

HB

294

Alaska State Legislature

House of Representatives

Official Business



State Capitol
Juneau, Alaska 99801-1182
(907) 465-3718

House Majority Leader

SPONSOR STATEMENT

HB-294, "Village Safe Water Projects was introduced for the following reasons;

This bill was introduced to ensure that the highest quality work and the best price will be obtained for the construction of the "Village Safe Water Projects".

Only by competitive bidding can we be assured that the funds spent for these construction projects will result in the greatest value to the state and the communities involved.

By requiring competitive bidding we can also be assured that the awarding of contracts will meet all of the ethical standards the people of Alaska demand of their government.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. _____

HB 294

Revision Date: _____
 Title: Contracts for VSW Projects
 Sponsor: Representative Al Vezey
 Requestor: _____

Department Affected: Environmental Conservation
 BRU: Facility Construction & Operation
 Component: Facility Construction & Operation

COMPONENT SERIAL NO.

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	9.0	9.0	9.0	9.0	9.0	9.0
CHANGE IN REVENUES ()						

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL						

Estimate of any current year (FY95) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

SEE ATTACHMENT

Prepared by: Larry Jones
 Division: Director, Information and Administrative Services

Phone: 465-5010
 Date: 4/10/95

Approved by Commissioner: Lawrence Jones
 Agency: Department of Environmental Conservation

Date: 4/10/95

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ATTACHMENT

FISCAL NOTE, HB 294 (continued)

This fiscal note is not an analysis of this bill's impact on the Department's operating budget or personnel. Rather, it explains what will happen to the effectiveness and efficiency of construction grant dollars administered by the Village Safe Water (VSW) program. If HB 294 is adopted and all State funded sanitation projects must be built by licensed contractors, construction costs will increase by approximately 35%. Our analysis is based on a line item cost comparison for completing a typical \$1,200,000 water and sewer project using "force account" and contract construction methods. The attached spreadsheet shows the additional requirements and costs associated with contracting projects in these nine (9) activities: engineering design; preparation of bid documents; performance bonding; working housing; labor; management; change orders; overhead and profit.

Requiring contract construction for all VSW projects would greatly reduce the funding available for other communities. Over the last four years, \$35.0 million of project funding would have been lost.

As pointed out in the Department's Bill Analysis, construction contracting has its place in sanitation facility construction. But neither the Department or the communities should be required to use it exclusively to complete projects.

Our analysis assumes that if this measure passes, the VSW capital budget request will have to increase by 35% to accomplish the same amount of work now done using force account construction.

FOR
**COMPLETING A TYPICAL \$1,200,000 VILLAGE WATER AND/OR SEWER
 PROJECT UNDER A PUBLIC BID SCENARIO VS. A FORCE ACCOUNT SCENARIO**

	PROJECT ACTIVITY	TRADITIONAL PUBLIC BID SCENARIO (DESIGN/BID/CONSTRUCT)	FORCE ACCOUNT SCENARIO (VILLAGE IS THE GENERAL CONTRACTOR)	APPROXIMATE SAVINGS UNDER FORCE ACCOUNT
1.	Design Engineering (preparation of plans specifications & bid documents)	Requires complete set of drawings, technical specifications for control of the contractor, bidding requirements and bid forms, procedures for change orders, pay requests etc. - the full blown contract "Boiler Plate".	Requires complete drawings and "outline" technical specifications only	30,000
2.	Bidding Process	Requires invitation to bid, advertisement, duplication and distribution of documents, prebid conference, addenda, bid opening, evaluation of bids, post bid conference, recommendation for award, possible protest of award, bid award preconstruction conference, etc.	Not required	8,000
3.	Performance & Payment Bond	Required	Not required when the village is the general contractor	20,000
4.	Submittals	Requires the contractor to prepare formal submittals, "cut sheets" and shop drawings for equipment and materials, etc. proposed for use in the work. Submittals must be formally reviewed and approved by the owner prior to ordering.	Most of this effort is eliminated	8,000
5.	Procure equipment, materials, supplies, etc. and transport them to the job site	Required	Required	-0-
6.	Construction Camp	Requires the contractor to procure, mobilize, set up, operate and demobilize a camp to house workers, provide a portable office for the contractor, and a separate office for the owner's representative and his inspector's.	Camp is generally not required since the majority of the labor is local; imported supervision general lives in existing village owned facilities, full time outside inspectors are not required since the village is the general contractor and has no incentive to "cut corners"	60,000

	PROJECT ACTIVITY	TRADITIONAL PUBLIC BID SCENARIO (DESIGN/BID/CONSTRUCT)	FORCE ACCOUNT SCENARIO (VILLAGE IS THE GENERAL CONTRACTOR)	APPROXIMATE SAVINGS UNDER FORCE ACCOUNT
7.	Construct the Project	Contractor imports a labor crew, pays Davis Bacon wages, pays to house and feed the vast majority of the workers in a camp	Only a few supervisors are imported, the locals are paid approximately ± 60% of the Davis Bacon wage, no room and board costs are incurred for the local labor	60,000*
8.	Manage the Project During Construction	Contractor must employ a cadre of people to interact with the owner's representatives and on-site inspectors on matters pertaining to errors on the plans, change orders, quality control inspections, pay requests, scheduling, etc. (There are essentially two teams of professionals on the jobsite.)	The village's construction management team runs the project. There is no cost associated with a second management team or with the interaction between the two management teams.	30,000
9.	Changes During Construction	Contractors often see change orders as opportunities to take a disproportionate markup. A substantial amount of negotiation and documentation is usually required to reach agreement on a change order.	Changes are easily made at the actual cost of performance.	20,000
10.	Contractor Overhead	Typically the contractor's overhead may be 8 to 15% of the construction cost (pays a portion of the contractor's home office rent, vehicles, administrative staff payroll, bidding expenses, etc.	Overhead is approximately half of what it costs under a public bid scenario. Typically the village sees only a temporary increase in administrative cost. Unlike the contractor the village has no on-going promotional and bidding expenses, and no separate facilities to maintain.	60,000
11.	Contractor Contingency	Generally the contingency the contractor adds to the bid to cover unforeseen difficulties is overstated. When this happens the money stays in the contractor's account.	The village pays actual cost of construction. No contractor contingency is paid.	20,000
12.	Contractor Profit	The contractor's profit is a function of the degree of difficulty, the perceived risk and the number of bidders. Profit margins are typically 8 to 20% of construction cost for village projects in the \$1,000,000 range. Use 10% for this computation	No contractor profit is paid.	100,000

TOTAL SAVINGS

\$416,000

PERCENT OF TOTAL PROGRAM

$\frac{\$416,000}{\$1,200,000} = 35\%$

* Reflects lower productivity of less experienced local crews

	OTHER ISSUES	TRADITIONAL PUBLIC BID SCENARIO (DESIGN/BID/CONSTRUCT)	FORCE ACCOUNT SCENARIO (VILLAGE IS THE GENERAL CONTRACTOR)	APPROXIMATE SAVINGS UNDER FORCE ACCOUNT
1.	Disputes between the contractor and the owner during construction	Disputes are bound to occur and often escalate requiring a large expenditure of management time on the part of both the owner and the contractor. Legal fees may add to the cost.	Completely avoided	Can't be quantified
2.	Support to the local economy	Contractors generally hire very few local people. Payroll dollars do not stay in the community	Typically 30% - 90% of the work is performed by local crews. Those payroll dollars add to the local economy.	Can't be quantified
3.	Community involvement and "ownership" in the project	The community generally has minimal involvement in the project and feels very little "ownership" in the completed facility	Local people are involved in the planning, scheduling, staffing, quality control and financial control of the project. The project becomes a community effort and the completed project is often a source of pride for the entire community.	Can't be quantified
4.	Operation and maintenance of the completed facility	Because the community doesn't feel it has a substantial ownership interest in the project there is naturally less commitment to insure the continued maintenance and operational success of the completed project.	Since the community planned and built the project it has more of a vested interest in the operational success of the completed facilities. Since local people were heavily involved in the planning and construction of the project they are better prepared to operate the completed system and repair it when necessary.	Can't be quantified
5.	Job Training	Since few local people are hired there is little opportunity for local people to improve their job skills	There is enormous opportunity for local residents to learn job skills, improve their job skills and develop supervisory skills.	Can't be quantified

CITY OF ST. MARY'S

P.O. Box 163
St. Mary's, AK 99658
(907) 438-2515

April 19, 1995

Senator Al Adams
BY FAX

Dear Senator Adams:

As I write this letter, my water and sewer supervisor is posting notices informing local residents to boil their water prior to drinking it. Our water system has again been overcome with run-off, and we are uncertain about the quality of water.

As a Bush resident and a Bush City Manager, I am deeply concerned about two items currently under consideration by the Legislature: (1) the possible elimination of VSW funding from the budget, and, (2) The introduction of HB 294 to insist that VSW projects are only to be bid out to contractors.

My first work in the public sector was over 20 years ago in health services planning. I was amazed when given a quote from the public health movement that increases in life expectancy in this century had been made .."in spite of modern medical science...". The majority of the increase is due to the public health movement, and in particular, to the development of safe and sanitary water and sewer systems.

Being a "doubting Thomas", I ordered the actuarial tables from the census bureau. I discovered that once you eliminated the age group of 0 to 5 years of age, the increased life expectancy between 1900 and 1970 was only a few years. In other words, the impact of early childhood mortality is what has made the greatest difference in life expectancy in this century. Also, the provision of good sanitation services has the greatest single effect on childhood morbidity and mortality.

What was also claimed during the '70's, was that the first programs to be cut during a budget crunch were the preventive programs, including water and sewer service funding. It appears that history will repeat itself in the Alaska legislature this year.

The passage of HB 294, and the cutting of water and sewer funding from the budget will ultimately have an impact on morbidity and mortality in the Bush.

On a more personal level, I traveled for the RUBA program for almost two years in this area. The villages I dealt with, for the most part, had very limited water and sewer systems. More than once I was advised to wash my hands frequently, as pink eye (or hepatitis, or some other bug) was circulating through the village. It is difficult to wash thoroughly when sanitation facilities consisted of a 40 gallon rubber trash can for the water supply, and a honey bucket to substitute for the sewer system.

I have had personal experience with force account labor, and with outside contractors doing work. I have also had both VSW and PHS supervise the work. While no system is perfect, I prefer the "force-account" method for providing water and sewer construction services for the following reasons:

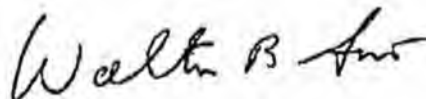
1. We get "more bang for the buck."
2. Overall, we have more control over the quality of the job; i.e., we have to service what we build, long after any warranty would have expired had we used a contractor.
3. We stimulate the local economy. Outside contractors come in, do the job, and leave, taking their money with them.

Yes, one can find excellent examples of contractor work that has gone well, and force account work that has not. Examples of good and bad work can be found in each type of project. However, on the average, I still believe we get more value and better projects when we do the work locally.

I think I have addressed the need for funding for water and sewer. I realize that it is difficult to provide water and sewer services to the Bush. I also realize it is difficult to support and maintain these systems once they are constructed. However, safe sanitation facilities are a basic health need. I would hope the legislature would fund the projects recommended by VSW in the Governor's budget.

Please contact me if I can provide you with additional information.

Sincerely yours,



Walton B. Smith
City Manager

cc. Sen. Adams, Rep. Austerman, Rep. Elton, Rep. Ivan, Rep. Kott, Rep. Mackie, Rep. Maclean, Rep. Nicholia, Rep. Vezey.

MEMORANDUM

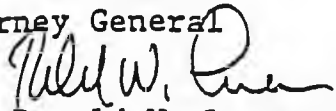
cc: Dale Cheek, Director
Wage & Hour Division
Department of Labor

DATE: October 11, 1978

FILE NO:

TELEPHONE NO:

cc: Avrum M. Gross
Attorney General

By: 
Ronald W. Lorensen
Assistant Attorney General

SUBJECT: Performance of Public
Construction Projects by
Municipalities; A.G. File
No. J-66-195-79

This is in response to your recent request for our advice as to whether municipal governments may properly carry out their public construction projects by using their own employees under a "force-account" system which utilizes private contractors, if at all, solely to provide overall "hands-in-pocket" management and supervision of the project. Also, if municipalities may perform their own public construction in this manner, you wonder whether they are subject to the provisions of AS 36.05, relating to the payment of prevailing wages on public construction contracts.

