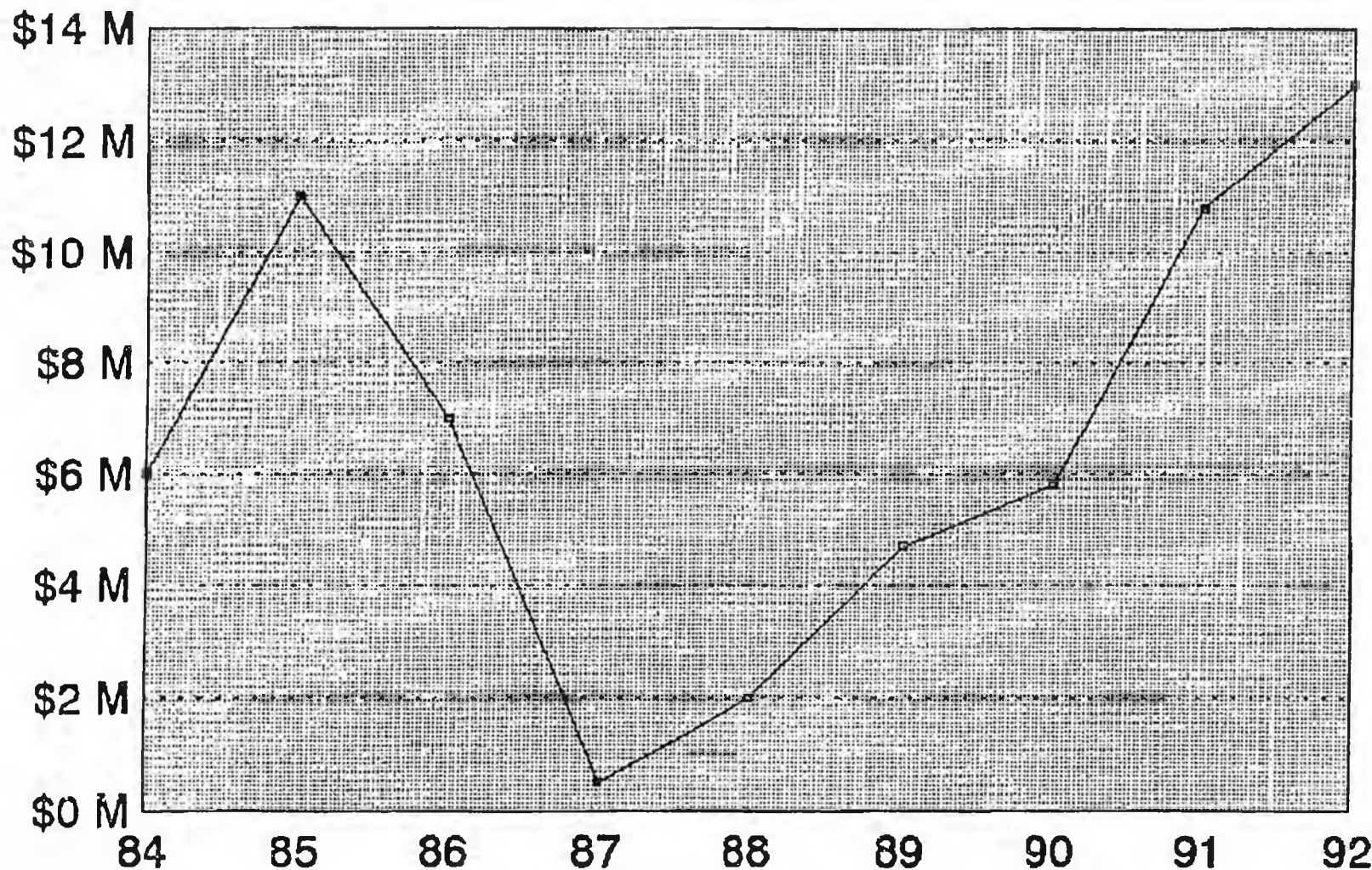
Sincerely,

YUKON EQUIPMENT, INC.

Morry Hollowell
President

SEF FUNDS EXPENDITURES

EQUIPMENT REPLACEMENT



Figures for FYs 84-88 come from a 1987 OMB Audit Report. Amounts for 1988 are estimated.

SEF BID PROTEST SUMMARY

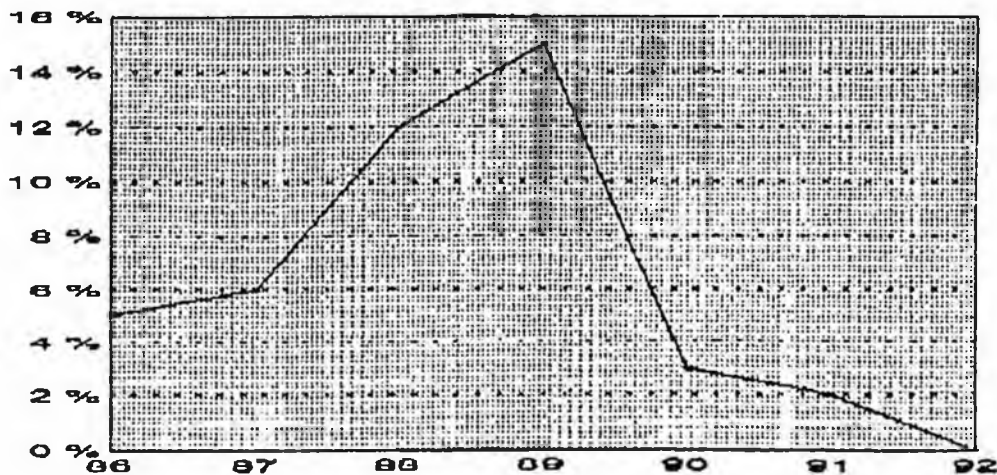
<u>YR</u>	<u>BIDS</u>	<u>PROTESTS</u>	<u>%</u>	<u>APPEALS</u>	<u>PROTESTS/ APPEALS UPHELD</u>
86	42	2	5	0	0
87	33	2	6	2	0
88	49	6	12	5	2
89	60	9	15	9	0
90	92	3	3	2	0
91	154	3	2	0	0
92*	101	0	0	0	0

*YTD

NOTES:

1. Number of bids includes all individual lots in each bid.
2. Number of protests includes multiple protests on a single bid.
3. Data is for calendar years.

