

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 1985 8672
1450 SCOMM 54: SEN. SELECT INTERIM COMM. ON PROCUREMENT PRACTICES.



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James M. Butler
Signature of Camera Operator

3/17/92
Date

SB

341

SENATE JUDICIARY COMMITTEE SUBSTITUTE
SENATE BILL 341
SECTIONAL ANALYSIS

(Unless otherwise indicated, "commissioner" means commissioner of administration)

SECTION 1. The purposes of the act are outlined to include: simplification, clarification, modernization of the laws; consistency among the branches of government; increased public confidence; fair and equitable treatment of all vendors; increased economy in state procurement; broad-based competition; safeguards for the maintenance of a procurement system of quality and integrity; and elimination and prevention of discrimination in state contracting.

SECTION 2. A new chapter is added to AS 36 entitled "State Procurement Code."

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Sec. 36.30.190. Multi-step sealed bidding is allowed when it is considered impractical to initially prepare a definitive purchase description to support an award based on price. Unpriced technical offers are submitted, followed by an ITB limited to the bidders whose offers are determined to be technically qualified under the criteria established.

Article 3. Competitive Sealed Proposals.

Sec. 36.30.200. Contracts may be awarded by competitive sealed proposals when the chief procurement officer, or

the commissioner of transportation and public facilities for construction and state equipment fleet contracts, determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state.

Sec. 36.30.210. Request for proposals must contain the same information required for ITBs. The same notice provisions for ITBs apply for RFPs. An offeror must list the subcontractors within 48 hours after the date by which the proposals must be received. The same duties of bidders under ITBs apply to competitive sealed proposals.

Sec. 36.30.220. Standard overhead rate established by agencies and applicable to contracts for supplies and services, must be included in a RFP.

Sec. 36.30.230. Proposals are to be opened in a manner which avoids disclosure of contents to competing offerors during the process of negotiation. A register of proposals containing the name and address of each offeror shall be prepared and open for public inspection after the notice of intent to award a contract is issued.

Sec. 36.30.240. Discussions with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, may be conducted for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submissions and before the award for the purpose of obtaining best and final offers. These discussions are exempt from the Alaska Open Meetings law.

Sec. 36.30.250. A contract under competitive sealed proposals shall be awarded to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price, the evaluation factors set out in the RFP, and whether the offeror qualifies as an Alaskan Bidder or is offering the services of an employment program.

Sec. 36.30.260. A contract awarded under competitive sealed proposals must contain: the amount of the contract; the date for supplies to be delivered or the term for services to be performed; a description of the services or supplies contracted for; and a certification that sufficient funds are available for the amount of the contract.

Sec. 36.30.270. Special procedures apply to contracts awarded to architects, engineers, and land surveyors. These provisions only apply to contracts negotiated by the executive branch.

Article 4. Other Procurement Methods.

Sec. 36.30.300. Sole source procurements may only be awarded if it is determined in writing that there is only one source for the required supply, service or construction. A sole source procurement may not be approved if a reasonable alternative source exists.

Sec. 36.30.310. Emergency procurements may be authorized under emergency conditions when there exists a threat to public health, welfare, or safety, and procurement through competitive sealed bids or competitive sealed proposals is impracticable, or contrary to the public interest, or to protect public or private property. A written determination of the basis for the emergency and for the selection of the particular contractor must be provided.

Sec. 36.30.320. Small procurements which do not exceed an aggregate amount of \$5,000 shall be made with competition that is practicable under the circumstances. A contract for professional services that does not exceed \$25,000 may be made in accordance with regulations adopted by the commissioner. Notice of small procurements shall be provided to Alaskan bidders designated by the commissioner under section 36.30.050(d).

Article 5. Contract Formation and Modification.

Sec. 36.30.340. If a contract contains a term that is in conflict with a state standard form contract term or if a standard term is deleted or modified by a term that is not standard, the contract must be approved by the department of law.

Sec. 36.30.350. Solicitations may be cancelled or any bids or proposals may be rejected, in whole or in part, or the date for opening bids or proposals may be delayed as may be specified in the solicitation, when it is in the best interest of the state. The reasons for cancellation, rejection, or delay in opening bids or proposals shall be made part of the contract file.

Sec. 36.30.360. A written determination of responsibility of a bidder or offeror shall be made by the procurement officer.

Sec. 36.30.362. The procurement officer must issue a written statement explaining the reasons a contract was awarded to a person who does not reside or maintain a place of business in Alaska, if the supplies, services, professional services or construction could have been obtained from in-state sources.

Sec. 36.30.365. At least 10 days before the formal award of a contract the procurement officer shall provide to each bidder or offeror notice of intent to award a contract.

Sec. 36.30.370. Any type of contract that will promote the best interests of the state may be used, except that the use of a cost-plus-a-percentage-of cost contract is prohibited.

Sec. 36.30.380. Except with respect to contracts awarded through competitive sealed bidding or firm fixed-price contracts, a contract type may not be used unless it has been approved in writing by the procurement officer.

Sec. 36.30.390. Unless otherwise provided by law, multi-term contracts are permitted, but subject to availability and appropriation of funds. Written determination must support multi-term contracts.

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal periods, the contract shall be cancelled. The contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred, but not amortized in the price of the supplies or services delivered under the contract that are not otherwise recoverable.

Sec. 36.30.400. Cost or pricing data must be submitted and certified by contractors. This does not apply when: the contract price is based on adequate price competition; the contract price is set by law or regulation; or it is determined in writing that the requirements of this section are waived and the reasons for waiver are stated in writing.

Sec. 36.30.410. The state has the right to inspect the plant or place of business of a contractor or subcontractor that is related to the performance of a contract awarded or to be awarded by the state.

Sec. 36.30.420. The state may audit books and records of a person who has submitted cost or pricing data or receives a contract.

Sec. 36.30.430. The commissioner shall adopt regulations permitting the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions, and appropriate remedies.

Sec. 36.30.460. Standard clauses in state contract may be modified if supported by a written determination that states the circumstances justifying the variation.

Sec. 36.30.470. If the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget or the total contract budget, the procurement officer may not execute the contract modification, change order, or adjustment in contract price unless sufficient funds are available, or the scope of the project or contract is adjusted to permit the degree of completion that is feasible within the total project budget or total contract budget as it existed before the contract modification, change order, or adjustment in contract price.

Sec. 36.30.480. Cost principle regulations shall be adopted.

Article 6. Procurement Records and Reports.

Sec. 36.30.500. Procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the state archivist.

Sec. 36.30.510. A contract file open for public inspection must be kept by the commissioner and the contracting agency for each contract awarded under competitive sealed proposals. The file kept by the commissioner shall contain a summary of the information in the file of the contracting agency.

Sec. 36.30.520. The commissioner shall maintain for at least 5 years a record listing all sole source and emergency procurement contracts. An agency which has delegated procurement authority shall by October 1, of each year, submit records of all sole source and emergency procurement contracts to the commissioner.

Sec. 35.30.530. Procurement information is public except as otherwise provided by law.