As we understand the situation about which you are inquiring, at least one organized borough in the state does not carry out its public construction projects by hiring private construction contractors to perform all phases of the work and complete the project. Instead, it hires private contractors to perform only the management and supervisory functions necessary to accomplish the project for the borough, but requires that the contractor utilize borough employees to actually do the construction work. We see no legal impediment to a borough doing all or any portion of its public construction projects on its own in this manner.

As to whether AS 36.05 applies to a borough which accomplishes its public construction projects by use of its own employees under a "force account" system, we think the answer is clearly that it does not. AS 36.05.010, which establishes the scope of the requirement of payment of prevailing wages under AS 36.05, speaks only in terms of the duty of "contractors" and "sub-contractors" who perform work on public construction in the state. It does not state that political subdivisions performing such work must pay prevailing wages. Nor does it state that all employees working on public construction projects are entitled to be paid in accordance with prevailing wages. Thus, while it appears that AS 36.05 would apply to a municipality's contractor for management services on a public construction project, it does not apply to the municipality in carrying out such projects with its own employees.

MEMORANDUM

State of Alaska

TO: Honorable Richard A. Nevé
Commissioner
Department of Environmental
Conservation

DATE: May 9, 1983

FILE NO: 366-573-83

TELEPHONE NO: 465-3603

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Title 36

By: 
Gary I. Amendola
Assistant Attorney General
Human Services-Juneau

You have requested an opinion regarding the scope of Title 36 and its requirement that prevailing wages be paid on public works projects. Specifically you ask whether non-profit entities which receive grants under AS 37.05.316 or AS 37.05.317 can use "force account labor" to complete the public works project and thus avoid the payment of prevailing wages, as that term is used in AS 36.05.010 et seq.

On March 11, 1983, Deputy Attorney General Ron Lorensen issued an opinion regarding the application of the Little Davis-Bacon Act (AS 36.05) to designated grantees under AS 37.05.316 and 317. Under AS 37.05.317(2), nonprofit entities are permitted to receive and administer grants for public construction. This opinion addresses the related question which arose because of the issuance of that opinion.

A short answer to your question is yes.

The federal government has long recognized that where the government uses its own employees to perform public construction, the Davis-Bacon Act, upon which our "Little Davis Bacon Act" is modelled, does not require the payment of prevailing wages. See Veader v. Bay State Dredging and Contracting Company, 79 F. Supp. 837 (D.C. Mass. 1948); see also, Davis Bacon Act Field Operations Handbook, dated May 5, 1978 at page 15c14.

The 1978 informal Attorney General's opinion written by then Assistant Attorney General Ron Lorensen extended that rationale to municipal governments and by implication ratified that state governments could also use the "force account" system.

Without the existence of a contractual relationship between the non-profit entity and some third party doing the

Honorable Richard A. Nevé
Commissioner
366-573-83

May 9, 1983
Page 2

work, Title 36 simply does not apply. The legislation in Title 36 is written in terms of contractors, subcontractors, and contracts. AS 36.05.010 states in relevant part:

A contractor or subcontractor who performs work on public construction in the state, as defined by AS 36.95.010(3), shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done
...

Public construction, in turn, is defined at AS 36.95.010(3) as "the onsite field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board with respect to an educational facility under AS 14.08.161." (emphasis supplied).

We can perceive of no reason to distinguish between a nonprofit entity's use of "force account labor" and a state's or municipality's use of "force account labor" to complete similar construction projects.

GIA:bap

MEMORANDUM

State of Alaska

TO: Robert Bacolas, Director
Division of Labor Standards & Safety
Department of Labor

DATE: December 30, 1985

FILE NO: 166-229-86

TELEPHONE NO: 276-3550

FROM: Harold M. Brown
Attorney General

SUBJECT: Application of AS 36.05
to contracts for
weatherizing
low income homes

By: *JH*
Jan Hart DeYoung
Assistant Attorney General

You have asked whether the requirement to pay prevailing wages in the "Little Davis-Bacon Act," AS 36.05.010--36.05.125, applies to contracts to weatherize privately owned, low income family homes. The answer is that the Act should apply if the state or a political subdivision of the state, such as the North Slope Borough, awards the contract. If the contract were funded by a grant made under AS 37.05.316, it probably would not be covered by the Act.

The facts prompting this question follow. One of the duties of the Department of Community and Regional Affairs (C&RA) is to plan programs for energy development, including weatherization, to meet community needs. AS 44.47.050(18). C&RA has adopted regulations establishing a low-income residential energy conservation program. 19 AAC 69.010--19 AAC 69.190. The program is funded through federal grants and state general funds.^{1/} The program is implemented through the award of contracts to political subdivisions, nonprofit corporations, and occasionally, private businesses. See 19 AAC 69.050. The contract awarded is the state's standard agreement for professional services contracts. The contract does not state whether prevailing wages under AS 36.05.010 must be paid by the contractor.

C&RA apparently has assumed that the requirement does not apply to professional services contracts. Ordinarily this is

1/ The federal funds come from two sources: a grant from the Department of Energy under 10 C.F.R. Part 1005 (1985) and a grant to the Department of Health and Social Services that is transferred to C&RA by reimbursable services agreement. The sources of state funds for the program in 1985 were the operating budget and the capital projects budget. Sec. 26, ch. 98, SLA 1985, p. 99, l. 17; Sec. 3, ch. 96, SLA 1985, p. 23, l. 6.

This memorandum does not address the effect of Federal regulations, if any, that would conflict with the application of "Little Davis-Bacon" scale wages.

true. Under AS 36.05.010, the prevailing wage requirement applies only to public construction,^{2/} and professional services contracts do not usually cover construction work. AS 36.98.080(2) defines "professional services" as predominantly intellectual in character:

Professional, technical, or consultant's services that are predominantly intellectual in character and that

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

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

In contrast, "public construction" is predominantly physical in character. It is defined in AS 36.95.010(3) as follows:

"Public construction" or "public works" means the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board.

However, the weatherization "professional services" contracts do include some construction work. The description of the work in the weatherization contracts includes assessing energy needs of low-income applicants, distributing educational literature, inspection, recordkeeping, and most important, "ensuring" installation of eligible energy conservation materials. Approved conservation materials include caulk and weatherstripping, furnace modifications, thermostats, insulation, skirting, ventilation, vapor barriers, vestibules, heat exchangers, etc.

^{2/} AS 36.05.010 provides, in part, as follows:

A contractor or subcontractor who performs work on public construction in the state, as defined by AS 36.95.010(3), shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done. . . .

Actual installation work certainly qualifies as "rehabilitation, alteration, extension, or repair . . . of buildings" in AS 36.95.010(3). The construction work in the contract, moreover, is not insignificant. The installation of energy-saving materials appears to be the primary purpose of the contracts. The fact that the contract is called a professional services contract should not determine whether the prevailing wage requirement applies. The issue is whether the contract is to perform work covered under the definition of public construction. We conclude that these weatherization contracts do cover such work.

This determination does not end the inquiry. The construction work must be public construction for the prevailing wage requirement to apply. In AS 36.95.010(3), to be "public" construction, the work must be "under contract for the state, a political subdivision of the state or a regional school board." The professional services contracts awarded by C&RA are "under contract for the state."

We understand that these contracts can be awarded to political subdivisions, such as the Municipality of Anchorage and the North Slope Borough, nonprofit corporations, such as Rural Alaska Community Action Program (Rural CAP), and private businesses. A political subdivision is not required to pay workers prevailing wages if the work is performed by force account, i.e., by employees of the political subdivision. If the political subdivision, however, contracts the work, prevailing wages must be paid for all labor performed under the contract.^{3/}

^{3/} If the weatherization program had been a designated grant to a named recipient under AS 37.05.316, the result would be different. We previously have opined that designated grants to named recipients under AS 37.05.316 are covered by AS 36.05.010 only if the project involves the undertaking or provision of traditional government facilities, services, or activities. 1983 Op. Att'y Gen. at 2 (Mar. 11; 366-267-83). The reason why these grants are handled differently under AS 36.05.010 is that a nonprofit corporation, rather than a state agency or political subdivision, has primary responsibility for construction funded by the grant. The state, through C&RA, only retains minor oversight and accounting responsibility, and upon completion of the project, the state is not obligated to maintain or operate the facility. Under these grants any contract for construction is awarded by the nonprofit corporation. The state or political subdivision, therefore, is not a party to the actual construction
(Footnote Continued)

Robert Bacolas
Division of Labor Standards & Safety
166-229-86

December 30, 1985
Page 4

In summary, the low-income residential energy conservation program as it currently operates, through contracts awarded by C&RA, is subject to the prevailing wage requirement in AS 36.05.010, unless the work is performed by employees of a state agency or a political subdivision. Nonprofit corporations and private businesses, when awarded a contract for weatherization by C&RA or a political subdivision, must pay workers the prevailing rates. Major changes in the program would be needed to avoid the prevailing wage requirement in AS 36.05.010.

JHD:jg

cc: Janice Brewer
Donald R. Wilson

(Footnote Continued)

contract. AS 36.05.010 however, is not limited to projects under contract with the state or its political subdivisions. 1983 Op. Att'y Gen. at 4. The Alaska Supreme Court rejected this argument, extending the prevailing wage requirement to a timber sales contract, issued in conjunction with the construction of a dam to be built with public funds, in Sitka v. Construction and General Laborers Local 942, 644 P.2d 227 (Alaska 1982). Therefore, we have concluded that the prevailing wage requirement should apply if the project serves a traditional government function to avoid circumvention of the prevailing wage requirement through use of these grants and in recognition of the broad application given AS 36.05.010 in Sitka v. Construction and General Laborers Local 942.

Thus, a grant to a named recipient from the legislature to perform weatherization work would be covered only if weatherization of a privately owned home could be said to constitute a traditional government service. While the weatherization program serves a general public interest, for example in conserving fuel, the primary benefit is personal to the residents of the home who will reduce expenses and will own the weatherization materials. Moreover, historically, government has not provided this service. The state program began in 1983, and federal funds for weatherization have been available only since 1977. For these reasons we believe that weatherization is not a traditional government service. Thus, if the weatherization program were funded by a grant under AS 37.05.316 to a named recipient who was not the state or a political subdivision of the state, the prevailing wage requirement in AS 36.05.010 should not apply.

BILL ANALYSIS/POSITION PAPER

DEPARTMENT Environmental Conservation	DIVISION Facility Construction & Operation	BILL NUMBER HB 294	SPONSOR Representative Vezey
SHORT TITLE OF BILL Contracts for VSW Projects			
DEPARTMENT POSITION Oppose this Bill			
PREPARED BY	DATE 4/10/95	COMMISSIONER'S SIGNATURE	DATE

SUMMARY

OTHER AGENCIES AFFECTED BY BILL DOT/PF, AHFC, ARC, U of A, AADC	CONSTITUENT GROUP(S) AFFECTED BY BILL City, towns, villages, non-profit corporations, traditional governments
ORGANIZATIONAL SUPPORT FOR BILL Association of General Contractors	ORGANIZATIONAL OPPOSITION TO BILL Rural Alaska Sanitation Coalition Second Class Cities IRA Councils, Villages
FISCAL IMPACT: <input type="checkbox"/> NONE <input checked="" type="checkbox"/> FISCAL NOTE ATTACHED	

BACKGROUND/LEGISLATIVE INTENT

The sponsor would like to ensure that all village sanitation projects funded with State dollars be constructed by licensed contractors following competitive bidding requirements.

ANALYSIS OF BILL/PROGRAM EFFECTS

1. Construction costs will increase by at least 35%. Based on an average State appropriation of \$25.0 million for the last four years, contracting would cost up to \$9.0 million per year in the value of projects constructed. Fewer projects will be built because State and federal dollars won't be used in the most efficient manner.
 2. The responsibility for how a project is built will be taken away from the owner (the community), and be decided by the State of Alaska. This approach will undermine the concept of local ownership of public facilities because this important decision was made by authorities residing outside the community.
 3. Local jobs will be lost because contractors typically import the majority of workers into a community. This includes skilled jobs, as well as laborers.
 4. Contract workers are normally paid a high wage rate while local workers are paid the prevailing wage rate of the area. This disparity will create conflict and resentment within the communities.
- ***SEE ATTACHMENT***

AMENDMENTS PROPOSED

None

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

ATTACHMENT

BILL ANALYSIS, HB 294 (continued)

5. There are several key but ambiguous terms in the bill that need clarification. The term "person" is not defined. Also "village" in Section 3 is not consistent with the definition in the VSW Act. The term "state agency" conflicts with the definition in the State Procurement Code.
6. This Bill requires all VSW grant recipients to comply with the competitive bidding requirements of the State Procurement Code. However, AS 36.30.850(b)(1) specifically exempts grants from this requirement.
7. The Little Davis Bacon Act entitles grantees to use force account labor to accomplish public construction projects. Yet the purpose of this bill is to prohibit grantees from using this method of construction in favor of competitively bid construction contracts.
8. The Procurement Code does not apply to political subdivisions of the State. Section 3 of the Bill conflicts with this position.