SEF BID PROTEST HISTORY
PERCENT OF BIDS PROTESTED





McDONALD INDUSTRIES ALASKA, INC.

2756 Commercial Drive
Anchorage, Alaska 99501

(907) 279-5411
FAX: (907) 276-3101

April 6, 1992

Senator Curt Menard
ALASKA STATE LEGISLATURE
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Menard:

I am writing to express my deep concern with both SB0245B and HB0245E.

The changes that are being proposed by these two bills are in direct conflict with the spirit and intent of the State of Alaska procurement code. The procurement code, as it stands, affords State departments all the flexibility and protection necessary to assure that equipment acquisitions are matched to job requirements and allows costs related to these purchases to be closely controlled by the competitive bid process.

To change the procurements process to a subjective, non-competitive system would open the door to both favoritism and corruption. No checks and no balances. Under the suggested scenario, purchases would be executed solely at the whim and fancy of individuals rather than under the protective umbrella or a logical self-policing competitive system. The process, as described in these two bills, would usurp the best interest of the taxpayers by creating systems within systems, kingdoms within kingdoms and a few, very powerful emperors within the structure of the empire. The potential for abuse of power and influence is overwhelming.

Clearly the current procurement policy is a well written, well thought out, process that, when administered properly, protects the State from the pitfalls of subjectivity, higher than necessary costs and poor product performance. The key is the proficiency of administration. Past performance of this policy's administrators includes rebids, awards outside the specific guidelines, delivery delays and protest after protest. The area of administration should be closely scrutinized and objectively evaluated before the purchasing mechanism itself is reinvented. When the procurement guidelines are adhered to and clear specifications are provided at the outset, the system works.



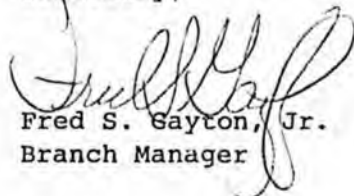
McDONALD INDUSTRIES ALASKA, INC.

APRIL 6, 1992
PAGE TWO

The practice of competitive bidding, although not always to the liking of the second and third low bidders, has always delivered productive and cost effective equipment to the Department of Transportation. In those cases where product quality, performance or costs have not been what the State anticipated them to be, the problem can, in the greatest majority of cases, be traced to a poorly written specification or a specification that does not direct itself to performance and application.

McDonald Industries Alaska, Inc. whole heartedly opposes the intent and content of both the House and Senate version of 425.

Sincerely,



Fred S. Gayton, Jr.
Branch Manager

FSGJ/amv

**AMENDMENT TO CS FOR SENATE BILL
NO. 245 (FINANCE)**

AMEND THE DEFINITION OF "HEAVY EQUIPMENT AND HEAVY TRUCKS" IN SEC. 6, PAGE 3, LINE 30 TO READ AS FOLLOWS:

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

New Text Underlined [DELETED TEXT BRACKETED]



To: Senate Transport Co	From: H. Springer
Co. Sen Curt Menard	Co. AGC
Dept. State Senate	Phone # 561-5354
Fax # 465-3756	Fax #

ASSOCIATED GENERAL CONTRACTORS of ALASKA

4011 B STREET • ANCHORAGE, ALASKA 99503
PO BOX 240609 • ANCHORAGE, ALASKA 99521 0609
TELEPHONE (907) 561-5354 • FAX (907) 562-6116

7. April 1992

To
Senate Transportation Committee
Curt Menard, Chm.
FAX 465-3756

Subject: CS SB 245
An Act relating to state purchase of heavy trucks and heavy equipment.

AGC supports the sealed, competitive bidding process for purchasing and contracting by public entities. In order to effectively compare the bid results all bid criteria needs to be on an equal basis in the bid documents. Interpretation of bids and bid results by bureaucrats has to be avoided.

In some cases, especially in remote areas, it may be in the State's best economic interest to include items other than initial purchase price. In such a case the bid documents need to show clear and precise information and criteria, which allows direct comparison of bid results, which are not open to interpretation.