Sec. 36.30.540. The commissioner shall biennially report to the legislature concerning procurements by agencies.

Article 7. Legal and Contractual Remedies.

Sec. 36.30.560. An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for goods, services or construction. The protest shall be filed with the procurement officer of the contracting agency in writing and must contain specified items.

Sec. 36.30.565. Time deadlines for filing protests are specified.

Sec. 36.30.570. Notice of a protest shall immediately be given to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

Sec. 36.30.575. If a protest is filed before a contract is awarded, the award may be made unless the procurement officer of the contracting agency determines in writing that: a reasonable probability exists that the protest will be sustained; or stay of the award is not contrary to the best interests of the state.

Sec. 36.30.580. A written decision by the procurement officer of the contracting agency shall be issued within 14 days after a protest has been filed, unless the time is extended up to 26 days for good cause. Notice shall be sent to the protester. If a decision is not made by the due date, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.

Sec. 36.30.585. If the procurement officer sustains a protest the procurement officer shall implement an appropriate remedy.

Sec. 36.30.590. An appeal from a decision of a procurement officer on a protest must be filed with the appropriate commissioner within 5 days after the decision is received by the protester.

Sec. 36.30.595. The procurement officer shall immediately give notice of an appeal to the contractor if a contract has been awarded, or, if no award has been made, to all interested parties.

Sec. 36.30.600. If a protest appeal is filed before a contract is awarded and the award was stayed, the filing of the appeal automatically continues the stay until the commissioner of administration or transportation and public facilities makes a written determination that the award of the contract is necessary to protect substantial interests of the state.

Sec. 36.30.605. The procurement officer of the contracting agency shall file a complete report on the protest and decision with the commissioner of administration or transportation and public facilities within 7 days after a protest appeal is filed. The protester and all interested parties that have requested a copy of the appeal shall be furnished one. The protester may file comments on the protest report within 7 days after the report is received. Extensions may be granted.

Sec. 36.30.610. The commissioner of administration or transportation and public facilities shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely. The appropriate commissioner may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact.

Sec. 36.30.615. A hearing on a protest appeal shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.620. If a controversy, asserted by a contractor, concerning a contract awarded under this chapter cannot be resolved by agreement, the procurement officer shall, after receiving a written request by the contractor, issue a written decision no more than 90 days after receipt of all necessary information from the contractor, unless the due date is extended for good cause.

The decision shall be sent to the contractor. If a decision is not made by the due date, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor. If a controversy asserted by the state concerning a contract awarded cannot be resolved by agreement, the matter shall be immediately referred to the commissioner of administration or transportation and public facilities.

Sec. 36.30.625. An appeal from a decision of the procurement officer on a contract controversy may be filed by the contractor with the commissioner of administration or transportation and public facilities. The appeal shall be filed within 14 days after the decision is received by the contractor.

Sec. 36.30.630. A hearing on a contract controversy appealed to the commissioner or referred to the commissioner shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.632. The commissioners of administration and transportation and public facilities may delegate responsibilities under Sec. 36.30.590 and Sec. 36.30.630 to the head of the contracting agency.

Sec. 36.30.635. The commissioners of administration and transportation and public facilities may debar or suspend a person from consideration for award of contracts. Notice and opportunity for a hearing are specified.

Sec. 36.30.640. Causes for debarment or suspension are enumerated.

Sec. 36.30.645. The commissioners of administration and transportation and public facilities shall issue a written decision to debar or suspend.

Sec. 36.30.650. A person suspended is entitled to a hearing if the person files a written request for a hearing within 7 days after receipt of the notice of suspension.

Sec. 36.30.655. The commissioner shall maintain a list of all persons debarred or suspended from consideration for award of contracts.

Sec. 36.30.660. The commissioner of administration or the commissioner of transportation and public facilities may, at any time after a final decision to debar a person, reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

A debarred person may request reinstatement. A hearing may be held on a reinstatement petition. A decision on reinstatement shall be made in writing within 7 days after a reinstatement petition is submitted. A decision under this section is not subject to judicial appeal.

Sec. 36.30.665. The commissioner of administration or transportation and public facilities may permit a debarred person to participate in a contract on a limited basis during the debarment period.

Sec. 36.30.670. The commissioner of administration or transportation and public facilities shall act as a hearing officer or appoint a hearing officer for a hearing conducted under this chapter. The provisions of the Administrative Procedure Act do not apply to a hearing conducted under this chapter. The authority of a hearing officer is outlined.

Sec. 36.30.675. If the commissioner of administration or transportation and public facilities is not acting as hearing officer, the hearing officer shall recommend a decision to the appropriate commissioner based on the evidence presented. The recommendation shall include findings of fact and conclusions of law. The appropriate commissioner may affirm, modify or reject the hearing

officer's recommendation or take any other appropriate action.

Sec. 36.30.680. A decision by the commissioner of administration is final, and shall be sent within 20 days after a hearing to all parties. A decision by the commissioner of transportation and public facilities involving procurement of construction shall be sent within 90 days after the hearing.

Sec. 36.30.685. A final decision of the commissioner of administration or transportation and public facilities may be appealed to the superior court in accordance with the Alaska Rules of Appellate Procedure.

Sec. 36.30.687. Civil and criminal sanctions are outlined for misrepresentations and fraudulent claims.

Sec. 36.30.690. This chapter and the regulations adopted under it are the exclusive procedures for asserting a claim against the state or an agency arising in relation to a procurement conducted under this chapter.

Sec. 36.30.695. The commissioner of administration may adopt by regulation additional rules of procedure.

Sec. 36.30.699. The definition of interested party is given.

Article 8. Intergovernmental Relations.

Sec. 36.30.700. Cooperative purchasing is authorized between public procurement units or external procurement activities in accordance with an agreement entered into between the participants.

Sec. 36.30.710. Sale, acquisition, or use of supplies among public procurement units or with external procurement activity may be done independent of certain requirements of this chapter.

Sec. 36.30.720. Joint use of facilities is allowable.

Sec. 36.30.730. A public procurement unit may provide personnel, information and technical services to a requesting public procurement unit or external procurement activity.

Sec. 36.30.735. Current Alaska law on restrictions of contracting with or employing experts on radiation hazards is retained.

Sec. 36.30.740. The commissioner may collect information concerning supplies, services or construction being procured or used by state public procurement units.

Sec. 36.30.750. Under a cooperative purchasing agreement, controversies arising between an administering public procurement unit and its bidders, offerors, or contractors shall be resolved in accordance with this chapter.

Sec. 36.30.790. Definitions for this article are provided.

Article 9. General Provisions.

Sec. 36.30.850. This chapter applies to contracts solicited or entered into after January 1, 1987, unless the parties agree to its application to a contract solicited or entered into before that date. This chapter applies to the disposal of state supplies and every expenditure of public funds irrespective of their sources, except as specified in AS 36.30.915.