In summary, the Department feels this Bill will harm the VSW program while offering no improvement or advantages to the current way sanitation facilities are built. In a "typical" project, both force account and contract construction methods may be needed to accomplish the work. This responsibility must be retained by the local governing body who is in a better position to make this decision than an outside authority. Without this flexibility, project costs will escalate.

Enclosures: AG Analysis [April 7, 1995]
AG Opinions
Construction Article [Nov. 1994]
Contact/Force Account Cost Comparison
Private Contractors Funded

To: Keith Kelton, Director
Facilities Operation & Construction Div.
Dep't of Environmental Conservation

From: Marie Sansone
Assistant Attorney General
Natural Resources Section - Juneau

Date: April 7, 1995

Re: HB 294
Village Safe Water Program

At your request, I reviewed HB 294 concerning the Village Safe Water Program. Upon preliminary review, there are a number of serious legal concerns.

First, this bill would require Village Safe Water Program grant recipients to comply with the competitive bidding requirements of the State Procurement Code, AS 36.30. The Procurement Code, however, specifically exempts grants from its application: Alaska Statute 36.30.850(b)(1) states "This chapter applies to every expenditure of state money by the state, acting through an agency, under a contract, except that this chapter does not apply to (1) grants" Sections 1 - 3 of the bill therefore conflict with this provision of the Procurement Code. To enact sections 1 - 3 as proposed, it would also be necessary to amend the Procurement Code.

Second, under the current interpretation of the Little-Davis Bacon Act, AS 36.05, entities that receive grants under AS 37.05.316 or AS 37.05.317 may use "force account labor" to complete public construction projects and thus avoid costs associated with payment of "prevailing wages." 1983 Inf. Op. Att'y Gen. (May 9; 366-573-83). See also 1985 Inf. Op. Att'y Gen. (Dec. 30; 166-229-86); 1983 Inf. Op. Att'y Gen. (Apr. 19; 366-554-83); 1978 Inf. Op. Att'y Gen. (Oct. 11; J-66-195-79). By prohibiting grantees from using procurement methods other than competitive sealed bidding under the Procurement Code, this bill will preclude the use of force account labor.

Third, except for lease purchase agreements under AS 36.30.085 and the cooperative procurement procedures of AS 36.30.700 -- 36.30.790, the Procurement Code "does not apply to contracts between two or more agencies, the state and its political subdivisions, or the state and other governments." AS

36.30.850(c). Section 3 of the bill conflicts with this exemption from the Procurement Code, and an amendment to the Procurement Code would be necessary to enact the bill as proposed.

Fourth, the definition of "state agency" contained in section 3 of the bill, to be enacted in AS 46.07.100, differs from the definition of "agency" contained in AS 36.30.990(1) of the Procurement Code. This may present a source of confusion; it may also raise a question of redundancy and surplusage should its interpretation ever be in issue.

Finally, the definition of "village" contained in section 3 of the bill, to be enacted at AS 46.07.100, conflicts with the definition of "village" presently contained in AS 46.07.080(2). Under the current definition in AS 46.07.080(2), the Village Safe Water Program presently applies to first class cities with not more than 600 residents. Since Section 3 as proposed does not include these cities, it would create a conflict in the law.

Please let me know if you require further assistance.

cc: Larry Jones
Margie Vandor

NOV-10-94 THU 15:55

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FAX NO. 344-8072

P. 01

Force Account Labor

Water and sewer programs in the Bush

CAN CONTRACTORS COMPETE?

By Jack E. Phelps

Water and sewer construction projects in rural Alaska are pumping millions of dollars every year into local economies. This year the state Legislature alone appropriated more than \$25 million in capital construction money for village sanitation. According to officials with the Alaska Department of Environmental Conservation (ADEC), total federal and state expenditures on village sanitation are now

averaging nearly \$80 million per year. A recent report by the U.S. Office of Technology Assessment suggests that an annual commitment of \$125 million over two decades is needed to address the needs of Alaska villages.

There are two principal funding sources for rural sanitation projects in Alaska. On the federal side is the Indian Health Service (IHS), operating

under the authority of Public Law 86-121, the Indian Sanitation Facilities Construction Act of 1959. As of May 1994, more than \$350 million has been provided for rural Alaska sanitation projects through IHS.

In Alaska, the Alaska Area Native Health Service, a division of IHS, handles rural sanitation issues through its Office of Environmental Health

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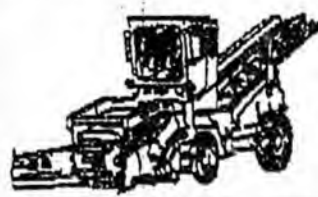
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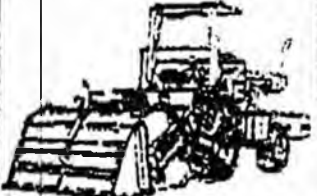
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P. 02

Force Account Labor

and Engineering (OEH&E). Jim Crum is director of OEH&E. He has a staff of 35 to 40 engineers who provide design and construction know-how to the villages served by IHS.

ADEC's Village Safe Water (VSW) program is the state counterpart to OEH&E. VSW currently has 58 active projects in 32 villages around the state. VSW is staffed by 12 people and is funded by annual appropriations from the Legislature. Greg Capito is director of VSW. Capital appropriations for VSW projects in FY95 were \$23,288,600, including \$2.5 million in pass-through money from the Environmental Protection Agency's (EPA) Indian set-aside program.

At first glance, this flow of capital would seem to be a great boon to the Alaska construction trade. Unfortunately for contractors, most rural projects are built using force account labor and are never put out to gen-

eral contractors for bid. Recent research shows that of \$48.1 million allocated to VSW projects in FY93-94, only \$8.3 million were used to fund projects that were subject to competitive bidding. Furthermore, many of the contracts let for such projects are for non-construction portions of the job, like equipment rental, component manufacturing or materials transportation.

Both federal and state laws require a local hire preference. Alaska Statute 46.07.040(b) stipulates that "workers from the village in which the facility is being constructed shall be utilized to the maximum extent feasible." Federal law requires a Native hire preference in villages where IHS money or EPA Indian set-aside money is being used to build a project. Also, U.S. Public Law 98-638, the Indian Self-Determination Act, anticipates that federal agencies will deal directly with tribal units and assist them in operat-

ing as self-determining, self-governing entities.

Money for building a sanitation system flows to the village as a grant. The lead agency involved, IHS or VSW, then acts as a "governmental parent" overseeing the progress of the project and providing technical assistance. In some instances, the local council may hire a private consultant to manage the project and may contract with one or more construction firms to perform some or all of the work. In the main, however, the majority of the construction labor comes from local people hired under the force account system.

Why do villages prefer force account labor over general contractors? Ginny Tierney, city administrator in Thorne Bay, says, "In many instances, you can complete your project using force account for less money. Because you don't have to pay Davis-Bacon wages, you get more bang for ▶

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P. 03

Force Account Labor

your buck. Then there's the added benefit of local employment. Dollars earned by our local people continue to circulate within the community."

Bill Ryan of HDR Engineering, who has many years of experience working with rural village projects, says the reasons are complex and interrelated. "First of all, it reduces the cost of construction," Ryan says, "by eliminating the contractor's profit. And it utilizes the local people more, which they like. In the process, the community learns to run a payroll and other administrative chores which prepares them for the operations and maintenance responsibility that they have to assume upon completion."

Other local leaders echo these thoughts. Dorothy Barr, utility clerk for White Mountain, says, "We like our people to work, we hardly have any jobs here. We have carpenters and laborers, and we like to keep the

money in the village. We have a tribal base roll and a tribal employment rights office. We try to put our enrollees to work here to keep the money in the village."

"Contractors need to understand what the villages want in terms of services, and craft their presence in a way calculated to win the market."

Greg Capto, Director
Village Sale Water

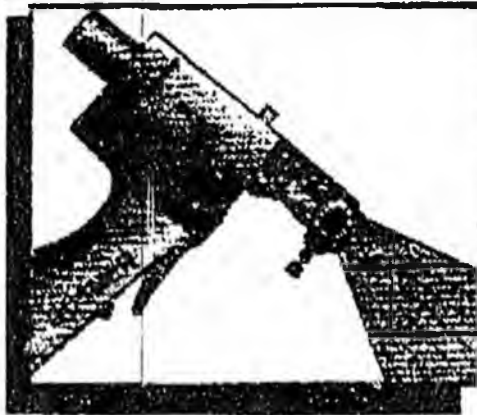
Unalakleet's city administrator, Nancy Cannington, agrees. She points out that "people out here in rural Alaska live a subsistence lifestyle the

rest of the year. Sewer and water projects during the summer subsidize their income for the rest of the year."

Barr and others admit that they can't always supply the kind of specialized labor that a sewer project often requires. Certified electricians and plumbers, for instance, may not be available. "We told the PHS people we wanted our eligible people to work," Barr says. "But with certified people, we hardly have any of those, so we hire in certified people."

Tierney says her community contracted out most of the electrical work, the fire suppression work and the specialty concrete work. "But the plumbing and mechanical work was done in-house," she adds. "We have the human resources here that enable us to do that quite successfully."

Other rural leaders bluntly present another argument. One city manager,



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P. 04

Force Account Labor

speaking on the condition he would not be identified, says, "We've had bad luck with most Alaska contractors on these smaller, less than \$10 million jobs. They arrogantly sweep into town, do a hurry-up job, skim the grant cream and vanish. When things go wrong, they can't be reached. They often use the smaller towns to scope out some new, untested methods, and we're left with something nobody can fix."

Speaking in the industry's defense, one contractor called the force account system a "program of failure." Many village projects have had to be rebuilt he says, "because they were constructed inexpertly by untrained workers with little knowledge of how to deal with the kinds of problems encountered in an Arctic environment."

Some contractors would like to see the laws changed to require that all

public works projects in Alaska be put out to competitive bid. Both federal and state officials say that is not likely to happen. In fact, DHS's Crum thinks the trend is in the other direction. "I see the federal government giving more and more discretion and authority over to the tribal villages," Crum says. "The way we do business here may be completely different five years from now."

"We like our people to work, we don't hardly have any jobs here. We have carpenters and laborers, and we like to keep the money in the village."

Dorothy Barr, Utility Clerk
White Mountain

It seems unlikely the problem facing contractors wanting to break into the rural sanitation market will be solved by name-calling and threats. One solution suggested by VSW's Capito involves bridge-building and marketing. "There is a market in the bush for certain kinds of services that the contractors can supply," he says. "Contractors need to understand what the villages want in terms of services, and craft their presence in a way calculated to win the market. What the villages need and are willing to pay for is construction management expertise. The contractors have this, they just need to learn how to sell it to the village leaders." There is already a small coterie of Anchorage businesses that have recognized and taken advantage of that market, but experts agree there is room yet for more.

A former administrator in rural Alaska suggests that building relationships and trust between



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P. 05

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contractors and villages is the key to unlocking the market. "Once a company's been around a couple years, and knows where the lines are buried, it's just about assured of a long-term relationship, and can even help the villages plan work into the future."

Nearly everyone agrees, though, that local hire will have to be a component of any relationship between contractors and villages. The laws provide no way around this, and the villages are not about to give up that advantage of the force account system. Tierney says that even when Thorne Bay does use contractors, "We have

made local hire a requirement. The ultimate decision (on who to hire) is left in the hands of the contractor," she says, "but he must make a good faith effort. And we monitor that good faith effort."