Henry Springer

Exec. Director

SENATE FINANCE COMMITTEE

STATEWIDE EQUIPMENT FLEET OVERVIEW

March 27, 1992

**Ken Langel
Statewide Equipment Fleet Manager**

SENATE FINANCE BRIEFING

- 1. Procurement**
- 2. Finances (HEWCF)**
- 3. EMS**
- 4. Equipment Maintenance**
- 5. Future Horizons**

**ALASKA STATEWIDE EQUIPMENT FLEET
HEWCF CASH FLOW PROJECTION FOR 6/30/92
AS OF March 18, 1992**

CASH BALANCE \$15,707,662

SOURCES OF CASH:

REVENUE PROJECTION

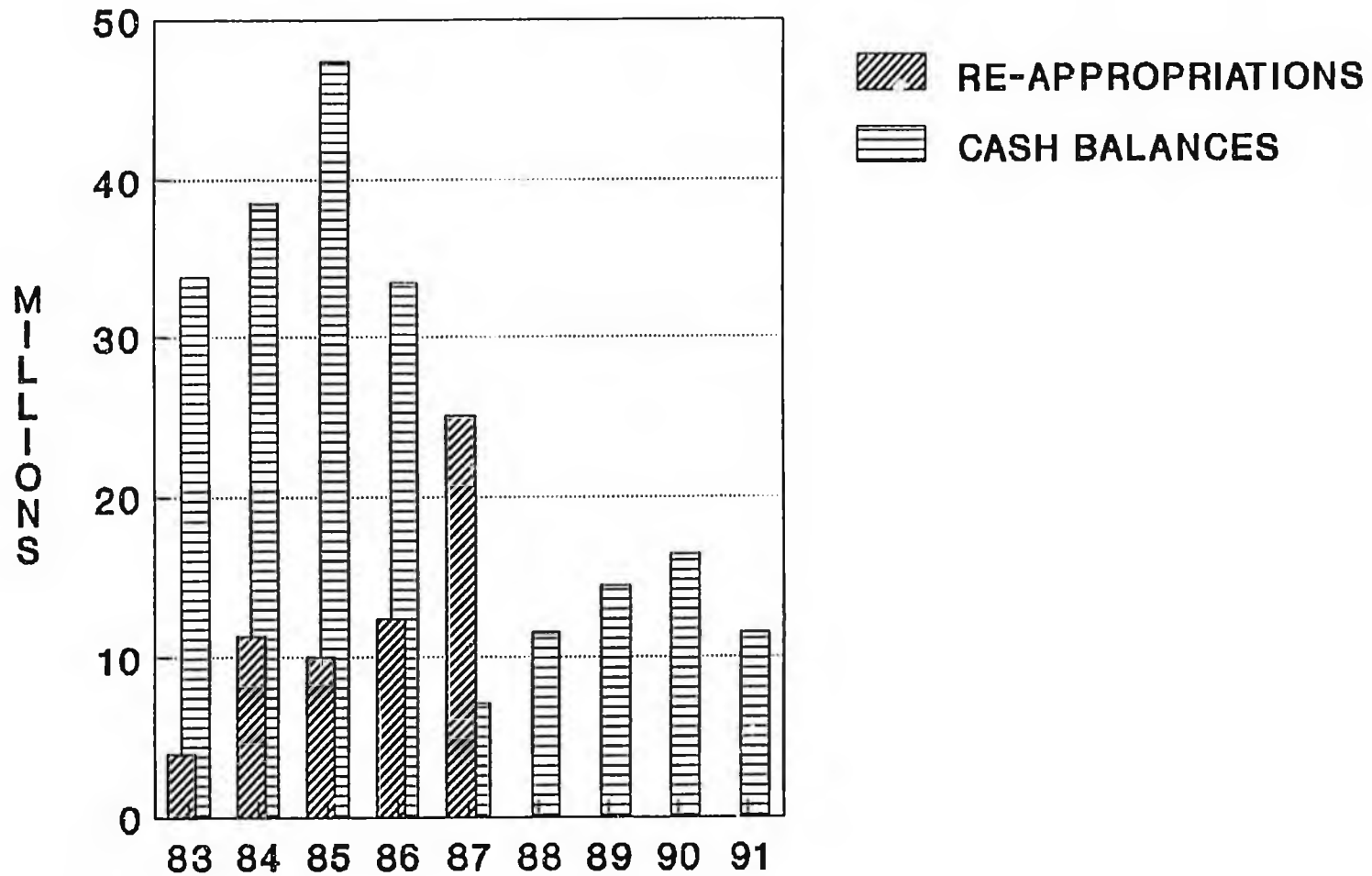
OPERATING	6,101,901	
REPLACEMENT	2,476,242	8,578,143

USES OF CASH:

REPLACEMENT ENCUMBERED FUNDS	(4,458,804)	
OPERATING & REPLACEMENT RESERVE	(2,950,000)	
BIDS IN PROCESS	(3,616,525)	
OPERATING EXPENSE PROJECTION	(8,882,828)	
		<u>(19,908,157)</u>