This chapter does not apply to: grants; contracts for professional witnesses; contracts of the University of Alaska where the work is to be performed substantially by enrolled students; contracts for medical doctors and dentists; contracts for the purchase of residential child care services under AS 47.40; disposals of land or interest in land; disposals under AS 38.05; contracts for the preparation of ballots under AS 15.15.030; acquisitions or disposals of property and other contracts relating to airports; acquisitions of real property or disposals of obsolete property under AS 19.05.060, 19.05.100, 19.05.110 or 19.05.120; disposals of obsolete material or equipment under AS 35.20.060; leases of ferry terminal facilities under AS 19.60.010; or contracts of the department of fish and game for non-point-to-point flights requiring specialized flying and piloting skills.

Except for AS 36.30.700-36.30.895, this chapter does not apply to contracts between two or more agencies, the state and its political subdivisions, or the state and other governments.

Sec. 36.30.860. Unless displaced by the particular provision of this chapter, all other principles of law and equity shall supplement the provisions of this chapter.

Sec. 36.30.870. Regulations under this chapter shall be adopted in accordance with the Administrative Procedure Act. Regulations applicable to procurements of construction or procurements for or disposal of property

of the state equipment fleet shall be adopted by the commissioner of administration only after consultation with the commissioner of transportation and public facilities.

Sec. 36.30.880. This chapter requires all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

Sec. 36.30.890. If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or a regulation adopted under a provision, the federal statute or regulation shall prevail.

Sec. 36.30.900. This chapter does not modify, amend, or alter laws regarding preference for Alaska forest products or preference to producers or dealers in Alaska, except as provided in AS 36.30.170(b) and (c).

Sec. 36.30.910. This chapter does not prevent purchasing through the general services administration as provided by law.

Sec. 36.30.920. Suspected anticompetitive practices are to be reported to the attorney general.

Sec. 36.30.930. In addition to penalties prescribed for unethical conduct, civil and criminal penalties are provided for violations of this chapter.

Sec. 36.30.940. The attorney general on behalf of the state shall enforce the provisions of this chapter.

Sec. 36.30.990. Definitions.

Sec. 36.30.995. This chapter may be cited as the State Procurement Code.

SECTION 3 through SECTION 66 amend other Alaska statutes to reflect the provisions of this chapter.

SECTION 67. The commissioner must report to the legislature by December 1, 1987, concerning procurements by state agencies during the first 6 months of 1987.

SECTION 68. The commissioner of administration shall adopt the regulations required under this chapter by January 1, 1987.

SECTION 69. This is the repealer section.

SECTION 70. Section 68 of this Act takes effect immediately.

SECTION 71. Except as provided in sec. 70, this Act takes effect January 1, 1987.

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Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on bid mistakes shall be permitted in accordance with regulations and supported by written justification.

Sec. 36.30.170. Awards to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the ITB shall be promptly made. The Alaska bidder preference is expanded to apply to all construction contracts. The lowest responsible and responsive Alaskan bidder with a bid not more than 10% higher than the lowest bid of a nonresident shall be awarded the contract. An Alaskan bidder who qualifies as an "employment program" shall be given preference also.

Sec. 36.30.190. Multi-step sealed bidding is allowed when it is considered impractical to initially prepare a definitive purchase description to support an award based on price. Unpriced technical offers are submitted, followed by an ITB limited to the bidders whose offers are determined to be technically qualified under the criteria established.

Article 3. Competitive Sealed Proposals.

Sec. 36.30.200. Contracts may be awarded by competitive sealed proposals when the chief procurement officer, or

the commissioner of transportation and public facilities for construction and state equipment fleet contracts, determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state.

Sec. 36.30.210. Request for proposals must contain the same information required for ITBs. The same notice provisions for ITBs apply for RFPs. An offeror must list the subcontractors within 48 hours after the date by which the proposals must be received. The same duties of bidders under ITBs apply to competitive sealed proposals.

Sec. 36.30.220. Standard overhead rate established by agencies and applicable to contracts for supplies and services, must be included in a RFP.

Sec. 36.30.230. Proposals are to be opened in a manner which avoids disclosure of contents to competing offerors during the process of negotiation. A register of proposals containing the name and address of each offeror shall be prepared and open for public inspection after the the notice of intent to award a contract is issued.

Sec. 36.30.240. Discussions with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, may be conducted for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submissions and before the award for the purpose of obtaining best and final offers. These discussions are exempted from the Alaska Open Meetings law.

Sec. 36.30.250. A contract under competitive sealed proposals shall be awarded to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price, the evaluation factors set out in the RFP, and whether the offeror qualifies as an Alaskan Bidder or is offering the services of an employment program.

Sec. 36.30.260. A contract awarded under competitive sealed proposals must contain: the amount of the contract; the date for supplies to be delivered or the term for services to be performed; a description of the services or supplies contracted for; and a certification that sufficient funds are available for the amount of the contract.

Sec. 36.30.270. Special procedures apply to contracts awarded to architects, engineers, and land surveyors. These provisions only apply to contracts negotiated by the executive branch.

Article 4. Other Procurement Methods.

Sec. 36.30.300. Sole source procurements may only be awarded if it is determined in writing that there is only one source for the required supply, service or construction. A sole source procurement may not be approved if a reasonable alternative source exists.

Sec. 36.30.310. Emergency procurements may be authorized under emergency conditions when there exists a threat to public health, welfare, or safety, and procurement through competitive sealed bids or competitive sealed proposals is impracticable, or contrary to the public interest, or to protect public or private property. A written determination of the basis for the emergency and for the selection of the particular contractor must be provided.

Sec. 36.30.320. Small procurements which do not exceed an aggregate amount of \$5,000 shall be made with competition that is practicable under the circumstances. A contract for professional services that does not exceed \$25,000 may be made in accordance with regulations adopted by the commissioner. Notice of small procurements shall be provided to Alaskan bidders designated by the commissioner under section 36.30.050(d).

Article 5. Contract Formation and Modification.

Sec. 36.30.340. If a contract contains a term that is in conflict with a state standard form contract term or if a standard term is deleted or modified by a term that is not standard, the contract must be approved by the department of law.

Sec. 36.30.350. Solicitations may be cancelled or any bids or proposals may be rejected, in whole or in part, or the date for opening bids or proposals may be delayed as may be specified in the solicitation, when it is in the best interest of the state. The reasons for cancellation, rejection, or delay in opening bids or proposals shall be made part of the contract file.

Sec. 36.30.360. A written determination of responsibility of a bidder or offeror shall be made by the procurement officer.

Sec. 36.30.362. The procurement officer must issue a written statement explaining the reasons a contract was awarded to a person who does not reside or maintain a place of business in Alaska, if the supplies, services, professional services or construction could have been obtained from in-state sources.

Sec. 36.30.365. At least 10 days before the formal award of a contract the procurement officer shall provide to each bidder or offeror notice of intent to award a contract.

Sec. 36.30.370. Any type of contract that will promote the best interests of the state may be used, except that the use of a cost-plus-a-percentage-of cost contract is prohibited.

Sec. 36.30.380. Except with respect to contracts awarded through competitive sealed bidding or firm fixed-price contracts, a contract type may not be used unless it has been approved in writing by the procurement officer.