As Capito says, "Contractors cannot just show up and say, 'take us because we're here.' That just won't work." On the other hand, there is general agreement that cooperation can be a good deal all the way around — for both the contractor and the village — when the contractor cultivates an ongoing relationship. That takes care and concern Capito advises. ■

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Denali Industrial Supply, a statewide supplier of industrial tools, fasteners and welding equipment, has recently relocated its Anchorage store to larger quarters at 6000 Arctic Boulevard. Business partners James "Bo" Kilbourn and Gary Swoffer, started

the firm as a fastener outlet in Fairbanks in 1936. Since that time stores have been added in Anchorage and Kenai. The new 18,000 square foot Anchorage facility will enable the firm to vastly increase its stock and expand service to statewide outlets. ■

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1990 TO 1994

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Akiak	Bethel Contractors	landfill construction	91	\$ 300,000.00
	Bethel Contractors	lagoon construction	92/3	\$ 500,000.00
Anchor Point	J-Brant	water main,service&wtp construction	92/3	\$ 330,000.00
Kongigiganak	Ice Water Well	well drilling	92	\$ 250,000.00
Shungnak	Industrial Commerical Electric	electrical	91	\$ 4,000.00
Hooper Bay	M-W Drilling	well drilling	94	\$ 450,000.00
Emmonak	Industrial Commercial Electric	electrical	94	\$ 20,000.00
Mountain Point	Southcoast	wtp & tank construction	90	\$ 700,000.00
	Southcoast	water & sewer installation	91	\$ 690,000.00
	Southcoast	water & sewer installation	92	\$ 2,387,000.00
	Southcoast	water & sewer installation	93	\$ 1,170,000.00
	Southeast Engineering	water & sewer inst	94	\$ 1,143,000.00
Thorne Bay[wwtp]	Dawson Contraction	wwtp concrete work	91	\$ 425,000.00
	Wire Communication	wwtp electrical	93	\$ 83,000.00
	Control Draft	wwtp controls	93	\$ 50,000.00
	Herr's Painting	wwtp painting	93	\$ 54,000.00
Thorne Bay[sw]	Alaska Industrial&Commerical	sw electrical	94	\$ 78,000.00
	Alaska Fire Extinguisher	sw fire system	94	\$ 48,000.00
	C.R. Lewis	sw mechanical	94	\$ 12,000.00
Thorne Bay[he]	Russel Construction	heavy equipment rental	88	\$ 92,000.00
	Russel Construction	heavy equipment rental	89	\$ 122,000.00
	J.S. Construction	road building	90	\$ 53,000.00
	Russel Construction	heavy equipment rental	90	\$ 151,000.00
	Russel Construction	heavy equipment rental	91	\$ 29,000.00
	McAllen Construction	heavy equipment rental	92	\$ 36,000.00
	McAllen Construction	heavy equipment rental	93	\$ 54,000.00
	Seaford Construction	heavy equipment rental	93	\$ 24,000.00
Napaskiak	Roy Longbathum	well drilling	93	\$ 48,000.00
Glennallen	Athna Construction	sewer line to parks place	91	\$ 450,000.00
	Copper Valley Construction	sewer main &services(crossroads)	91	\$ 150,000.00
	Norse Construction	sewer glennallen heights phase1	92	\$ 500,000.00
	O&S Construction	sewer glennallen heights phase2	92	\$ 250,000.00
	Copper Valley Construction	sewer service lines	92/3	\$ 150,000.00
Bethel	Construction & Rigging	lagoon sheet pile structura	93	\$ 800,000.00
	Alaska Mechanical Inc.	w&s bethel heights/tundra north	93	\$ 800,000.00
McGrath	Takotna Construction	building for sw equipment	93/4	\$ 100,000.00
Nikiski	Alaska Building Systems	water plant building	93	\$ 75,000.00
	John Whites Plumb. & Heating	water plant piping	93	\$ 25,000.00
Chitina	M-W Drilling	well drilling	91	\$ 70,000.00
	Copper Valley Construction	water line & pumphouse construction	91	\$ 15,000.00
	Ice Water Well	well drilling	92	\$ 50,000.00
Tuntutuliak	John Lamb	soils drilling	94	\$ 75,000.00
Whittier	Rockford	water line construction	93	\$ 1,000,000.00
	Rockford	water line construction	94	\$ 750,000.00
Angoon	Construct. Machinery Inc.	heavy equipment rental	91/2	\$ 163,000.00
	Miller Construction	dumn truck rental	91/2	\$ 50,000.00
	Comdive	diving water line	91/2	\$ 100,000.00
	Alaska Diving Service	diving water line	91/2	\$ 100,000.00
	High Drive Drilling & Blasting	drilling and blasting water line trench	91	\$ 240,000.00
	Cove Electric	power line construction	92	\$ 340,000.00
Noatak	Ambler Exploration	well drilling	92	\$ 6,000.00
	Statewide Blasting	blasting	92	\$ 15,000.00
	Longstaff Electrical	electrical	92	\$ 8,000.00
	Chilcat Electric	electrical	93	\$ 16,000.00
Kotzebue	Wayne Drake Inc.	sewer line replacement	91	\$ 580,000.00
	Wayne Drake Inc.	sewer line replacement	92/3	\$ 400,000.00
Talkeetna	Bardarka	water & sewer construction	93	\$ 1,100,000.00
TOTAL			\$	17,681,000.00

Projects funded through VSW where contractors were used to accomplish the work

VILLAGE	CONTRACTOR	WORK	YR.	AMOUNT	
akiak	bethel contractors	landfill construction	91	\$300,000	
	bethel contractors	lagoon construction	92/3	\$500,000	
anchor point	j-brant	water main, service & wtp construction	92/3	\$330,000	
konglganak	ice water well	well drilling	92	\$250,000	
shungnak	Industrial commercial electric	electrical	91	\$4,000	
hooper bay	m-w drilling inc.	well drilling	94	\$450,000	
emmonak	Industrial commercial electric	electrical	94	\$20,000	
mountain point	southcoast	wtp & tank construction	90	\$700,000	
	southcoast	water & sewer installation	91	\$690,000	
	southcoast	water & sewer installation	92	\$2,387,000	
	southcoast	water & sewer installation	93	\$1,170,000	
	southeast engineering	water & sewer installation	94	\$1,143,000	
thorne bay (wwtp)	davson construction	wwtp concrete work	91	\$425,000	
	wire communication	wwtp electrical	93	\$83,000	
	control craft	wwtp controls	93	\$50,000	
	herr's painting	wwtp painting	93	\$54,000	
thorne bay (sw)	alaska industrial & commercial	sw electrical	94	\$78,000	
	alaska fire extinguisher	sw fire system	94	\$48,000	
	c.r. lewis	sw mechanical	94	\$12,000	
thorne bay (he)	russel construction	heavy equipment rental	88	\$92,000	
	russel construction	heavy equipment rental	89	\$122,000	
	j.s. construction	road building	90	\$53,000	
	russel construction	heavy equipment rental	90	\$151,000	
	russel construction	heavy equipment rental	91	\$29,000	
	mcallen construction	heavy equipment rental	92	\$36,000	
	mcallen construction	heavy equipment rental	93	\$54,000	
	seaford construction	heavy equipment rental	93	\$24,000	
napaskiak	roy longbathum	well drilling	93	\$48,000	
	glennallen	athna construction	sewer line to parks place	91	\$450,000
		copper valley construction	sewer main & services (crossroads)	91	\$150,000
		norse construction	sewer glennallen heights phase 1	92	\$500,000
		o&s construction	sewer glennallen heights phase 2	92	\$250,000
bethel	copper valley construction	sewer service lines	92/3	\$150,000	
	construction & rigging	lagoon sheet pile structure	93	\$800,000	
	alaska mechanical inc.	w&s bethel heights/tundra north	93	\$800,000	
mcgrath	lakotna construction	building for sw equipment	93/4	\$100,000	
nikiski	alaska building systems	water plant building	93	\$75,000	
	john whites plumb. & htg.	water plant piping	93	\$25,000	
chitina	m-w drilling	well drilling	91	\$70,000	
	copper valley construction	water line & pumphouse construction	91	\$15,000	
	ice water well	well drilling	92	\$50,000	
tuntutuliak	john lamb	soils drilling	94	\$75,000	
whittier	rockford	water line construction	93	\$1,000,000	
	rockford	water line construction	94	\$750,000	
angoon	construct. machinery inc.	heavy equipment rental	91/2	\$163,000	
	milller construction	dump truck rental	91/2	\$50,000	
	comdive	diving water line	91/2	\$100,000	
	alaska diving service	diving water line	91/2	\$100,000	
	high drive drilling & blasting	drilling and blasting water line trench	91	\$240,000	
noatak	cove electric	power line construction	92	\$340,000	
	ambler exploration	well drilling	92	\$6,000	
noatak	ststewide blasting	blasting	92	\$15,000	
	longstaff electrical	electrical	92	\$8,000	
	chilcat electric	electrical	93	\$16,000	
VILLAGE	CONTRACTOR	WORK	YR.	AMOUNT	
kotzebue	wayne drake inc.	sewer line replacement	91	\$580,000	
	wayne drake inc.	sewer line replacement	92/3	\$400,000	
lalkeetna	bardarka	water & sewer construction	93	\$1,100,000 (1991-4 total)	
unalakleet	alaska mechanical inc.	landfill fencing	94	\$50,000	
TOTAL CONTRACTS 1991-4				\$17,731,000	

Projects funded through VSW where contractors were used to accomplish the work

bethel	southcoast	lagoon construction	95	\$725,000	
	alaska mechanical inc.	kilbuck & main lift stations	95	\$465,000	
napakiak	to bid and award in 95	lagoon and sanitation roads	95	\$700,000	
whittier	to bid and award in 95	water system improvements	95	\$850,000	
chefomak	to bid and award in 95	well drilling	95	\$200,000	
dearing	to bid and award in 95	heavy equipment rental	95	\$100,000	
nikolaevsk	to bid and award in 95	water system	95	\$3,000,000	
mountain point	to bid and award in 95	phase V water and sewer	95	\$1,600,000	
	to bid and award in 95	water treatment plant upgrade	95	\$200,000	
	to bid and award in 95	waste water treatment plant site dev.	95	\$250,000	
alakanuk	to bid and award in 95	pile driving and water building erection	95	\$500,000	\$8,590,000
	TOTAL CONTRACTS(est.) 95			\$8,590,000	

Alaska Water & Sewer Projects
and the Construction Industry

A Preliminary Investigation

July 8, 1994

Prepared for

Associated General Contractors of Alaska

by

Jack E. Phelps

ExecuSwift, Anchorage, Alaska

I. Introduction

I.1. Scope and Limitations

This report provides a survey of funding for Alaska sanitation projects in the current fiscal year and in the recent past. It also examines the degree to which the construction trade (i.e., general contractors) has opportunity to participate in the job market created by these funds. The predominant use of force account labor is of particular concern, and is considered from two perspectives: 1) as a factor of the total work force in the subject projects; and 2) as an expression of government intent both at the state and federal levels.

The agreement governing this report specified that data would be compiled for the last two federal and state appropriation cycles. Initial evaluation of the data suggested some problems with the requested scope of the work. First, federal and state funding practices differ in several important respects. By law, federal funds must be allocated in the same year they are appropriated. They are not, however, expended in the same year, and are frequently held in interest-bearing accounts for the projects for which they are allocated. Hence, federal funds for a project in a particular village may be matched up with state funds appropriated for that village in a different fiscal year.

The predominant use of force account labor is of particular concern

State funds, unlike federal money, are appropriated for specific projects as line items in the capital appropriations budget. The main state funding source for rural sanitation projects is the Department of Environmental Conservation, Division of Facility Construction and Operation, Village Safe Water (VSW). Appropriations to VSW projects in fiscal years 1993, 1994 and 1995 are set forth in Table 1-1.

Second, both state and federal funds for Alaska sanitation projects come from a variety of agencies. Work in most villages listed in the report is supported by some combination of funds from these various agencies and may have been allocated in as many as three or four different years. To accommodate this circumstance, we have included appropriations and allocations from as far back as 1990 on the federal side, and from 1992 on the state side. It should be noted that these inclusions are not exhaustive. An attempt was made to include those sources which were relevant to understanding the overall funding pattern for on-going projects. Judgments were made based on analysis of the available data. We are confident the resulting tables fairly represent the funding picture.

This report focuses on rural sanitation projects. The second specification of the governing agreement calls for identification of projects using an open competitive bidding process as opposed to force account labor and government project management. Since this is not considered a problem in the urban areas of the state, this report ignores recent funding for similar projects in those areas. For example, while we have included 1995 Municipal Capital Matching Grants money (AS 37.06.010) in Table 1-3 for all rural projects, \$4,902,600 appropriated for the Municipality of Anchorage and \$459,500 appropriated for the City of Fairbanks are not listed.