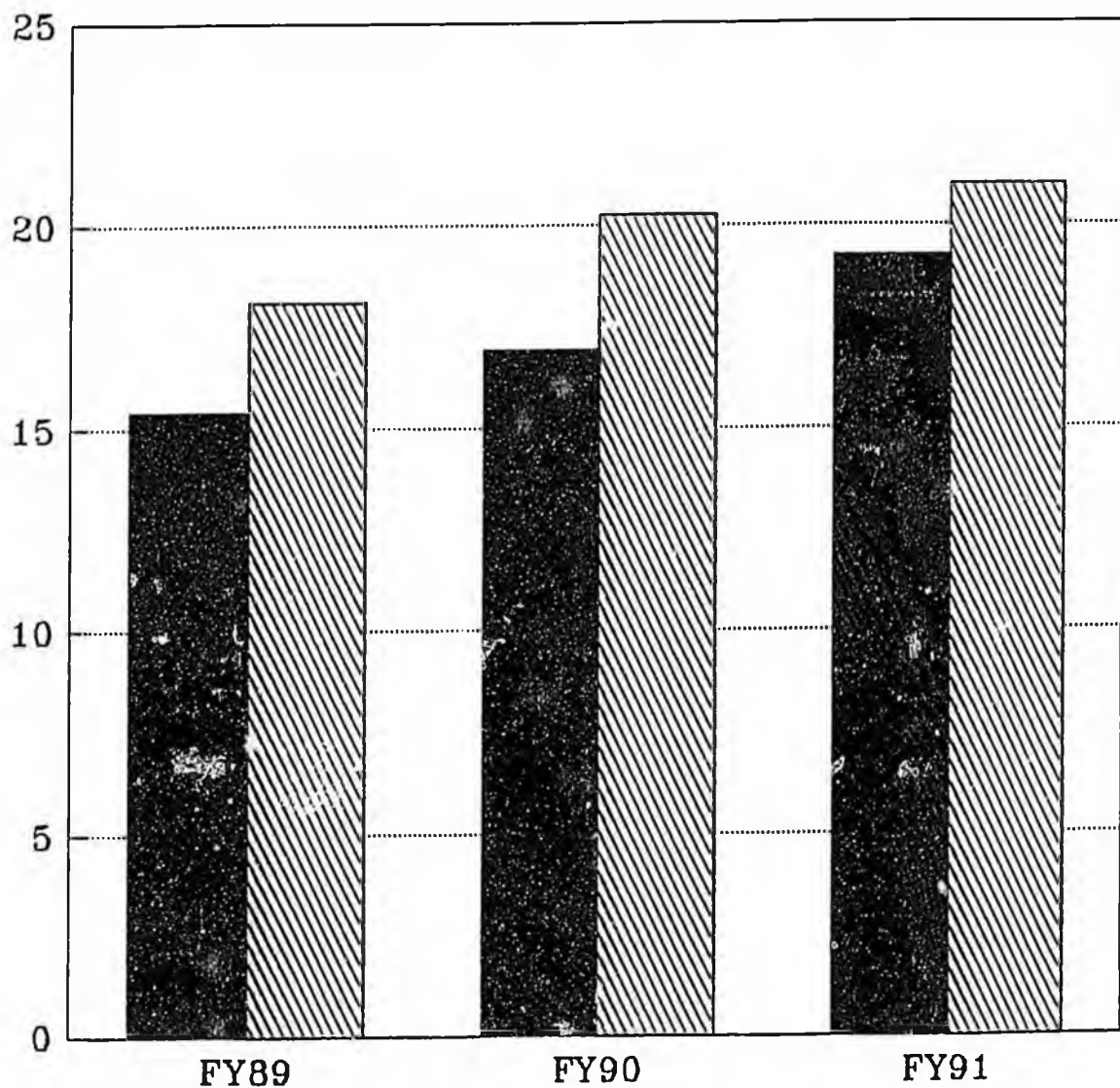
PROJECTED BALANCE @ 6/30/92	<u><u>4,377,648</u></u>
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HIGHWAY EQUIPMENT WORKING CAPITAL FUND CASH TRENDS