Sec. 36.30.390. Unless otherwise provided by law, multi-term contracts are permitted, but subject to availability and appropriation of funds. Written determination must support multi-term contracts.

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal periods, the contract shall be cancelled. The contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred, but not amortized in the price of the supplies or services delivered under the contract that are not otherwise recoverable.

Sec. 36.30.400. Cost or pricing data must be submitted and certified by contractors. This does not apply when: the contract price is based on adequate price competition; the contract price is set by law or regulation; or it is determined in writing that the requirements of this section are waived and the reasons for waiver are stated in writing.

Sec. 36.30.410. The state has the right to inspect the plant or place of business of a contractor or subcontractor that is related to the performance of a contract awarded or to be awarded by the state.

Sec. 36.30.420. The state may audit books and records of a person who has submitted cost or pricing data or receives a contract.

Sec. 36.30.430. The commissioner shall adopt regulations permitting the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions, and appropriate remedies.

Sec. 36.30.460. Standard clauses in state contract may be modified if supported by a written determination that states the circumstances justifying the variation.

Sec. 36.30.470. If the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget or the total contract budget, the procurement officer may not execute the contract modification, change order, or adjustment in contract price unless sufficient funds are available, or the scope of the project or contract is adjusted to permit the degree of completion that is feasible within the total project budget or total contract budget as it existed before the contract modification, change order, or adjustment in contract price.

Sec. 36.30.480. Cost principle regulations shall be adopted.

Article 6. Procurement Records and Reports.

Sec. 36.30.500. Procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the state archivist.

Sec. 36.30.510. A contract file open for public inspection must be kept by the commissioner and the contracting agency for each contract awarded under competitive sealed proposals. The file kept by the commissioner shall contain a summary of the information in the file of the contracting agency.

Sec. 36.30.520. The commissioner shall maintain for at least 5 years a record listing all sole source and emergency procurement contracts. An agency which has delegated procurement authority shall by October 1, of each year, submit records of all sole source and emergency procurement contracts to the commissioner.

Sec. 35.30.530. Procurement information is public except as otherwise provided by law.

Sec. 36.30.540. The commissioner shall biennially report to the legislature concerning procurements by agencies.

Article 7. Legal and Contractual Remedies.

Sec. 36.30.560. An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for goods, services or construction. The protest shall be filed with the procurement officer of the contracting agency in writing and must contain specified items.

Sec. 36.30.565. Time deadlines for filing protests are specified.

Sec. 36.30.570. Notice of a protest shall immediately be given to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

Sec. 36.30.575. If a protest is filed before a contract is awarded, the award may be made unless the procurement officer of the contracting agency determines in writing that: a reasonable probability exists that the protest will be sustained; or stay of the award is not contrary to the best interests of the state.

Sec. 36.30.580. A written decision by the procurement officer of the contracting agency shall be issued within 14 days after a protest has been filed, unless the time is extended up to 26 days for good cause. Notice shall be sent to the protester. If a decision is not made by the due date, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.

Sec. 36.30.585. If the procurement officer sustains a protest the procurement officer shall implement an appropriate remedy.

Sec. 36.30.590. An appeal from a decision of a procurement officer on a protest must be filed with the appropriate commissioner within 5 days after the decision is received by the protester.

Sec. 36.30.595. The procurement officer shall immediately give notice of an appeal to the contractor if a contract has been awarded, or, if no award has been made, to all interested parties.

Sec. 36.30.600. If a protest appeal is filed before a contract is awarded and the award was stayed, the filing of the appeal automatically continues the stay until the commissioner of administration or transportation and public facilities makes a written determination that the award of the contract is necessary to protect substantial interests of the state.

Sec. 36.30.605. The procurement officer of the contracting agency shall file a complete report on the protest and decision with the commissioner of administration or transportation and public facilities within 7 days after a protest appeal is filed. The protester and all interested parties that have requested a copy of the appeal shall be furnished one. The protester may file comments on the protest report within 7 days after the report is received. Extensions may be granted.

Sec. 36.30.610. The commissioner of administration or transportation and public facilities shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely. The appropriate commissioner may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact.

Sec. 36.30.615. A hearing on a protest appeal shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.620. If a controversy, asserted by a contractor, concerning a contract awarded under this chapter cannot be resolved by agreement, the procurement officer shall, after receiving a written request by the contractor, issue a written decision no more than 90 days after receipt of all necessary information from the contractor, unless the due date is extended for good cause.

The decision shall be sent to the contractor. If a decision is not made by the due date, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor. If a controversy asserted by the state concerning a contract awarded cannot be resolved by agreement, the matter shall be immediately referred to the commissioner of administration or transportation and public facilities.

Sec. 36.30.625. An appeal from a decision of the procurement officer on a contract controversy may be filed by the contractor with the commissioner of administration or transportation and public facilities. The appeal shall be filed within 14 days after the decision is received by the contractor.

Sec. 36.30.630. A hearing on a contract controversy appealed to the commissioner or referred to the commissioner shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.632. The commissioners of administration and transportation and public facilities may delegate responsibilities under Sec. 36.30.590 and Sec. 36.30.630 to the head of the contracting agency.

Sec. 36.30.635. The commissioners of administration and transportation and public facilities may debar or suspend a person from consideration for award of contracts. Notice and opportunity for a hearing are specified.

Sec. 36.30.640. Causes for debarment or suspension are enumerated.

Sec. 36.30.645. The commissioners of administration and transportation and public facilities shall issue a written decision to debar or suspend.

Sec. 36.30.650. A person suspended is entitled to a hearing if the person files a written request for a hearing within 7 days after receipt of the notice of suspension.

Sec. 36.30.655. The commissioner shall maintain a list of all persons debarred or suspended from consideration for award of contracts.

Sec. 36.30.660. The commissioner of administration or the commissioner of transportation and public facilities may, at any time after a final decision to debar a person, reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

A debarred person may request reinstatement. A hearing may be held on a reinstatement petition. A decision on reinstatement shall be made in writing within 7 days after a reinstatement petition is submitted. A decision under this section is not subject to judicial appeal.

Sec. 36.30.665. The commissioner of administration or transportation and public facilities may permit a debarred person to participate in a contract on a limited basis during the debarment period.

Sec. 36.30.670. The commissioner of administration or transportation and public facilities shall act as a hearing officer or appoint a hearing officer for a hearing conducted under this chapter. The provisions of the Administrative Procedure Act do not apply to a hearing conducted under this chapter. The authority of a hearing officer is outlined.

Sec. 36.30.675. If the commissioner of administration or transportation and public facilities is not acting as hearing officer, the hearing officer shall recommend a decision to the appropriate commissioner based on the evidence presented. The recommendation shall include findings of fact and conclusions of law. The appropriate commissioner may affirm, modify or reject the hearing

officer's recommendation or take any other appropriate action.

Sec. 36.30.680. A decision by the commissioner of administration is final, and shall be sent within 20 days after a hearing to all parties. A decision by the commissioner of transportation and public facilities involving procurement of construction shall be sent within 90 days after the hearing.