Analysis of actual expenditures for specific projects was limited by the lack of data available from government agencies. Auditing of individual VSW projects is performed by the Anchorage CPA firm, Coopers and Lybrand. While some cost analysis reports were found in VSW files during a physical search, they were not recent enough nor sufficiently plentiful to provide much useful information. Full accounting or representative audit reports can be purchased from Coopers and Lybrand should more detailed information be deemed necessary.

1.2. Methodology

Research for this report included three phases. Examination of funding documents, including state capital appropriation legislation for the past three years and other federal, state and private reports, comprised phase one. During phase two, interviews were conducted with state and federal officials in seven different agencies. The final phase involved detailed comparisons of data compiled from various sources and the construction of a database to produce the tables contained in this report.

2. Rural Alaska Sanitation

2.1. Indian Health Services

The principal federal agency concerned with rural Alaska sanitation issues is the Indian Health Service, operating under the authority of Public Law 86-121, the Indian Sanitation Facilities Construction Act of 1959. As of May, 1994, more than \$350 million has been provided for rural Alaska sanitation projects through IHS.

In Alaska, the Alaska Area Native Health Service, a division of IHS, handles rural sanitation issues through its Office of Environmental Health and Engineering (OEH&E). Mr. Jim Crum is director of OEH&E. He has a staff of 35-40 engineers who provide design and construction expertise to the villages served by IHS.

2.2. Village Safe Water

The Alaska Department of Environmental Conservation, Village Safe Water (VSW) program is the state counterpart to OEH&E. VSW currently has 58 active projects in 32 villages around the state. These are listed in Table 2-1. VSW is staffed by 12 people and is funded by annual appropriations from the legislature. Mr. Greg Capito is director of VSW. Capital appropriations for VSW projects in FY 95 were \$23,288,600, including \$2.5 million in pass-through money from the Environmental Protection Agency's Indian set-aside program. VSW appropriations for fiscal years 1993 through 1995 are shown in Table 1-1.

IHS has provided more than \$350 mil. for rural Alaska sanitation

2.3. Cooperative Efforts

A high level of cooperation exists between the federal and state efforts in rural sanitation. In 1993, VSW and IHS worked jointly on 17 projects. In addition to pooled funding, the two agencies will often cooperate on planning, design and project management. Since restrictions on federal funds often prevent IHS from spending federal dollars on certain aspects of a particular village need, joint funding is welcomed by the villages and has led to more satisfactory projects than might otherwise be possible.

Other funds for rural sanitation projects come from the U.S. Department of Housing and Urban Development (HUD), the Environmental Protection Agency (EPA), Farmers Home Administration (FmHA), Alaska Department of Community and Regional Affairs (DCRA), Alaska Department of Administration (DOA), and the Department of Transportation and Public Facilities (DOTPF). Recent grants from these agencies are shown in Table 1-2 (federal agencies) and Table 1-3 (state agencies).

Additionally, three projects received moneys from other sources which are reflected in the village-by-village summary (Table 1-4), but are not shown in Tables 1-2 and 1-3. In 1994, Thome Bay received \$45,500 from the U.S. Forest Service for use in a sewer and solid waste project. Also in 1994, the northwest Arctic village of Point Lay received \$133,100 from the state through the Department of Education for Cully School drinking water. Finally, the community of Diomedes received \$750,000 in payment for a private insurance claim on a failed water supply. While this is technically not a public money source, it is included in the village table, since it was used in the reconstruction of the water system at Diomedes.

3. Findings

3.1 Construction Approach

To a large extent, the decision to build by force account in these village projects seems predetermined. Both the federal and state laws stipulate that preference for local hire will be given. Alaska Statute 46.07.040(b) stipulates that "workers from the village in which the facility is being constructed shall be utilized to the maximum extent feasible." Federal agencies are even more constrained. Public Law 93-638, the Indian Self-Determination Act, anticipates that federal agencies will deal directly with tribal units and assist them in operating as self-determining, self-governing entities.

Federal money for sanitation projects goes to the village as a grant. The federal agency then provides technical assistance and project management under a memorandum of agreement with the local council. In some instances, the council may hire a private consultant to manage the project and may contract with one or more construction firms to perform some of the work. In the main, however, the majority of the construction labor comes from local people hired under "time and materials" type arrangements.

VSW Projects FY93-94

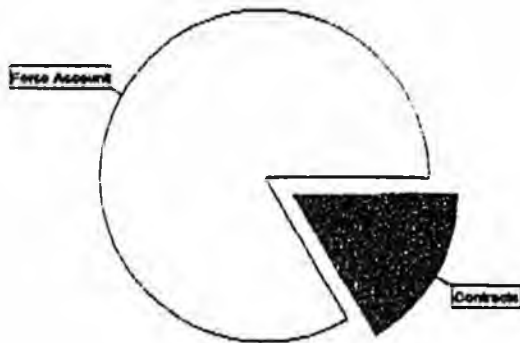


Figure 1

As a comparison of Tables 1-1; 2-1; and 2-1-1 will readily indicate, the predominant approach to building village water and sewer projects is force account. Of \$48.1 million allocated to VSW projects in FY93-94, only \$8.3 million was used to fund projects that were subject to competitive bidding.

Another \$1.2 million went to contracts for portions of projects, such as well-drilling, soil sampling, electrical equipment

installation, and pipe manufacturing. Table 2-1-2 shows contractor constructed projects for the period. It will be noted that a significant portion of the contract money comes from projects located on the highway system or closely connected with it, such as Whittier. If these contracts are eliminated, the total drops to \$4.8 million. If the number is further reduced by the two Mountain Point projects which are located near Ketchikan and accessed by the Alaska Marine Highway system, the total is only \$2.49 million, a mere 5 percent! Truly the general contractor is not getting a significant slice of the rural sanitation business.

4. Strategies

4.1. A Regulatory Approach

What strategies are most likely to lead the general contractor community to a significant increase in this market share? One approach that suggests itself is to lobby for a change in the relationship between federal and state government on the one hand and local governments on the other. Since significant numbers of public dollars are flowing into these rural sanitation projects annually (currently between \$60 and \$80 million) an argument could be made that more public accountability would result from a more public process (i.e. more open bidding, fewer negotiated contracts and force account arrangements).

One problem with this strategy is that it runs counter to the strong federal trend to give more self-determination power to rural tribes and villages. It also is contrary to a principle which is the basis of VSW's relationship with rural villages. By both jurisprudential and economic law, the argument runs, with ownership comes responsibility. The premise is that the state or federal money is given to the village, the village builds the project and is the recipient of a transfer of ownership and then becomes accountable for operation and maintenance of the facility. For this to work properly, of course, it must be *de facto* as well as *de jure*, and there must be increasing pressure for financial accountability on the part of the villages for O&M, even for construction which currently is prohibited by state law.

4.2. A Marketing Strategy

Another approach which is suggested by the data would be to commission a marketing study to determine how to sell the expertise and services of the general contracting community to the villages. Unless federal law is changed, and along with it thirty plus years of momentum, village sovereignty can be expected to become stronger over the next decade. The village councils will likely be in the driver's seat with respect to the expenditure of transfer payments. Now seems a prudent time for the general contractors to position themselves for a larger share of what may be a growing market in public works projects in rural Alaska. One study is calling for \$125 million annually to go into rural sanitation projects.

Among potential tactics in such a marketing strategy, two seem worthy of mention at the close of this report. First, the AGC should capitalize on its greatest strength which is accumulated knowledge of proper construction techniques and practices. This can be sold to the village councils as in their best interest to tap for the long-term benefit of well-built facilities. Second AGC firms should consider preparing a package of contract options which include villages in the planned labor pool. In this way, the villages get the best of both worlds, and the construction trade can capture more of the work which is currently closed to it.

Table 1-1
VSW Appropriations FY93 - FY95

Village name	FY	Project Description	Phase	Amount (in thousands)
Akiak	93	sewage lagoon, backwash disposal		\$500.00
Alakanuk	93	w&s master plan and design	I	\$500.00
Alakanuk	94	w&s system design and construction	II	\$500.00
Alakanuk	95	sanitation facilities design and construction	III	\$1,000.00
Allakaket	95	w&ww system design and construction		\$333.00
Anaktuvuk Pass	95	w&s system construction	II	\$750.00
Anchor Point	93	community water system		\$289.00
Angoon	95	Chatham SD sewer study and design		\$121.10
Anvik	94	w&s system design and construction		\$200.00
Anvik	95	w&s system construction		\$575.00
Beaver	94	water and solid waste study		\$35.00
Beaver	95	water supply and solid waste disposal improvements		\$295.00
Bethel	93	Bethel Heights sewer		\$800.00
Bethel	93	City subdivision piped water		\$200.00
Bethel	93	City subdivision wastewater		\$125.00
Bethel	93	Kilbuck wastewater pumping		\$125.00
Bethel	93	main wastewater pumpstation		\$140.00
Bethel	94	sewage lagoon construction		\$1,000.00
Bethel	95	Bethel Heights & Tundra N. w&s extension		\$25.00
Bethel	95	City subdiv. w treatment plant design and construc		\$800.00
Bethel	95	Kilbuck and Main washeteria lift station design		\$50.00
Bethel	95	original townsite design		\$150.00
Bethel	95	sewage lagoon completion		\$500.00
Buckland	94	w&s system planning, design and construction		\$870.00
Chevak	93	watering point, landfill, honeybucket construction	I	\$551.00
Chevak	94	watering point, landfill, honeybucket construction	II	\$602.00
Chevak	95	w&s system design and construction	III	\$1,700.00
Chignik	93	sewer upgrade, solid waste		\$180.00
Chignik Lake	94	landfill relocation design and construction		\$245.90
Cold Bay	95	w&s replacement		\$992.00
Crooked Creek	94	w&s system design and construction		\$450.00
Deering	94	w&s system construction	II	\$1,290.00
Deering	95	w&s system design and construction	III	\$850.00
Elim	93	sewage outfall line extension		\$431.00
Emmonak	93	w&s project		\$1,500.00
Gambell	94	w&s system expansion		\$970.00
Glennallen	93	sewer system expansion		\$800.00
Golovin	94	water source transmission line construction		\$972.50
Healy Lake	95	sanitation facilities construction		\$250.00
Holy Cross	94	sanitation and lagoon design and construction		\$500.00
Hooper Bay	94	w&s system construction	III	\$1,100.00
Huslia	94	w&s design and construction		\$350.00
Kaitag	93	w&s extension	I	\$342.00
Kaitag	94	w&s system design and construction	II	\$846.00
Kasaan	94	dam site and treatment plant construction		\$500.00
Kiana	93	w&s installation		\$230.00
Kipnuk	93	washeteria construction		\$800.00
Kipnuk	94	water source construction		\$800.00
Kivalina	94	w&s system construction		\$420.00
Kobuk	94	w&s&sw master planning and design		\$180.00
Kongiganak	93	w&s improvements		\$500.00
Kotzebue	93	sewage collection system		\$1,293.00
Kotzebue	93	solid waste study		\$150.00
Kotzebue	94	solid waste project final design and construction		\$1,850.00
Kotzebue	95	collection and distribution facilities upgrade		\$795.10
Koyuk	93	solid waste disposal facility		\$400.00