JUNE 30, 1991

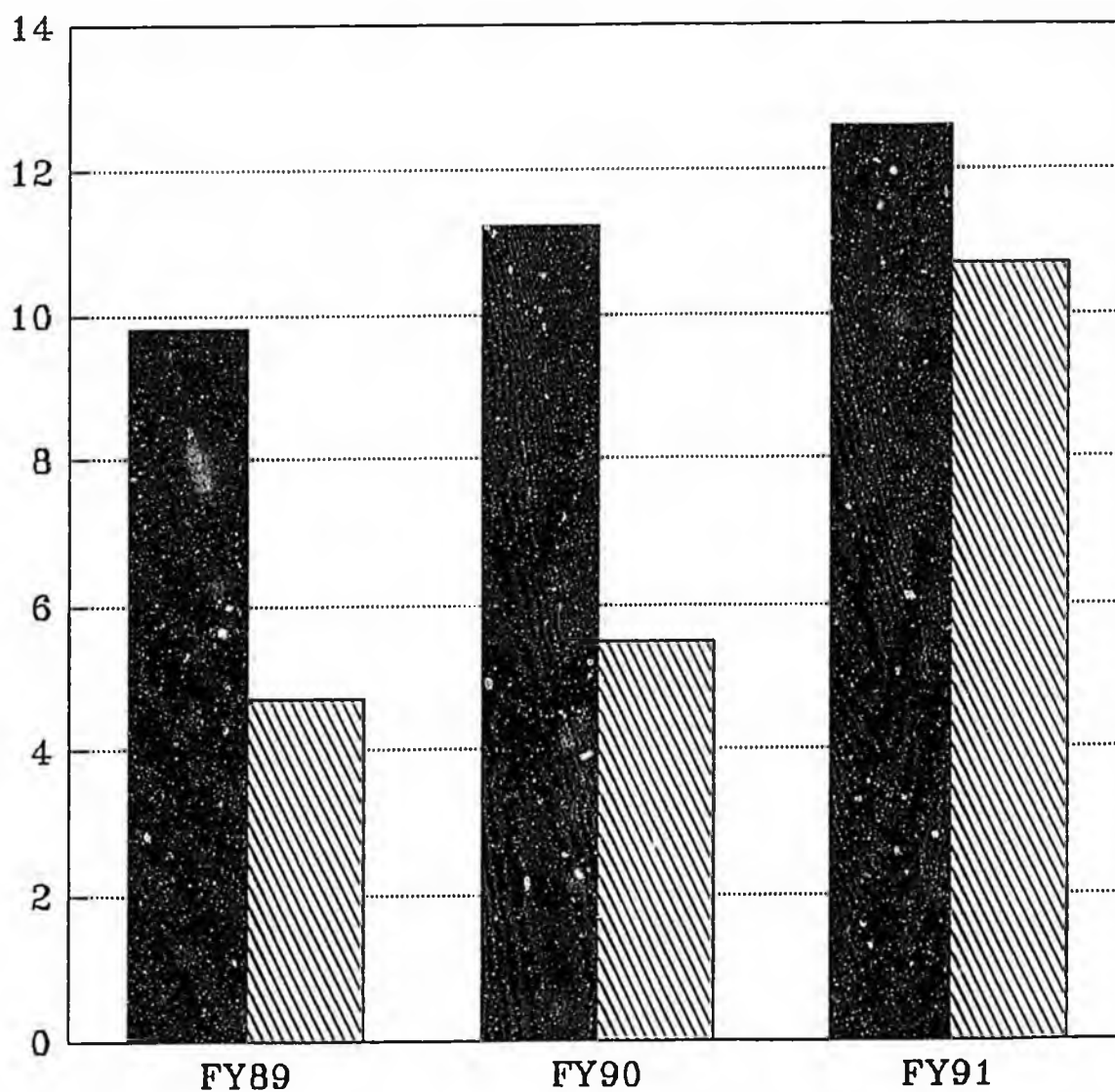
OPERATING ACTIVITY HEWCF



REVENUE EXPENDITURES

MILLIONS

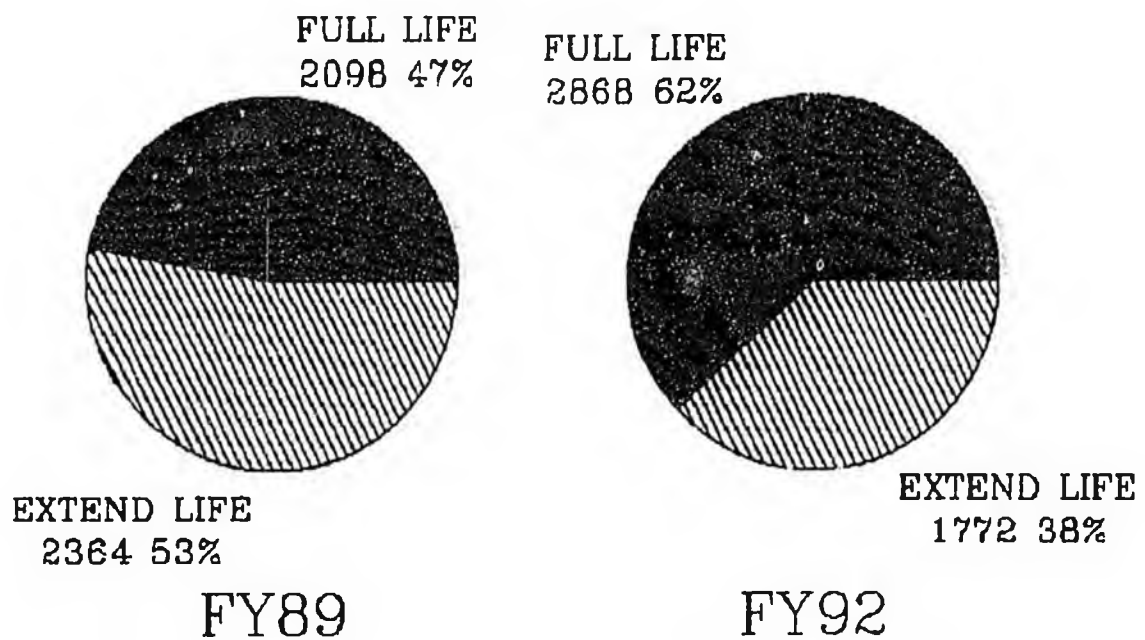
REPL ACTIVITY HEWCF



■ REVENUE ▨ EXPENDITURES

MILLIONS

FLEET AGE HEWCF UNITS

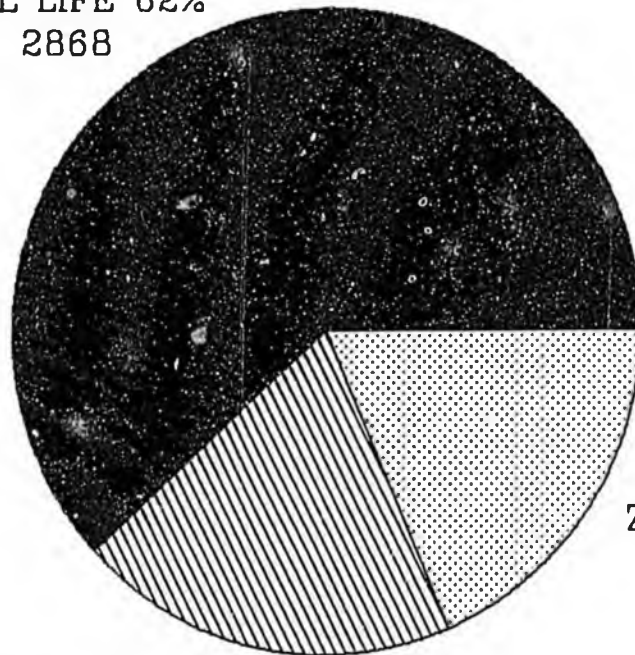


- * Extended life includes both X and Z status
- * As the procurement of Replacement Equipment has accelerated the % of extended life has dropped from 53% to 38%