Sec. 36.30.685. A final decision of the commissioner of administration or transportation and public facilities may be appealed to the superior court in accordance with the Alaska Rules of Appellate Procedure.

Sec. 36.30.687. Civil and criminal sanctions are outlined for misrepresentations and fraudulent claims.

Sec. 36.30.690. This chapter and the regulations adopted under it are the exclusive procedures for asserting a claim against the state or an agency arising in relation to a procurement conducted under this chapter.

Sec. 36.30.695. The commissioner of administration may adopt by regulation additional rules of procedure.

Sec. 36.30.699. The definition of interested party is given.

Article 8. Intergovernmental Relations.

Sec. 36.30.700. Cooperative purchasing is authorized between public procurement units or external procurement activities in accordance with an agreement entered into between the participants.

Sec. 36.30.710. Sale, acquisition, or use of supplies among public procurement units or with external procurement activity may be done independent of certain requirements of this chapter.

Sec. 36.30.720. Joint use of facilities is allowable.

Sec. 36.30.730. A public procurement unit may provide personnel, information and technical services to a requesting public procurement unit or external procurement activity.

Sec. 36.30.735. Current Alaska law on restrictions of contracting with or employing experts on radiation hazards is retained.

Sec. 36.30.740. The commissioner may collect information concerning supplies, services or construction being procured or used by state public procurement units.

Sec. 36.30.750. Under a cooperative purchasing agreement, controversies arising between an administering public procurement unit and its bidders, offerors, or contractors shall be resolved in accordance with this chapter.

Sec. 36.30.790. Definitions for this article are provided.

Article 9. General Provisions.

Sec. 36.30.850. This chapter applies to contracts solicited or entered into after January 1, 1987, unless the parties agree to its application to a contract solicited or entered into before that date. This chapter applies to the disposal of state supplies and every expenditure of public funds irrespective of their sources, except as specified in AS 36.30.915.

This chapter does not apply to: grants; contracts for professional witnesses; contracts of the University of Alaska where the work is to be performed substantially by enrolled students; contracts for medical doctors and dentists; contracts for the purchase of residential child care services under AS 47.40; disposals of land or interest in land; disposals under AS 38.05; contracts for the preparation of ballots under AS 15.15.030; acquisitions or disposals of property and other contracts relating to airports; acquisitions of real property or disposals of obsolete property under AS 19.05.060, 19.05.100, 19.05.110 or 19.05.120; disposals of obsolete material or equipment under AS 35.20.060; leases of ferry terminal facilities under AS 19.60.010; or contracts of the department of fish and game for non-point-to-point flights requiring specialized flying and piloting skills.

Except for AS 36.30.700-36.30.895, this chapter does not apply to contracts between two or more agencies, the state and its political subdivisions, or the state and other governments.

Sec. 36.30.860. Unless displaced by the particular provision of this chapter, all other principles of law and equity shall supplement the provisions of this chapter.

Sec. 36.30.870. Regulations under this chapter shall be adopted in accordance with the Administrative Procedure Act. Regulations applicable to procurements of construction or procurements for or disposal of property

of the state equipment fleet shall be adopted by the commissioner of administration only after consultation with the commissioner of transportation and public facilities.

Sec. 36.30.880. This chapter requires all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

Sec. 36.30.890. If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or a regulation adopted under a provision, the federal statute or regulation shall prevail.

Sec. 36.30.900. This chapter does not modify, amend, or alter laws regarding preference for Alaska forest products or preference to producers or dealers in Alaska, except as provided in AS 36.30.170(b) and (c).

Sec. 36.30.910. This chapter does not prevent purchasing through the general services administration as provided by law.

Sec. 36.30.920. Suspected anticompetitive practices are to be reported to the attorney general.

Sec. 36.30.930. In addition to penalties prescribed for unethical conduct, civil and criminal penalties are provided for violations of this chapter.

Sec. 36.30.940. The attorney general on behalf of the state shall enforce the provisions of this chapter.

Sec. 36.30.990. Definitions.

Sec. 36.30.995. This chapter may be cited as the State Procurement Code.

SECTION 3 through SECTION 66 amend other Alaska statutes to reflect the provisions of this chapter.

SECTION 67. The commissioner must report to the legislature by December 1, 1987, concerning procurements by state agencies during the first 6 months of 1987.

SECTION 68. The commissioner of administration shall adopt the regulations required under this chapter by January 1, 1987.

SECTION 69. This is the repealer section.

SECTION 70. Section 68 of this Act takes effect immediately.

SECTION 71. Except as provided in sec. 70, this Act takes effect January 1, 1987.

**SENATE BILL 341
STATE PROCUREMENT CODE**

Origin: Pursuant to Senate Resolution #6, a Senate Select Interim Committee on Procurement Practices and Procedures was appointed. After months of work and eight public hearings, a state procurement code was developed and introduced as SB 341.

Basis of SB 341: The Model Procurement Code, which has been adopted in 11 other states was used as a guide. Utilizing the expertise of a task force composed of state procurement personnel the Model Code was adapted to Alaska's needs.

Structure of SB 341: Preferred method is competitive sealed bids. Competitive sealed proposals are subject to detailed procedures. Sole source and emergency contracts may be awarded only if supported by substantial written justification. A remedy section includes a detailed procedure for the protest of solicitations and awards of contracts.

Major Modifications in CS SB 341 (Jud):

1. University of Alaska is subject to the code, but will adopt its own procedures rather than use DOA's regulations.
2. The administrative director of the Court System will adopt procedures based upon competitive principles established under the code, but may be adapted to the special needs of the judicial branch.
3. Contractors must list subcontractors two working days after bids are opened.
4. Contracts based on total or life cycle costs may be awarded only when it is determined in writing that the contract promotes overall economy, encourages competition, is not unduly restrictive, and is in the best interest of the state.
5. Alaska Bidder preference is increased to 10% and applies to all construction contracts.
6. Special contracting provisions apply to architects, engineers and land surveyors. This is modeled after SB 204.

AMENDMENTS

AMENDMENT #1 by Senate Finance

ASHA has urged the Senate to exempt them from the code. The code provides substantial safeguards that assure continuation of federal funds.

Page 53: Sec. 36.30.890 Federal Assistance, provides that conflicts between federal and state law will be resolved in favor of the federal law.

Page 62: Section 10 provides that conflicts between AS 18.55.110 (ASHA) and the code will be resolved in favor of AS 18.55.110 (ASHA).

The federal government has used the model procurement code as a guide when reviewing procurement practices adopted by ASHA and other state housing authorities. (Attachment O to ASHA's procurement regulations).

AMENDMENT #2 by Senate Finance

The time for submitting subcontractors was extended to 2 working days after the bids are open, this applies to the apparent two lowest bidders.

Two additional reasons are added for the substitution of subcontractors: failure to comply with federal affirmative action requirements and labor agreements.

AMENDMENT #3 by Senator Rodey

The time for submitting subcontractors should be immediately upon bid opening by the successful bidder.