VSW Appropriations FY93 - FY95

Village name	FY	Project Description	Phase	Amount (in thousands)
Koyuk	94	sanitation facilities construction	III	\$600.00
Koyukuk	94	landfill construction		\$130.00
Manley	94	washeteria, water study		\$35.00
Marshall	94	solid waste site relocation		\$430.00
McGrath	93	waste disposal improvements		\$600.00
Mekoryuk	93	sewage haul project		\$170.00
Mekoryuk	95	w&s system construction		\$659.50
Mountain Point	93	w&s system construction	III	\$1,800.00
Mountain Point	94	w&s system construction	IV	\$926.00
Mountain Point	95	w&s system completion		\$1,460.00
Mountain Village	93	solid waste project		\$81.70
Mountain Village	94	w&s system improvements		\$551.00
Napakiaik	95	flush tank and haul ww design and construction		\$270.00
Nikolaevsk	94	village community water system		\$342.00
Nikolaevsk	95	community water system design and construction		\$1,200.00
Nikolai	93	w&s improvements		\$80.00
Nikolai	94	HUD Homes sewer system construction		\$340.00
Noorvik	93	w&s system upgrade		\$1,150.00
Noorvik	94	utilidor, landfill, utility bldg construction		\$879.00
Noorvik	95	w&s system extension		\$94.00
Northway	95	washeteria project completion		\$326.00
Northwest Arctic B	93	local utility matching program		\$480.00
Nulato	93	w&s system construction	III	\$2,685.00
Nulato	94	w&s system construction	IV	\$810.00
Nulato	95	w&s system construction	V	\$1,250.00
Nunapitchuk	94	w&s system design and construction		\$750.00
Point Lay	95	w&s system construction		\$750.00
Port Lions	93	w&s project		\$250.00
Port Lions	94	solid waste disposal		\$100.00
Saint Mary's	94	w&s system design and construction		\$500.00
Saint Michael	94	w&s system design and construction		\$500.00
Saint Michael	95	utility upgrade		\$539.00
Saint Paul	94	water system replacement, reconstruction	III	\$1,000.00
Saint Paul	95	landfill and incinerator construction		\$428.50
Savoonga	94	sanitation facilities construction		\$382.00
Savoonga	95	piped water and sewer design and construction		\$400.00
Selawik	94	w&s system construction	II	\$480.00
Selawik	95	w&s system design and construction	II	\$310.00
Seldovia	94	w&ww system design and construction		\$985.00
Shaktolik	93	maintenance equipment		\$210.00
Shishmaref	95	w&s system design and construction		\$175.00
South Naknek	95	w&s system design and construction		\$600.00
Stevens Village	94	dump site study		\$35.00
Talkeetna	93	eastside w&s construction		\$1,200.00
Tanana	95	sanitation facilities design and construction		\$338.80
Thorne Bay	93	sewerage system and solid waste		\$1,250.00
Thorne Bay	94	sewer replacement		\$655.00
Thorne Bay	95	sewer and solid waste project completion	V	\$75.00
Togiak	94	sewer system design and construction	II	\$348.00
Toksook Bay	93	water system improvement		\$150.00
Tununak	95	sanitation improvements	III	\$595.70
Unalakleet	93	airport utilities project		\$1,366.00
Unalakleet	95	water treatment improvements		\$239.40
Wainwright	95	w&s system construction	III	\$750.00
Whittier	93	community water system	I	\$1,500.00
Whittier	94	water system reconstruction	II	\$849.00
Whittier	95	water system improvements	III	\$492.50
Yakutat	94	w&ww system design and construction		\$449.90

Table 1-2

Federal Funding Sources

Village name	Year	IHS	HUD	EPA	Farmers Home	Total
Akiak	94	\$263.00				\$263.00
Akutan	93		\$250.00			\$250.00
Aleknagik Island	93	\$262.00				\$262.00
Allakaket	93	\$750.00				\$750.00
Ambler	84	\$100.00				\$100.00
Anaktuvik Pass	93	\$412.00				\$412.00
Anvik	93	\$100.00				\$100.00
Anvik	94	\$625.00			\$775.00	\$1,400.00
Atmautluak	94			\$1,125.00		\$1,125.00
Bethel	93	\$125.00			\$1,000.00	\$1,125.00
Buckland	93	\$578.00	\$225.00			\$803.00
Chalkyitsik	94	\$167.00				\$167.00
Chignik Lagoon	94	\$100.00				\$100.00
Chignik Lake	93	\$50.00				\$50.00
Clarks Point	84	\$136.00				\$136.00
Cook Inlet Tribal	84	\$404.00				\$404.00
Copper River sctrd	93	\$275.00				\$275.00
Copper River sctrd	94	\$222.00				\$222.00
Craig	91	\$790.00				\$790.00
Crooked Creek	92	\$2,381.00		\$600.00		\$2,981.00
Diomedea	92	\$562.50	\$200.00			\$762.50
Dot Lake	93		\$422.50			\$422.50
Eek	92		\$400.00			\$400.00
Eek	93	\$1,447.00				\$1,447.00
Eek	94			\$600.00		\$600.00
Elim	93	\$431.00				\$431.00
Fairbanks sctrd	93	\$200.00				\$200.00
Galena	93	\$1,070.00				\$1,070.00
Gambell	93	\$1,150.00				\$1,150.00
Golovin	92	\$461.30				\$461.30
Goodnews Bay	92	\$575.00				\$575.00
Healy Lake	93	\$250.00				\$250.00
Healy Lake	94				\$250.00	\$250.00
Holy Cross	94	\$340.00				\$340.00
Igiugig	92	\$845.00				\$845.00
Kake	94	\$350.00				\$350.00
Kaltag	92	\$810.40				\$810.40
Kaltag	93	\$443.00				\$443.00
Kaltag	93	\$980.00				\$980.00
Kasaan	93	\$75.00				\$75.00
Kenaitze	93	\$172.00				\$172.00
Kiana	93			\$883.00		\$883.00
Kipnuk	90	\$1,285.00				\$1,285.00
Kipnuk	92	\$1,362.80		\$502.80		\$1,865.60
Kipnuk	93	\$140.00				\$140.00
Kivalina	92	\$1,030.00				\$1,030.00
Kivalina	93	\$675.00				\$675.00
Klawock	93	\$615.00				\$615.00
Klukwan	94	\$102.00				\$102.00
Kobuk	94		\$170.00			\$170.00
Kokhanok	92	\$953.00		\$242.00		\$1,195.00
Kokhanok	93	\$1,011.00	\$181.50			\$1,192.50
Kokhanok	94			\$1,040.00		\$1,040.00

Federal Funding Sources

Village name	Year	IHS	HUD	EPA	Farmers Home	Total
Koliganak	92	\$615.00				\$615.00
Koliganak	93	\$180.00				\$180.00
Kotzebue	93	\$288.00	\$300.00			\$588.00
Kotzebue	94		\$400.00		\$795.00	\$1,195.00
Koyuk	91	\$3,050.00				\$3,050.00
Koyuk	92	\$1,210.00				\$1,210.00
Koyuk	93	\$810.00				\$810.00
Kuskokwim HIP sctr	93	\$170.00				\$170.00
Kuskokwim HIP sctr	94	\$68.00				\$68.00
Kwethluk	92	\$130.00				\$130.00
Kwethluk	94			\$93.00		\$93.00
Kwigillingok	91	\$288.00				\$288.00
Kwigillingok	94			\$600.00		\$600.00
Larsen Bay	91	\$353.00				\$353.00
Lower Kalskag	90	\$850.00				\$850.00
McGrath	91	\$100.00				\$100.00
Mekoryuk	92	\$100.00				\$100.00
Metlakatla	92		\$700.00			\$700.00
Metlakatla	93	\$499.00				\$499.00
Napakiaak	93	\$920.00				\$920.00
Napakiaak	94				\$270.00	\$270.00
Nelson Lagoon	92	\$200.00				\$200.00
New Stuyahok	91	\$475.00				\$475.00
Nikolai	92		\$200.00			\$200.00
Nikolai	94	\$100.00				\$100.00
Ninilchik	93	\$128.00				\$128.00
Noatak	93		\$717.00			\$717.00
Noatak (FEMA)	92	\$3,897.48				\$3,897.48
Nome	91	\$229.00				\$229.00
Nome	92	\$1,044.00				\$1,044.00
Nome	93	\$1,200.00				\$1,200.00
Nondalton	93	\$100.00				\$100.00
Nondalton	94	\$70.00				\$70.00
Noorvik	92	\$3,079.00				\$3,079.00
Noorvik	93	\$350.00		\$700.00		\$1,050.00
Nulato	92	\$72.00		\$1,610.00		\$1,682.00
Nulato	93	\$330.00				\$330.00
Ouzinkie	91	\$875.00				\$875.00
Pedro Bay	92	\$240.00				\$240.00
Ferryville	91	\$200.00				\$200.00
Quinhagak	93		\$100.00			\$100.00
Quinhagak	94	\$520.00				\$520.00
Russian Mission	91	\$522.00				\$522.00
Saint Mary's	92	\$1,400.00	\$950.00			\$2,350.00
Saint Mary's	94	\$75.00				\$75.00
Saint Michael	92		\$370.00			\$370.00
Saint Michael	94		\$370.00			\$370.00
Sand Point	91	\$355.00				\$355.00
Savoonga	91	\$915.00				\$915.00
Savoonga	92	\$800.00				\$800.00
Savoonga	93	\$700.00				\$700.00
Savoonga	94	\$50.00				\$50.00
Saxman	93	\$50.00	\$81.00			\$131.00
Scammon Bay	92	\$937.00				\$937.00
Selawik	90	\$469.00				\$469.00

Federal Funding Sources

Village name	Year	IHS	HUD	EPA	Farmers Home	Total
Selawik	91	\$956.00				\$956.00
Selawik	93		\$460.00		\$96.00	\$556.00
Selawik	94	\$463.00				\$463.00
Seldovia	94	\$204.00				\$204.00
Shageluk	94	\$305.00				\$305.00
Shaktolik	90	\$150.00				\$150.00
Sheldon Point	92		\$225.00			\$225.00
Shishmaref	92	\$350.00				\$350.00
South Naknek	93	\$555.00				\$555.00
South Naknek	94				\$600.00	\$600.00
Stebbins	92		\$500.00			\$500.00
Stebbins	94		\$500.00			\$500.00
Stevens Village	91	\$292.00				\$292.00
Takotna	91	\$250.00				\$250.00
Tanana	90	\$350.00				\$350.00
Tanana	93	\$90.00				\$90.00
Teller	92	\$40.00				\$40.00
Togiak	91	\$1,200.00				\$1,200.00
Togiak	93	\$200.00				\$200.00
Toksook Bay	92	\$880.00				\$880.00
Toksook Bay	93		\$444.87			\$444.87
Tununak	92			\$600.00		\$600.00
Twin Hills	93	\$200.00				\$200.00
Unalaska	93	\$98.00				\$98.00
Upper Kalskag	91			\$800.00		\$800.00
Venetie	91	\$850.00				\$850.00
Venetie	94	\$100.00				\$100.00
Wainwright	93	\$350.00				\$350.00
Wales	92	\$15.00				\$15.00
White Mountain	91	\$1,291.00				\$1,291.00
White Mountain	92	\$341.00				\$341.00
Yakutat	92	\$290.00				\$290.00

Table 1-3
Other State Funding Sources

Village name	FY	DOA	DCRA	DOTPF	DEC	Total
Akutan	93	\$80.00				\$80.00
Akutan	94	\$25.00				\$25.00
Alakanuk	93	\$80.00				\$80.00
Anaktuvuk Pass	93	\$150.00				\$150.00
Angoon	84	\$30.00				\$30.00
Aniak	93		\$100.00			\$100.00
Anvik	95	\$25.00				\$25.00
Atka	94	\$25.00				\$25.00
Atka	95	\$25.00				\$25.00
Bethel	93		\$200.00			\$200.00
Birch Creek	95		\$25.00			\$25.00
Brevig Mission	94	\$10.90				\$10.90
Buckland	92			\$650.00		\$650.00
Chalkyitsik	95		\$25.00			\$25.00
Chignik Lake	94		\$100.00			\$100.00
Chitina	95		\$25.00			\$25.00
Cold Bay	94	\$75.00				\$75.00
Cordova	94				\$600.00	\$600.00
Cordova	95	\$105.60			\$100.00	\$205.60
Craig	94	\$120.00				\$120.00
Craig	95	\$54.90				\$54.90
Diomede	85	\$25.00				\$25.00
Dot Lake	94		\$25.00			\$25.00
Eagle Village	94		\$23.75			\$23.75
Eagle Village	85		\$26.30			\$26.30
Ekwok	95	\$43.70			\$30.00	\$73.70
Evansville	95				\$300.00	\$300.00
Fort Yukon	95	\$29.60				\$29.60
Galena	92	\$522.00				\$522.00
Galena	94	\$175.00				\$175.00
Gambell	94	\$25.00				\$25.00
Gambell	95	\$25.00				\$25.00
Glennallen	93		\$20.00			\$20.00
Golovin	92			\$469.00		\$469.00
Godnews Bay	92	\$50.00				\$50.00
Healy Lake	93		\$60.00			\$60.00
Homer	95	\$24.30				\$24.30
Kake	93				\$501.00	\$501.00
Kake	94	\$500.00				\$500.00
Kake	85	\$28.90				\$28.90
Kaktovik	93				\$500.00	\$500.00
Kaktovik	94		\$235.00			\$235.00
Kaltag	92	\$15.00				\$15.00
Kaltag	95	\$25.00				\$25.00
Karluk	84				\$75.00	\$75.00
King Cove	95				\$2,750.00	\$2,750.00
King Salmon	83				\$1,702.30	\$1,702.30
Klawock	83	\$50.00	\$175.00		\$1,600.00	\$1,825.00
Klawock	94	\$10.00				\$10.00
Kokhanok	92			\$538.00		\$538.00
Kotzebue	94			\$40.40		\$40.40
Kwethluk	83	\$235.00				\$235.00
Kwethluk	95	\$15.00				\$15.00
Larsen Bay	94	\$25.00				\$25.00
Larsen Bay	95	\$25.00				\$25.00