MARCH 25, 1992

CURRENT FLEET COMPOSITION

FULL LIFE 62%
2868



Z STATUS 19%
866

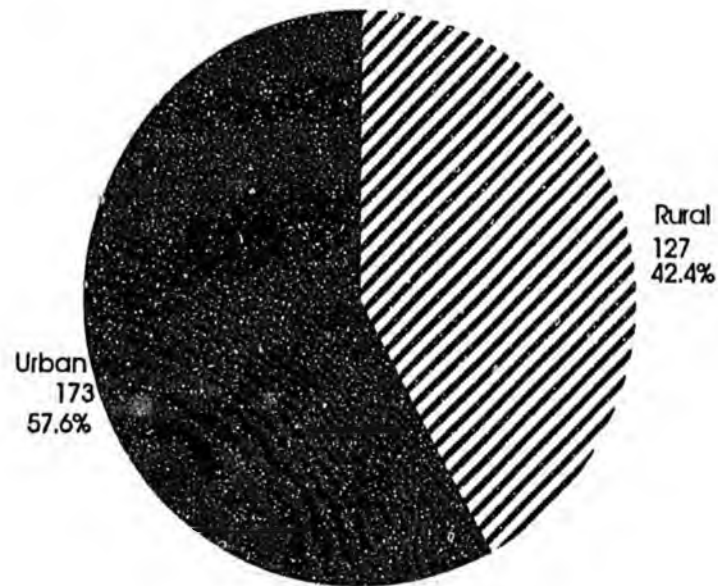
X STATUS 20%
906

MARCH 25, 1992

SUMMARY

RURAL VERSUS URBAN VEHICLE/EQUIPMENT PURCHASES

Total Vehicles/Equipment Purchased, Rural vs Urban



\$ Values of Vehicles/Equipment Purchased, Rural vs Urban



PLEASE NOTE:

- A. "Urban" is defined as Anchorage, Fairbanks and Juneau. All other areas are considered "Rural" for this study.
- B. Figures shown do not take into account vehicles and equipment delivered to urban areas for initial check in to an SEF shop, then re-shipped to rural locations.
- C. These figures are for FY1991.



McDONALD INDUSTRIES ALASKA, INC.

2756 Commercial Drive
Anchorage, Alaska 99501

(907) 279-5411
FAX: (907) 276-3101

April 6, 1992

Senator Dick Shultz
ALASKA STATE LEGISLATURE
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Shultz:

I am writing to express my deep concern with both SBO245B and HBC245E.

The changes that are being proposed by these two bills are in direct conflict with the spirit and intent of the State of Alaska procurement code. The procurement code, as it stands, affords State departments all the flexibility and protection necessary to assure that equipment acquisitions are matched to job requirements and allows costs related to these purchases to be closely controlled by the competitive bid process.

To change the procurements process to a subjective, non-competitive system would open the door to both favoritism and corruption. No checks and no balances. Under the suggested scenario, purchases would be executed solely at the whim and fancy of individuals rather than under the protective umbrella or a logical self-policing competitive system. The process, as described in these two bills, would usurp the best interest of the taxpayers by creating systems within systems, kingdoms within kingdoms and a few, very powerful emperors within the structure of the empire. The potential for abuse of power and influence is overwhelming.

Clearly the current procurement policy is a well written, well thought out, process that, when administered properly, protects the State from the pitfalls of subjectivity, higher than necessary costs and poor product performance. The key is the proficiency of administration. Past performance of this policy's administrators includes rebids, awards outside the specific guidelines, delivery delays and protest after protest. The area of administration should be closely scrutinized and objectively evaluated before the purchasing mechanism itself is reinvented. When the procurement guidelines are adhered to and clear specifications are provided at the outset, the system works.



McDONALD INDUSTRIES ALASKA, INC

APRIL 6, 1992
PAGE TWO

The practice of competitive bidding, although not always to the liking of the second and third low bidders, has always delivered productive and cost effective equipment to the Department of Transportation. In those cases where product quality, performance or costs have not been what the State anticipated them to be, the problem can, in the greatest majority of cases, be traced to a poorly written specification or a specification that does not direct itself to performance and application.

McDonald Industries Alaska, Inc. whole heartedly opposes the intent and content of both the House and Senate version of 425.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred S. Gayton, Jr.", is written over the typed name and title.

Fred S. Gayton, Jr.
Branch Manager

FSGJ/amv



To	Senate Trump Co	From	H. Springer
Co.	Sen Curt Menard	Co.	AGC
Dept.	State Senate	Phone	561-5354
Fax #	465-3756	Fax #	

ASSOCIATED GENERAL CONTRACTORS of ALASKA

4011 B STREET • ANCHORAGE, ALASKA 99503
P.O. BOX 20069 • ANCHORAGE, ALASKA 99521-0609
TELEPHONE (907) 561-5354 • FAX (907) 562-6116

7. April 1992

To

Senate Transportation Committee

Curt Menard, Chm.

FAX 465-3756

Subject: CS SB 245

An Act relating to state purchase of heavy trucks and heavy equipment.

AGC supports the sealed, competitive bidding process for purchasing and contracting by public entities. In order to effectively compare the bid results all bid criteria needs to be on an equal basis in the bid documents. Interpretation of bids and bid results by bureaucrats has to be avoided.

In some cases, especially in remote areas, it may be in the State's best economic interest to include items other than incitial purchase price. In such a case the bid documents need to show clear and precise information and criteria, which allows direct comparison of bid results, which are not open to interpretation.

Henry Springer

Exec. Director

JAN 31 1992

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

HEADQUARTERS, STATEWIDE EQUIPMENT FLEET

WALTER J. HICKEL, GOVERNOR

4601 AIRCRAFT DRIVE
ANCHORAGE, ALASKA 99501
(907) 241-7671 (FAX 248-4550)

Notice of Intent to Award

Ref: ITB SEF-140

Date of Notice: January 30, 1992

Thank you for your response to the Invitation to Bid referenced above.