ANTICIPATED AMENDMENT by Senator Ferguson

Senator Ferguson may move to amend the definition of GRANT or CONTRACT so that it is clear that Maniilaq is not subject to the code.



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

SENATE SELECT INTERIM COMMITTEE ON PROCUREMENT PRACTICES AND PROCEDURES

January 13, 1986

Senator Don Bennett, President
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Pursuant to Senate Resolution Number 6, a Senate Select Interim Committee on Procurement Practices and Procedures was appointed. The Committee was composed of the following Senators: Jan Faiks, Chairman, Jalmar Kerttula, Vice-Chairman, Rick Halford, Joe Josephson, Edna DeVries and Fred Zharoff. Attorney General Hal Brown participated as an ex-officio member.

The Committee has completed its duties, which included reviewing and investigating the Grand Jury recommendations concerning the Alaska statutes governing state procurement and a code of ethics for the executive branch. In addition, the Committee held eight public hearings based in Anchorage, Fairbanks and Barrow, at which numerous witnesses participated and presented additional information regarding state procurement and ethics. Four of the public hearings were teleconferenced statewide. A mailing list of over 300 interested people was compiled, with updated information relayed periodically.

A task force composed of state procurement personnel worked at length and presented recommendations to the Committee. Five formal task force meetings were held and many administrative briefings, directed by the Department of Administration, reached personnel throughout the executive branch. The Committee greatly appreciated the efforts of Attorney General Hal Brown, Assistant Attorney General Jim Baldwin, Deputy Commissioner Marsha Hubbard, and Bob Link, Director of General Services and Supplies, who worked diligently to make this effort a success.

The following findings and recommendations are based on consistent testimony presented to the Committee during its review.

PROCUREMENT

FINDING #1: Existing procurement statutes and regulations are inconsistent, inadequate, outdated and sporadically scattered throughout our laws. An overabundance of the rules pertaining to state purchasing are contained in internal agency policy and procedure manuals, which are not readily available to the public. These factors have caused confusion among those who contract or wish to contract with the state. According to the Department of Law, there has been a dramatic increase in litigation concerning contract disputes because of the fact that the state does not have a comprehensive procurement law.

RECOMMENDATION: Based on these factors, the Committee believes that comprehensive procurement laws and regulations should be enacted.

FINDING #2: The Legislature, Court System, Executive Branch, University of Alaska, and Alaska Railroad Corporation operate differently and independently in the manner in which procurements are made. The Alaska Railroad Corporation has independent authority under AS 42.20.100 to ensure that the procurement procedures of the Corporation meet accepted railroad industry standards. The Executive Branch has moved away from centralized procurement practices and procedures. The Department of Administration has delegated purchasing authority to agencies which have been nonresponsive in enacting basic purchasing regulations. The lack of a uniform and centralized system has produced a system which is incoherent and confusing to the public.

RECOMMENDATION: All laws and regulations pertaining to procurement should be substantially equivalent, while maintaining the integrity of the separate branches of the government. Procurement within the Executive Branch should be more centralized. Any delegation of purchasing authority to an agency should be made only after written determination that the agency is capable of implementing the delegated authority.

FINDING #3: Bid specifications, solicitations and award criteria are not always clearly written or referenced in the information reviewed by potential bidders. The process by which the issuing agency evaluates and accepts or rejects bids is uncertain. This has created confusion and frustration for those who wish to contract with the state.

RECOMMENDATION: Evaluation procedures and performance criteria should be clearly described and identified in all solicitations.

FINDING #4: The use of noncompetitive procurement methods, such as sole source contracts, has not always been adequately justified, demonstrated or documented. This has caused the public to be skeptical of the state procurement system.

RECOMMENDATION: Noncompetitive procurement methods should be limited, and used only after written determination is made that clearly defined criteria for such methods have been met. The Legislature should receive reports of all sole source and emergency contract awards.

FINDING #5: The appeals process has been criticized because of the lack of information concerning the procedures. The time limits imposed for an appeal are too rigid to allow sufficient preparation by the protestor.

RECOMMENDATION: A clear, comprehensive and uniform appeals procedure, with adequate timelines, should be adopted.

FINDING #6: Persons who are not licensed to do business in the state have been awarded contracts. This has caused a great amount of frustration among those who are licensed, yet unsuccessful bidders.

RECOMMENDATION: All bidders should have an Alaska business license at the time of bid.

FINDING #7: Concern has been expressed that access to state contracting is complicated and difficult. The lack of information or understanding of the procedures is viewed as a barrier to doing business with the state.

RECOMMENDATION: The contractors' list should be utilized by all state agencies and branches of government. This list should be current and easily available for users.

FINDING #8: Public procurement is a highly technical process and involves millions of state dollars annually. Expertise is required to make the process work efficiently and effectively.

RECOMMENDATION: Procurement personnel should be adequately trained and supervised. The Chief Procurement Officer should have substantial experience in public procurement, and should be adequately insulated from political pressure.

Based on the recommendations of the Grand Jury, public testimony and state personnel, the Committee is forwarding the attached bill and sectional analysis relating to state procurement practices and procedures. This bill is based on the Model Procurement Code (MPC) which was adopted by the American Bar Association's House of Delegates. The Code represents over five years of intensive effort directed by a Coordinating Committee which is a joint committee of the

Section of Public Contract Law and the Section of Urban, State and Local Government Law.

The Model Procurement Code provides the framework for creating a complete purchasing system at any level of government. Specifically the Code contains: (1) the statutory principles and policy guidance for managing and controlling the procurement of supplies, services, and construction for public purposes; and (2) administrative and judicial remedies for the resolution of controversies relating to public contracts.

The following jurisdictions have adopted modified versions of the Code: Kentucky (1979), Arkansas (1979), Louisiana (1980), Utah (1980), Maryland (1981), South Carolina (1981), Colorado (1982), Indiana (1982), Virginia (1983), Territory of Guam (1983), New Mexico (1984), and Arizona (1984). Local governments or agencies have also adopted versions of the Code, including the Municipality of Anchorage.

The Committee believes that the proposed procurement code will provide a comprehensive law which addresses the deficiencies of the existing system, and therefore we recommend it to you for approval.

ETHICS

Senate Resolution 6 also directed the Committee to "review, investigate and render advice with respect to the Grand Jury recommendations concerning a code of ethics for the executive branch and employee awareness of ethical obligations".

The Committee held two meetings in which it reviewed current statutes pertaining to conflict of interest and ethical behavior for state employees. The Committee also reviewed legislation introduced in the 13th Legislature that would have established an ethics code for the executive branch. Of particular interest was Senate Bill 501 that was introduced by the Governor in 1984 and extensively reviewed by the Senate State Affairs Committee. This bill became the basis from which the Committee began its deliberations.

During these deliberations, the Administration informed the Committee that they had already drafted and were nearing completion on an ethics bill to be introduced by the Governor. After some discussion and review of the draft legislation, it was felt no purpose would be served by the introduction of competing pieces of legislation on this important issue. Therefore, the Senate Select Interim Committee on Procurement Practices and Procedures agreed to defer to the Governor and not introduce an ethics bill.