Other State Funding Sources

Village name	FY	DOA	DCRA	DOTF	DEC	Total
Lower Kalskag	95	\$25.00				\$25.00
Manley	94		\$25.00			\$25.00
Manley	95		\$25.00			\$25.00
Marshall	93		\$200.00			\$200.00
Marshall	94	\$15.00				\$15.00
Marshall	95	\$25.00				\$25.00
McGrath	94	\$75.00				\$75.00
Mekoryuk	93		\$20.00			\$20.00
Metlakatla	93	\$500.00				\$500.00
Metlakatla	94	\$85.00	\$23.77			\$108.77
Napaskiak	94	\$10.00	\$47.00			\$57.00
Nenana	94	\$69.00				\$69.00
New Stuyahok	92			\$314.00	\$527.00	\$841.00
Newhalen	93	\$80.00				\$80.00
Newhalen	94	\$20.80				\$20.80
Newtok	94	\$50.00				\$50.00
Nightmute	82		\$75.00			\$75.00
Nome	93	\$700.00				\$700.00
Nome	94	\$400.00				\$400.00
Nome	95	\$158.00				\$158.00
Noorvik	94			\$33.20		\$33.20
Northway	92		\$260.00			\$260.00
Northway	95		\$25.00			\$25.00
Nuiqsut	93	\$81.90				\$81.90
Nunapitchuk	93		\$62.80			\$62.80
Pelican	92	\$402.00				\$402.00
Pilot Station	94	\$25.00				\$25.00
Pilot Station	95	\$25.00				\$25.00
Pitka's Point	94		\$40.00			\$40.00
Point Baker	94		\$25.00			\$25.00
Point Baker	95		\$25.00			\$25.00
Port Alexander	94	\$80.00			\$30.00	\$110.00
Port Alexander	85	\$25.00				\$25.00
Port Lions	95	\$23.70				\$23.70
Quinhagak	85	\$25.00				\$25.00
Rampart	95		\$25.00			\$25.00
Ruby	93		\$51.17			\$51.17
Russian Mission	92	\$80.00				\$80.00
Saint George	93		\$85.00			\$85.00
Saint Michael	94	\$40.00				\$40.00
Saint Paul	84	\$1,800.00				\$1,800.00
Saint Paul	95	\$31.00				\$31.00
Savoonga	92			\$400.00		\$400.00
Saxman	95	\$25.00				\$25.00
Scammon Bay	83	\$100.00				\$100.00
Seldovia	93	\$250.00				\$250.00
Seldovia	94	\$100.00				\$100.00
Seldovia	85	\$25.00				\$25.00
Sheldon Point	93	\$50.00				\$50.00
Sheldon Point	94	\$40.00				\$40.00
Shishmaref	95	\$25.00				\$25.00
Shungnak	93				\$75.00	\$75.00
Stebbins	94	\$12.50				\$12.50
Stony River	93				\$500.00	\$500.00
Tanacross	95		\$25.00			\$25.00
Tanana	92	\$100.00				\$100.00
Tanana	93	\$150.00				\$150.00
Teller	94			\$352.80		\$352.80

Other State Funding Sources

Village name	FY	DOA	DCRA	DOTPF	DEC	Total
Teller	95			\$350.00		\$350.00
Tetlin	95		\$25.00			\$25.00
Thorne Bay	94	\$23.75				\$23.75
Tok	94		\$25.00			\$25.00
Tununak	94		\$50.00			\$50.00
Venetie	93		\$100.00			\$100.00
Wiseman	94		\$25.00			\$25.00
Wrangell	95	\$99.80				\$99.80
Yakutat	94	\$30.41				\$30.41
Yakutat	95	\$27.30				\$27.30

MEMORANDUM

State of Alaska

TO: Honorable Richard A. Nevé
Commissioner
Department of Environmental
Conservation


DATE: May 9, 1983

FILE NO: 366-573-83

TELEPHONE NO: 465-3603

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Title 36

By: 
Gary I. Amendola
Assistant Attorney General
Human Services-Juneau

You have requested an opinion regarding the scope of Title 36 and its requirement that prevailing wages be paid on public works projects. Specifically you ask whether non-profit entities which receive grants under AS 37.05.316 or AS 37.05.317 can use "force account labor" to complete the public works project and thus avoid the payment of prevailing wages, as that term is used in AS 36.05.010 et seq.

On March 11, 1983, Deputy Attorney General Ron Lorenson issued an opinion regarding the application of the Little Davis-Bacon Act (AS 36.05) to designated grantees under AS 37.05.316 and 317. Under AS 37.05.317(2), nonprofit entities are permitted to receive and administer grants for public construction. This opinion addresses the related question which arose because of the issuance of that opinion.

A short answer to your question is yes.

The federal government has long recognized that where the government uses its own employees to perform public construction, the Davis-Bacon Act, upon which our "Little Davis Bacon Act" is modelled, does not require the payment of prevailing wages. See Veader v. Bay State Dredging and Contracting Company, 79 F. Supp. 837 (D.C. Mass. 1948); see also, Davis Bacon Act Field Operations Handbook, dated May 5, 1978 at page 15c14.

The 1978 informal Attorney General's opinion written by then Assistant Attorney General Ron Lorenson extended that rationale to municipal governments and by implication ratified that state governments could also use the "force account" system.

Without the existence of a contractual relationship between the non-profit entity and some third party doing the

Honorable Richard A. Nevé
Commissioner
366-573-83

May 9, 1983
Page 2

work. Title 36 simply does not apply. The legislation in Title 36 is written in terms of contractors, subcontractors, and contracts. AS 36.05.010 states in relevant part:

A contractor or subcontractor who performs work on public construction in the state, as defined by AS 36.95.010(3), shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done

...

Public construction, in turn, is defined at AS 36.95.010(3) as "the onsite field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board with respect to an educational facility under AS 14.08.161." (emphasis supplied).

We can perceive of no reason to distinguish between a nonprofit entity's use of "force account labor" and a state's or municipality's use of "force account labor" to complete similar construction projects.

GIA:bap

MEMORANDUM

State of Alaska

TO: Robert Bacolas, Director
Division of Labor Standards & Safety
Department of Labor

DATE: December 30, 1985

FILE NO: 166-229-86

TELEPHONE NO: 276-3550

FROM: Harold M. Brown
Attorney General

SUBJECT: Application of AS 36.05
to contracts for
weatherizing
low income homes

By: *JHD*
Jan Hart DeYoung
Assistant Attorney General

You have asked whether the requirement to pay prevailing wages in the "Little Davis-Bacon Act," AS 36.05.010--36.05.125, applies to contracts to weatherize privately owned, low income family homes. The answer is that the Act should apply if the state or a political subdivision of the state, such as the North Slope Borough, awards the contract. If the contract were funded by a grant made under AS 37.05.316, it probably would not be covered by the Act.

The facts prompting this question follow. One of the duties of the Department of Community and Regional Affairs (C&RA) is to plan programs for energy development, including weatherization, to meet community needs. AS 44.47.050(18). C&RA has adopted regulations establishing a low-income residential energy conservation program. 19 AAC 69.010--19 AAC 69.190. The program is funded through federal grants and state general funds.^{1/} The program is implemented through the award of contracts to political subdivisions, nonprofit corporations, and occasionally, private businesses. See 19 AAC 69.050. The contract awarded is the state's standard agreement for professional services contracts. The contract does not state whether prevailing wages under AS 36.05.010 must be paid by the contractor.

C&RA apparently has assumed that the requirement does not apply to professional services contracts. Ordinarily this is

1/ The federal funds come from two sources: a grant from the Department of Energy under 10 C.F.R. Part 1005 (1985) and a grant to the Department of Health and Social Services that is transferred to C&RA by reimbursable services agreement. The sources of state funds for the program in 1985 were the operating budget and the capital projects budget. Sec. 26, ch. 98, SLA 1985, p. 99, l. 17; Sec. 3, ch. 96, SLA 1985, p. 23, l. 6.

This memorandum does not address the effect of Federal regulations, if any, that would conflict with the application of "Little Davis-Bacon" scale wages.

Robert Bacolas
Division of Labor Standards & Safety
166-229-86

December 30, 1985
Page 2

true. Under AS 36.05.010, the prevailing wage requirement applies only to public construction,^{2/} and professional services contracts do not usually cover construction work. AS 36.98.080(2) defines "professional services" as predominantly intellectual in character:

Professional, technical, or consultant's services that are predominantly intellectual in character and that

- (A) include analysis, evaluation, prediction, planning, or recommendation; and
- (B) result in the production of a report or the completion of a task.

In contrast, "public construction" is predominantly physical in character. It is defined in AS 36.95.010(3) as follows:

"Public construction" or "public works" means the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board.

However, the weatherization "professional services" contracts do include some construction work. The description of the work in the weatherization contracts includes assessing energy needs of low-income applicants, distributing educational literature, inspection, recordkeeping, and most important, "ensuring" installation of eligible energy conservation materials. Approved conservation materials include caulk and weatherstripping, furnace modifications, thermostats, insulation, skirting, ventilation, vapor barriers, vestibules, heat exchangers, etc.

2/ AS 36.05.010 provides, in part, as follows:

A contractor or subcontractor who performs work on public construction in the state, as defined by AS 36.95.010(3), shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done. . . .

ALASKA ATTORNEY GENERAL
DIVISION OF LABOR STANDARDS & SAFETY
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166-229-86

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Page 3

Actual installation work certainly qualifies as "rehabilitation, alteration, extension, or repair . . . of buildings" in AS 36.95.010(3). The construction work in the contract, moreover, is not insignificant. The installation of energy-saving materials appears to be the primary purpose of the contracts. The fact that the contract is called a professional services contract should not determine whether the prevailing wage requirement applies. The issue is whether the contract is to perform work covered under the definition of public construction. We conclude that these weatherization contracts do cover such work.

This determination does not end the inquiry. The construction work must be public construction for the prevailing wage requirement to apply. In AS 36.95.010(3), to be "public" construction, the work must be "under contract for the state, a political subdivision of the state or a regional school board." The professional services contracts awarded by C&RA are "under contract for the state."

We understand that these contracts can be awarded to political subdivisions, such as the Municipality of Anchorage and the North Slope Borough, nonprofit corporations, such as Rural Alaska Community Action Program (Rural CAP), and private businesses. A political subdivision is not required to pay workers prevailing wages if the work is performed by force account, i.e., by employees of the political subdivision. If the political subdivision, however, contracts the work, prevailing wages must be paid for all labor performed under the contract.^{3/}

^{3/} If the weatherization program had been a designated grant to a named recipient under AS 37.05.316, the result would be different. We previously have opined that designated grants to named recipients under AS 37.05.316 are covered by AS 36.05.010 only if the project involves the undertaking or provision of traditional government facilities, services, or activities. 1983 p. Att'y Gen. at 2 (Mar. 11; 366-267-83). The reason why these grants are handled differently under AS 36.05.010 is that a nonprofit corporation, rather than a state agency or political subdivision, has primary responsibility for construction funded by the grant. The state, through C&RA, only retains minor oversight and accounting responsibility, and upon completion of the project, the state is not obligated to maintain or operate the facility. Under these grants any contract for construction awarded by the nonprofit corporation. The state or political subdivision, therefore, is not a party to the actual construction (Footnote Continued)

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Division of Labor Standards & Safety
166-229-36

December 30, 1985
Page 4

In summary, the low-income residential energy conservation program as it currently operates, through contracts awarded by C&RA, is subject to the prevailing wage requirement in AS 36.05.010, unless the work is performed by employees of a state agency or a political subdivision. Nonprofit corporations and private businesses, when awarded a contract for weatherization by C&RA or a political subdivision, must pay workers the prevailing rates. Major changes in the program would be needed to avoid the prevailing wage requirement in AS 36.05.010.