The enclosed abstract and summary indicate to whom FINAL AWARD is pending. An aggrieved bidder may appeal the award by submitting a protest in writing within ten (10) days of the date of this notice.

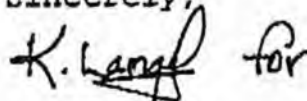
Should a protest be filed relative to any item/lot of this award, all bidders affected by that protest will be notified by this office.

Any item/lot not pertinent to the protest may be awarded.

All bidders are cautioned against taking action relative to satisfying an anticipated award prior to receipt of Final Award which will be in the form of purchase order(s), delivery order(s) or contractual document(s).

Your continued interest in fulfilling the needs of the State Equipment Fleet is appreciated. If we can be of further service, please advise.

Sincerely,



Jess L. Bulkley
Procurement Officer
Statewide Equipment Fleet

STATE OF ALASKA
Department of Transportation & Public Facilities
Statewide Equipment Purchasing

SUMMARY OF INTENT TO AWARD

** DATE OF THIS SUMMARY OF INTENT: January 07, 1992 **

Page 1 of 2

ITB NUMBER	AWARD DATE	SUBJECT	PROCUREMENT OFFICER
SEF-140	2/11/92	TRACTOR MOUNTED MOWERS & ROTARY MOWER	Jess L. Bulkley <i>[Signature]</i>

The figures shown on the attached bid abstract indicate the low responsive bidder(s). This summary explains the basis for designating awards as noted. If no protest of award is received from an aggrieved bidder within ten (10) days following the date of this notice, final awards will be executed. Any bidder for which an award is shown is hereby instructed not to proceed prior to receipt of purchase order(s) or contract document(s).

LOT 1:

First Low Bidder: Craig Taylor Equipment Co. offered a new 1992 John Deere 2955 Tractor with a Motrim LMT-21-5R Mower for delivery to Anchorage, Alaska for a total lot price of \$188,610.00. The bidder failed to address product information requirements of specification item 13.3. This was an astrisked item requiring clarification of the cutterhead below ground reach. Accordingly, their bid is Non-Responsive per Section II, para 8 of the ITB.

Second Low Bidder: Alaska Truck Center offered a new 1992 Ford 7740SLE tractor with an Alamo AB20 mower for delivery to Anchorage, Alaska for a total lot price of \$196,697.07. The bidder failed to address product information requirements of specification item 3.5. This was an astrisked item requiring clarification of the tractor weight. Accordingly, their bid is Non-Responsive per Section II, para 8 of the ITB.

Third Low Bidder: Sahlberg Equipment Co. offered a new 1992 Case Maxxum 1-5130 Tractor with a Tiger TRB-50C mower for delivery to Anchorage, Alaska for a total lot price of \$199,218.00.

Since no exceptions or deviations were taken nor discovered during bid analysis, Sahlberg Equipment Co.'s offer is found to be fully responsive and is accepted.

Final award of lot 1 will therefore be issued to Sahlberg Equipment Co.

This Intent to Award is subject to protest.

In order to be considered, a protest of this Intent to Award must be received in this office prior to close of business, February 11, 1992, with protest documentation in full compliance with AS 36.30.560.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR SHULTZ

TO: CSSB 245 (FINANCE)

Page 1, line 9, through page 3, line 12:

Delete all material.

Renumber the following bill sections accordingly.

Page 3, line 25, following "charges;":

Insert "and"

Page 3, lines 26 - 27:

Delete "; and

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

HICKEY & ASSOCIATES

Planning * Management * Lobbying

9091 Sheiye Way, Juneau, Alaska 99801
Telephone (907) 790-2424, Fax (907) 790-2425

MEMORANDUM

TO: Johanna Munson
Senator Curt Menard's Staff

FROM: Mark S. Hickey *MSH*
Alaska Railroad Legislative Liaison

SUBJ.: SB 245 Amendment

DATE: April 2, 1992

Per our discussions, attached is a proposed amendment to the definition of "heavy trucks and heavy equipment" contained in CSSB 245 (Finance). This change would ensure the purchasing criteria applies to railroad locomotives, rolling stock and related heavy maintenance equipment. It would be desirable to address this change in a Senate Finance or Rules CS to avoid trying to address the matter on the Senate floor.

Senator Shultz is aware of this request and has a copy of this package. Please call if there are questions, or you need additional information. Thank you for your consideration of this matter.

Attachment

cc. Robert S. Hatfield, ARRC President & CEO

Alaska State Legislature



Sen. Curt Menard, *Chair*
Sen. Lloyd Jones, *Vice-Chair*
Sen. Bettye Fahrenkamp, *Member*
Sen. Drue Pearce, *Member*
Sen. Dick Shultz, *Member*

P.O. Box V
Juneau, AK 99811
907 465-4921

Senate Transportation Committee

April 3, 1992

Dear Vendor:

The Senate Transportation Committee will be taking public testimony on SB 245, an act relating to state purchases of heavy trucks and heavy equipment, on Thursday, April 9, from 1:30 - 3:30 p.m. I would like to invite you to participate in the public hearing.

As you may know, the bill would require the State DOTPF to utilize the competitive sealed proposal process rather than the sealed bidding process for the purchasing of heavy trucks and equipment. The purpose of the legislation is to enhance the State Equipment Fleet's ability to purchase heavy trucks and heavy equipment that would perform better and reduce long-term maintenance and replacement costs to the state.