The Committee would like to thank the Administration for all its invaluable assistance in working on an ethics code for

the executive branch. The Attorney General, Hal Brown, provided the Committee with the able assistance of his Special Assistant, Randall Burns and Assistant Attorney General, Susan Cox without whom our task would have been much more difficult.

Respectfully submitted,



Senator Jan Faiks,
Chairman



Senator Jalmari Kettula
Vice-Chairman



Senator Edna DeVries



Senator Rick Halford



Senator Joe Josephson



Senator Fred Zharoff

HOUSE CS FOR CS FOR SENATE BILL NO. 341 (Finance)
SECTIONAL ANALYSIS

(Unless otherwise indicated, "commissioner" means commissioner of administration)

SECTION 1. The purposes of the act are outlined to include: simplification, clarification, modernization of the laws; consistency among the branches of government; increased public confidence; fair and equitable treatment of all vendors; increased economy in state procurement; broad-based competition; safeguards for the maintenance of a procurement system of quality and integrity; and elimination and prevention of discrimination in state contracting.

SECTION 2. A new chapter is added to AS 36 entitled "State Procurement Code."

Article 1. Organization of State Procurement.

Sec. 36.30.005. Centralization of procurement of supplies and services for state agencies is under the authority of the commissioner of administration and the chief procurement officer. Procurement of construction and procurements to or disposals from the state equipment fleet and the control over construction and the state equipment fleet is under the commissioner of transportation and public facilities.

The University of Alaska is subject to the requirements of SB 341, but has independent administrative authority and the ability to issue its own regulations implementing the chapter in conformance with state APA requirements.

Sec. 36.30.010. The chief procurement officer is selected by the commissioner; is responsible for procurement of supplies and services for agencies in the executive branch; is a partially exempt employee; must have a minimum of 5 years in public procurement; and may be removed by the commissioner only for cause. The term of office of the Chief Procurement Officer is 4 years. Duties of the Chief Procurement Officer are enumerated.

Sec. 36.30.015. The commissioner of transportation and public facilities may delegate to another agency the authority to contract for construction, after written determination has been made that the agency is capable of implementing the delegated authority. The commissioner of administration may delegate to an agency the authority to contract for its own supplies and services after a written

exceed \$1,000,000, notice must be provided the legislature for approval.

Article 2. Competitive Sealed Bidding.

Sec. 36.30.100. Competitive sealed bidding is the preferred method of contracting. Competitive sealed bidding is not required for certain purchases, including professional services, which are itemized.

Sec. 36.30.110. When competitive sealed bidding is used, an invitation to bid is issued which must include the date by which the bid must be received, purchase description, and all contractual terms and conditions. Subcontractors must be listed. Evidence of a valid Alaska business license for all bidders and subcontractors must be submitted when responding to the ITR. A bidder for construction contracts must also submit evidence of the bidder's registration under AS 08.18 and evidence of registration for each listed subcontractor.

Sec. 36.30.115. Within 24 hours after the opening of bids, the two apparent low bidders shall submit a list of the subcontractors the bidder proposes to use in the performance of the contract. Conditions under which a bidder may substitute a subcontractor are listed. A bidder who violates this section may either have the contract cancelled, or after notice and a hearing, be assessed a penalty in an amount not exceeding 10% of the value of the subcontract at issue.

Sec. 36.30.120. Bid security shall be required for all competitive sealed bidding for construction contracts which exceed an amount established by regulation. Bid security may be required for other types of supplies and services.

Sec. 36.30.130. Public notice of the ITR must be provided 21 days before the date for the opening of the bid, unless otherwise determined in writing by the chief procurement officer, or the commissioner of transportation and public facilities for construction or state equipment bids. Notice of solicitations must be published in the Alaska Administrative Journal. The state is liable for failing to substantially comply with the notice requirements of this section.

Sec. 36.30.140. Bid opening must be public, in the presence of witnesses, and relevant information must be recorded, which is open to public inspection. The bids are not open for public inspection until after a notice of intent to award a contract has been issued.

Sec. 36.30.210. Request for proposals must contain the same information required for ITBs. The same notice provisions for ITBs apply for RFPs. An offeror must list the subcontractors within 48 hours after the date by which the proposals must be received. The same duties of bidders under ITBs apply to competitive sealed proposals.

Sec. 36.30.220. Standard overhead rate established by agencies and applicable to contracts for supplies and services, must be included in a RFP.

Sec. 36.30.230. Proposals are to be opened in a manner which avoids disclosure of contents to competing offerors during the process of negotiation. A register of proposals containing the name and address of each offeror shall be prepared and open for public inspection after the the notice of intent to award a contract is issued.

Sec. 36.30.240. Discussions with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, may be conducted for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submissions and before the award for the purpose of obtaining best and final offers. These discussions are exempted from the Alaska Open Meetings law.

Sec. 36.30.250. A contract under competitive sealed proposals shall be awarded to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price, the evaluation factors set out in the RFP, and whether the offeror qualifies as an Alaskan Bidder or is offering the services of an employment program.

Sec. 36.30.260. A contract awarded under competitive sealed proposals must contain: the amount of the contract; the date for supplies to be delivered or the term for services to be performed; a description of the services or supplies contracted for; and a certification that sufficient funds are available for the amount of the contract.

Sec. 36.30.270. Special procedures apply to contracts awarded to architects, engineers, and land surveyors.

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

HOUSE CS FOR CS FOR SENATE BILL NO. 341 (Finance)
SECTIONAL ANALYSIS

(Unless otherwise indicated, "commissioner" means commissioner of administration)

SECTION 1. The purposes of the act are outlined to include: simplification, clarification, modernization of the laws; consistency among the branches of government; increased public confidence; fair and equitable treatment of all vendors; increased economy in state procurement; broad-based competition; safeguards for the maintenance of a procurement system of quality and integrity; and elimination and prevention of discrimination in state contracting.

SECTION 2. A new chapter is added to AS 36 entitled "State Procurement Code."

Article 1. Organization of State Procurement.

Sec. 36.30.005. Centralization of procurement of supplies and services for state agencies is under the authority of the commissioner of administration and the chief procurement officer. Procurement of construction and procurements to or disposals from the state equipment fleet and the control over construction and the state equipment fleet is under the commissioner of transportation and public facilities.

The University of Alaska is subject to the requirements of SB 341, but has independent administrative authority and the ability to issue its own regulations implementing the chapter in conformance with state APA requirements.

Sec. 36.30.010. The chief procurement officer is selected by the commissioner; is responsible for procurement of supplies and services for agencies in the executive branch; is a partially exempt employee; must have a minimum of 5 years in public procurement; and may be removed by the commissioner only for cause. The term of office of the Chief Procurement Officer is 4 years. Duties of the Chief Procurement Officer are enumerated.

Sec. 36.30.015. The commissioner of transportation and public facilities may delegate to another agency the authority to contract for construction, after written determination has been made that the agency is capable of implementing the delegated authority. The commissioner of administration may delegate to an agency the authority to contract for its own supplies and services after a written

determination has been made that the agency is capable of implementing the delegated authority.