JHD:jg

cc: Janice Brewer
Donald R. Wilson

(Footnote Continued)

contract. AS 36.05.010 however, is not limited to projects under contract with the state or its political subdivisions. 1983 Op. Att'y Gen. at 4. The Alaska Supreme Court rejected this argument, extending the prevailing wage requirement to a timber sales contract, issued in conjunction with the construction of a dam to be built with public funds, in Sitka v. Construction and General Laborers Local 942, 644 P.2d 227 (Alaska 1982). Therefore, we have concluded that the prevailing wage requirement should apply if the project serves a traditional government function to avoid circumvention of the prevailing wage requirement through use of these grants and in recognition of the broad application given AS 36.05.010 in Sitka v. Construction and General Laborers Local 942.

Thus, a grant to a named recipient from the legislature to perform weatherization work would be covered only if weatherization of a privately owned home could be said to constitute a traditional government service. While the weatherization program serves a general public interest, for example in conserving fuel, the primary benefit is personal to the residents of the home who will reduce expenses and will own the weatherization materials. Moreover, historically, government has not provided this service. The state program began in 1983, and federal funds for weatherization have been available only since 1977. For these reasons we believe that weatherization is not a traditional government service. Thus, if the weatherization program were funded by a grant under AS 37.05.316 to a named recipient who was not the state or a political subdivision of the state, the prevailing wage requirement in AS 36.05.010 should not apply.

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 19, 1983

Hon. John C. Sackett
Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Applicability of AS 36.-
05.010 -- 36.05.110 to
forced-accounting
Our file no.: 366-554-83

Dear Senator Sackett:

This letter responds to your inquiry regarding whether the prevailing wage stipulations required under the Little Davis-Bacon Act, AS 36.05.010 -- 36.05.110, apply where a municipality or a Rural Education Attendance Area (REAA) use their own employees to perform work on a public works project. It is our view that municipalities or REAAs which use their own employees on a public works project, a practice commonly referred to as "forced-accounting," are not required to pay prevailing wages. Where state funds are involved, however, other statutory provisions may limit the instances when forced-accounting is appropriate.

The prevailing wage requirement is set forth in AS 36.-05.010, which provides in pertinent part:

WAGE RATES ON PUBLIC CONSTRUCTION. A contractor or subcontractor who performs work on public construction in the state, as defined by AS 36.95.010(3), shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done.

The statute plainly applies only to contractor or subcontractors under contract for public works. Where the state or a political subdivision uses its own employees to perform public construction, the Little Davis-Bacon Act does not apply. 1978 Inf. Op. Att'y Gen. (Oct. 11; J66-195-79). See Annot. 18 A.L.R.-3d 944 (1968).

Hon. John C. Sackett
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April 19, 1983
Page 2

We have not discovered any case authority which imposes any limit on the authority of a public employer to force-account. We note, however, that courts which address the distinction drawn in a prevailing wage provision between public employees and those of a contractor justify the distinction due to the perceived benefits of public employment. The presumption, here, is that public employment is more permanent and offers an employee other economic advantages such as fringe benefits. See City of Monmouth v. Lorenz, 195 N.E.2d 661 (Ill. 1963) (inclusion of public employees in prevailing wage provision violated constitutional guarantee to equal protection). If, when a municipality or an REAA employs persons on a sporadic, project-by-project basis, the public employees do not obtain the advantages typically available through public employment, a court may conclude that forced-accounting cannot serve to circumvent prevailing wage requirements. See 1983 Inf. Op. Att'y Gen. (Mar. 11; 366-267-83) (Little Davis-Bacon Act applicable to certain designated grants). See also City and Borough of Sitka v. Construction and General Laborers Local 942, 644 P.2d 227 (Alaska 1982).

While a municipality or an REAA may construct a project through forced accounting without being subject to prevailing wage requirements, the more difficult inquiry is when forced-accounting is an available option. Where state funds are used, the general preference for the award of contracts through public bid is set forth in AS 35.15.010(a):

Except as provided in AS 36.98 and AS 44.33.-300, it shall be the general policy of the department to require the construction of all public works under bid contract. However, when the estimated cost of a construction project is less than \$100,000, or when it appears to be in the best interests of the state, the department may perform the work, notwithstanding any other provisions of law. A complete record shall be kept by the commissioner or the commissioner's designee of all transactions entered into under this section including names of employees involved in the transactions.

(Emphasis added.)

A municipality may request the assumption of "all or part of the [Department of Transportation and Public Facilities'] responsibilities relating to the planning, design and

Hon. John C. Sackett
366-554-83

April 19, 1983
Page 3

construction of a public works project of the state that is to be located within the boundaries of the municipality and that would otherwise be construction in the manner provided by AS 35.15.-010." AS 35.15.080. Arguably among the assumed responsibilities is the responsibility to determine under AS 35.15.010 whether "it appears to be in the best interests of the state" for the department to perform the work, notwithstanding that the public work costs in excess of \$100,000. 1/

An REAA, in turn, may assume "the responsibilities relating to the planning, design and construction of a school or an education-related facility, located within the boundaries or operating areas of the...[REAA]." AS 14.11.020. 2/ Title 14, however, does not define the Department of Education's "responsibilities" which may be assumed by an REAA. 3/ Were the Department of Education to retain responsibility for the construction of a school project, the public bid requirements set forth in AS 35.15 would be applicable. Consequently, an REAA which assumes responsibility for a school project is subject to the preference for public bidding under AS 35.15.010.

1/ A countervailing argument is that only a state agency has the requisite breadth of perspective to make a determination of what is in the best interest of the state. For purposes of this opinion, we assume that the best interest determination is delegable. Moreover, it is a separate inquiry whether DOT/PF may by regulation limit the authority to force-account. See AS 35.15.080(f).

2/ Indeed, prior the adoption of ch. 92, SLA 1982, AS 35.15.080 also provided for the assumption of responsibility in a local public works project by both a municipality and an REAA. We note that other provisions in AS 35.15 which relate to an assumption by an REAA were not amended. In particular, we do not interpret AS 35.05.080(f) to impose an independent obligation for an REAA to pay prevailing wages to its own employees engaged in work on a public project.

3/ Presumably, an REAA also assumes the concomitant responsibility to determine whether forced-accounting would be in the public interest. See supra, note 2. We are advised that, as required by AS 14.11.020(d), the Department of Education is presently drafting regulations which relate to the assumption of departmental responsibilities.

Hon. John C. Sackett
366-554-83

April 19, 1983
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We finally offer an observation regarding the flexibility of a municipality or an REAA to use its own employees on a public works project which costs in excess of \$100,000.

While a degree of deference would be due an administrative determination of when it is in the "public interest" to force-account rather than contract for services, we caution that an anticipated reduction in project costs may not, by itself, be a sufficient basis for that determination. The Alaska Supreme Court addressed an analogous claim in City and Borough of Sitka v. Construction and General Laborers Local 942, 644 P.2d 227 (Alaska 1982). Sitka had attempted to execute a timber sale contract separate from a dam construction contract subject to the Little Davis-Bacon wage stipulations. The separate timber sale contract allowed Sitka to maximize the value of the merchantable timber on the dam site. The court, however, rejected Sitka's attempt to enhance economic returns through the avoidance of contractual prevailing wage stipulations.

Sitka's position, in essence, invites the government to sever from a public construction bid offering any aspect of the endeavor which may have an unrelated profit incentive, such as the removal of a natural resource. Such a rule impermissibly enables a public agency to profit at the expense of workers engaged in activities instrumental to a public construction project.

644 P.2d at 233. The Sitka analysis suggests that a municipality or an REAA must articulate other considerations in support of a finding that force-accounting a particular project is in the best interests of the public.

We hope this responds to your concerns. Please feel free to contact us if you have any further questions on this matter.

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:

Jonathan B. Rubini
Jonathan B. Rubini
Assistant Attorney General

JER:jb

STATE
of ALASKA

MEMORANDUM

Dale Cheek, Director
Wage & Hour Division
Department of Labor

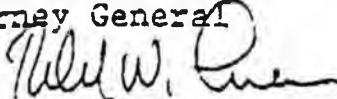
DATE: October 11, 1978

FILE NO:

TELEPHONE NO:

AVRUM M. Gross
Attorney General

SUBJECT: Performance of Public
Construction Projects by
Municipalities; A.G. File
No. J-66-195-79

By: 
Ronald W. Lorensen
Assistant Attorney General

This is in response to your recent request for our advice as to whether municipal governments may properly carry out their public construction projects by using their own employees under a "force-account" system which utilizes private contractors, if at all, solely to provide overall "hands-in-pocket" management and supervision of the project. Also, if municipalities may perform their own public construction in this manner, you wonder whether they are subject to the provisions of AS 36.05, relating to the payment of prevailing wages on public construction contracts.

As we understand the situation about which you are inquiring, at least one organized borough in the state does not carry out its public construction projects by hiring private construction contractors to perform all phases of the work and complete the project. Instead, it hires private contractors to perform only the management and supervisory functions necessary to accomplish the project for the borough, but requires that the contractor utilize borough employees to actually do the construction work. We see no legal impediment to a borough doing all or any portion of its public construction projects on its own in this manner.

As to whether AS 36.05 applies to a borough which accomplishes its public construction projects by use of its own employees under a "force account" system, we think the answer is clearly that it does not. AS 36.05.010, which establishes the scope of the requirement of payment of prevailing wages under AS 36.05, speaks only in terms of the duty of "contractors" and "sub-contractors" who perform work on public construction in the state. It does not state that political subdivisions performing such work must pay prevailing wages. Nor does it state that all employees working on public construction projects are entitled to be paid in accordance with prevailing wages. Thus, while it appears that AS 36.05 would apply to a municipality's contractor for management services on a public construction project, it does not apply to the municipality in carrying out such

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Projects funded through VSW where contractors were used to accomplish the work

CAPITO

Will this
cut it?

VILLAGE	CONTRACTOR	WORK	YR.
aklak	bethel contractors	landfill construction	91
	bethel contractors	lagoon construction	92/3
anchor point	j-brant	water main, service & wtp construction	92/3
konggiganak	ice water well	well drilling	92
shungnak	industrial commercial electric	electrical	91
hooper bay	m-w drilling inc.	well drilling	94
emmonak	industrial commercial electric	electrical	94
mountain point	southcoast	wtp & tank construction	90
	southcoast	water & sewer installation	91
	southcoast	water & sewer installation	92
	southcoast	water & sewer installation	93
	southeast engineering	water & sewer installation	94
thorne bay(wwtp)	dawson construction	wwtp concrete work	91
	wire communication	wwtp electrical	93
	control craft	wwtp controls	93
thorne bay(sw)	herr's painting	wwtp painting	93
	alaska industrial & commercial	sw electrical	94
	alaska fire extinguisher	sw fire system	94
thorne bay(ha)	c.r. lewis	sw mechanical	94
	russel construction	heavy equipment rental	88
	russel construction	heavy equipment rental	89
	j.a. construction	road building	90
	russel construction	heavy equipment rental	90
	russel construction	heavy equipment rental	91
	mcallen construction	heavy equipment rental	92
	mcallen construction	heavy equipment rental	93
	seaford construction	heavy equipment rental	93
	roy longbathum	well drilling	93
napasklak glennallen	athna construction	sewer line to parks place	91
	copper valley construction	sewer main & services (crossroads)	91
	nora construction	sewer glennallen heights phase 1	92
	o&a construction	sewer glennallen heights phase 2	92
	copper valley construction	sewer service lines	92/3
bethel	construction & rigging	lagoon sheet pile structure	93
	alaska mechanical inc.	w&s bethel heights/tundra north	93
mcgrath	takotna construction	building for sw equipment	93/4
niklaki	alaska building systems	water plant building	93
	john whites plumb. & hgt.	water plant piping	93
chitina	m-w drilling	well drilling	91
	copper valley construction	water line & pumphouse construction	91
	ice water well	well drilling	92
tuntutuliak	john lamb	soils drilling	94
whittler	rockford	water line construction	93
	rockford	water line construction	94
angoon	construct. machinery inc.	heavy equipment rental	91/2
	millier construction	dump truck rental	91/2
	comdive	diving water line	91/2
	alaska diving service	diving water line	91/2
	high drive drilling & blasting	drilling and blasting water line trench	91
	cove electric	power line construction	92
noatak	ambler exploration	well drilling	92
	statewide blasting	blasting	92

longstaff electrical
chilcat electric

electrical
electrical
electrical

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92
93