While I recognize that there have been significant problems in procurement practices at DOTPF in the past, it is the intent of the Committee to take comments which are constructive, positive and specifically address the issue of whether or not a revision is needed in the law to allow the DOTPF flexibility in the acquisition of heavy trucks and equipment. The hearing will not be a DOTPF "bashing" session.

I have scheduled teleconferences in Anchorage, Fairbanks, Mat-Su and Juneau. If you would like to participate from other locations in the state, please let me know and we can add you to the site list. I look forward to your participation in the hearing.

Warm regards,

A handwritten signature in black ink, appearing to read "Curt Menard", written over the typed name.

Senator Curt Menard, Chairman
Senate Transportation Committee

SENATE BILL 245

This Bill would eliminate the competitive bidding procedure relating to heavy trucks and heavy equipment. It would give the Commissioner and his department unlimited power in the selection of this type of equipment.

Department of Transportation has already shown ineptness in administering the present Procurement Code. This is evidenced in the problems relating to SEF-109 Fresia snowblower purchase. Machines were accepted out of specification, delivered five (5) months late, and failed the performance test. This is just one example of many procurement code violations.

Procurement can be done by capable people, using the existing Procurement Code, and following the decision handed down by the U. S. District Court of Massachusetts in 1983. (see attachment)

Senate Bill 245 would lead to:

- A. Opportunity for corruption.
- B. Increased equipment cost.
- C. Further deterioration of equipment quality.



Water & Wastewater Equipment Manufacturers Association, Inc.
P. O. Box 17402, Dulles International Airport, Washington, D. C. 20041 703/661-6011

MEMORANDUM

TO: WWEMA Members

FROM: John H. Schaefer

DATE: January 10, 1983

RE: Federal Court Says "Or Equal" Up to Specifying Source

Affirming a decision handed down by the U. S. District Court of Massachusetts, the Federal 1st Circuit Court in the case of Whitten Corp. vs. Paddock, Inc., was backed up by the U. S. Supreme Court which refused to hear further appeals. The decision is unique in that it defines the specifying party's clear authority at the federal level where previous decisions have been in lower courts.

Four major rulings regarding specifications come from this landmark decision:

1. The court ruled that proprietary specifications are not a violation of anti-trust laws. Further, the court stated that trained professionals - specifiers - make informed judgments on products which they feel best serve their client's needs. Technically, few brands of materials or equipment are exactly alike, and if the specifier wants to limit the specification to one source he has the right to do so and to enforce it.

2. The court ruled that other suppliers or manufacturers can qualify as "Or Equal" only when the specifier chooses to waive specifications or permit those suppliers or manufacturers to bid.

However, it clearly stated that the specifying source is charged with the responsibility and judgment for determining whether a proposed substitution is an "Or Equal." Further, where "Or Equal" is not stated in the specifications, it is still the specifying source's decision as to what products do or do not qualify as "Or Equal."

3. The court stated that the specifier "...may waive specifications in order to obtain a more desirable product for the client." The implication is again that only the specifier (from start to finish of the construction process) can ultimately decide that another desirable product is available in lieu of the product originally specified in the client's best interest.

WWEMA Members

Federal Court Says "Or Equal" Up to Specifying Source

Page 2

4. The court concluded "the burden is on the supplier or manufacturer who has not been specified to convince the specifier that their product is equal for the purpose of a particular project."

This is probably one of the most powerful court judgments in construction law history to come down the road - in that the judgment now establishes the specifier's legal right toward brand selection. It should also merit very important consideration for those manufacturer's that desire to make a better quality product and thereby get paid the necessary price to stay viable with it.

JMS/bh



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: SB 245

APPROVED:

[Signature] for 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.



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
- MENDELTA
- 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 employer. 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. (Eff. 1/1/88, Reg. 104)

Authority: AS 36.30.04
AS 36.30.06

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 bids
- 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 to 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 and bonding or other security requirements;

(4) a requirement for certification by the bidder that it complies with the applicable portions of 42 U.S.C. 1971, 1975, and 2000 (the Federal Civil Rights Act of 1964), AS 18.80 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 Exists
ALABAMA	Y	2,000	Y	100	N
<i>"... award shall be made to the lowest responsible 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 41-16-32</i>					
ALASKA	Y	10,000 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 responsible 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 responsible bidder whose bid reflects the lowest acquisition once 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
<i>Sec. 1. (a) "Contracts for supplies must be awarded under section 2 (competitive sealed bidding)" of this chapter.</i>					
<i>(b) "Contracts for services are not required to be awarded under this chapter." Indiana Code 4-13.4-5-1</i>					
<i>Sec. 2. (a) "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." Indiana Code 4-13.4-5-2</i>					
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
<i>None</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
NEW JERSEY	Y	2,500	Y	1,500	N
"... award shall be made ... to that responsible 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	5000	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 factor(s) 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	5000	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	N(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 2.1-442					

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:
Title: State Purchase of Trucks/Heavy Equipment

Department Affected: DOT&PF
BRU: Admin. Services

Sponsor: Senate Finance Committee
Requestor:

Component: SEF
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
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REVENUE	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	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. Bartholomeu

Phone: 465-3911

Division: Administrative Services Division

Date: April 17, 1991

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

Phone: 465-3911

Agency: Department of Transportation and Public Facilities

Date: April 17, 1991

Distribution By Preparer: Legislative Finance, Legislative Sponsor, Requestor, OMB, Impacted Agency(ies).

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR SHULTZ

TO: CSSB 245 (FINANCE)

Page 1, line 9, through page 3, line 12:

Delete all material.

Renumber the following bill sections accordingly.

Page 3, line 25, following "charges;":

Insert "and"

Page 3, lines 26 - 27:

Delete "; and

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