The authority to adopt regulations or dispose of surplus supplies may not be delegated. Agency contracts for the services of legal counsel must be approved by the department of law.

The Board of Directors of the Alaska Railroad Corporation and the Alaska State Housing Authority must adopt procedures substantially equivalent to the procurement code and regulations adopted by the commissioner.

Sec. 36.30.020. Legislative Council must adopt procedures which are based on the competitive principles consistent with this chapter.

Sec. 36.30.030. The administrative director of the court system must adopt procedures which are based on the competitive principles consistent with this chapter.

Sec. 36.30.040. Procurement regulations must be adopted by the commissioner.

Sec. 36.30.050. A list of persons who desire to provide supplies, services or construction items to the state will be established and maintained by the commissioner. Evidence of a valid Alaska business license and a statement of the contractor's qualifications must be submitted to be included on the list. Construction contractors must also submit a valid certificate of registration. A biennial fee will be charged to offset the cost of administering the list. The list may be used by the state agencies in providing notice of intent to make small purchases.

Sec. 36.30.060. Specification regulations must be adopted by the commissioner. Specifications must promote overall economy for the purposes intended, encourage competition in satisfying the state's needs, and may not be unduly restrictive.

Sec. 36.30.070. Supply management is under the authority of the commissioner and regulations must be adopted which govern management of supplies, surplus supplies and transfer of excess supplies.

Sec. 36.30.080. The department shall lease necessary space, and contract for the lease of space for the use of the state or an agency. A lease or contract for a lease may not be for a period of occupancy greater than 40 years. The department may enter into lease-financing agreements, which are subject to annual appropriation. If the department intends to enter into a lease or lease financing agreement with an annual rent anticipated to

exceed \$1,000,000, notice must be provided the legislature for approval.

Article 2. Competitive Sealed Bidding.

Sec. 36.30.100. Competitive sealed bidding is the preferred method of contracting. Competitive sealed bidding is not required for certain purchases, including professional services, which are itemized.

Sec. 36.30.110. When competitive sealed bidding is used, an invitation to bid is issued which must include the date by which the bid must be received, purchase description, and all contractual terms and conditions. Subcontractors must be listed. Evidence of a valid Alaska business license for all bidders and subcontractors must be submitted when responding to the ITR. A bidder for construction contracts must also submit evidence of the bidder's registration under AS 08.18 and evidence of registration for each listed subcontractor.

Sec. 36.30.115. Within 24 hours after the opening of bids, the two apparent low bidders shall submit a list of the subcontractors the bidder proposes to use in the performance of the contract. Conditions under which a bidder may substitute a subcontractor are listed. A bidder who violates this section may either have the contract cancelled, or after notice and a hearing, be assessed a penalty in an amount not exceeding 10% of the value of the subcontract at issue.

Sec. 36.30.120. Bid security shall be required for all competitive sealed bidding for construction contracts which exceed an amount established by regulation. Bid security may be required for other types of supplies and services.

Sec. 36.30.130. Public notice of the ITB must be provided 21 days before the date for the opening of the bid, unless otherwise determined in writing by the chief procurement officer, or the commissioner of transportation and public facilities for construction or state equipment bids. Notice of solicitations must be published in the Alaska Administrative Journal. The state is liable for failing to substantially comply with the notice requirements of this section.

Sec. 36.30.140. Bid opening must be public, in the presence of witnesses, and relevant information must be recorded, which is open to public inspection. The bids are not open for public inspection until after a notice of intent to award a contract has been issued.

Sec. 36.30.150. The procurement officer must evaluate bids based on the requirements set out in the ITB. The criteria used for the evaluation of an award must be objectively measurable. Criteria may not be used in bid evaluation if they are not set out in the ITB.

A contract based on total or life cycle costs may be awarded only when the chief procurement officer or the commissioner of transportation and public facilities determines in writing that the contract promotes overall economy for the purposes intended, encourages competition, is not unduly restrictive, and is in the best interest of the state.

Sec. 36.30.160. Bids received after the bid due date indicated on the ITB may not be accepted unless the delay was due to an error of the contracting agency.

Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on bid mistakes shall be permitted in accordance with regulations and supported by written justification.

Sec. 36.30.170. Awards to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the ITB shall be promptly made. The Alaska bidder preference is expanded to apply to all construction contracts. The lowest responsible and responsive Alaskan bidder with a bid not more than 5% higher than the lowest bid of a nonresident shall be awarded the contract. An Alaskan bidder who qualifies as an "employment program" shall be given a 10% preference.

Sec. 36.30.190. Multi-step sealed bidding is allowed when it is considered impractical to initially prepare a definitive purchase description to support an award based on price. Unpriced technical offers are submitted, followed by an ITB limited to the bidders whose offers are determined to be technically qualified under the criteria established.

Article 3. Competitive Sealed Proposals.

Sec. 36.30.200. Contracts may be awarded by competitive sealed proposals when the chief procurement officer, or the commissioner of transportation and public facilities for construction and state equipment fleet contracts, determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state.

Sec. 36.30.210. Request for proposals must contain the same information required for ITBs. The same notice provisions for ITBs apply for RFPs. An offeror must list the subcontractors within 48 hours after the date by which the proposals must be received. The same duties of bidders under ITBs apply to competitive sealed proposals.

Sec. 36.30.220. Standard overhead rate established by agencies and applicable to contracts for supplies and services, must be included in a RFP.

Sec. 36.30.230. Proposals are to be opened in a manner which avoids disclosure of contents to competing offerors during the process of negotiation. A register of proposals containing the name and address of each offeror shall be prepared and open for public inspection after the the notice of intent to award a contract is issued.

Sec. 36.30.240. Discussions with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, may be conducted for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submissions and before the award for the purpose of obtaining best and final offers. These discussions are exempted from the Alaska Open Meetings law.

Sec. 36.30.250. A contract under competitive sealed proposals shall be awarded to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price, the evaluation factors set out in the RFP, and whether the offeror qualifies as an Alaskan Bidder or is offering the services of an employment program.

Sec. 36.30.260. A contract awarded under competitive sealed proposals must contain: the amount of the contract; the date for supplies to be delivered or the term for services to be performed; a description of the services or supplies contracted for; and a certification that sufficient funds are available for the amount of the contract.

Sec. 36.30.270. Special procedures apply to contracts awarded to architects, engineers, and land surveyors.

Article 4. Other Procurement Methods.

Sec. 36.30.300. Sole source procurements may only be awarded if it is determined in writing that there is only one source for the required supply, service or construction. A sole source procurement may not be approved if a reasonable alternative source exists.

Sec. 36.30.310. Emergency procurements may be authorized under emergency conditions when there exists a threat to public health, welfare, or safety, and procurement through competitive sealed bids or competitive sealed proposals is impracticable, or contrary to the public interest, or to protect public or private property. A written determination of the basis for the emergency and for the selection of the particular contractor must be provided.

Sec. 36.30.320. Small procurements which do not exceed an aggregate amount of \$5,000 shall be made with competition that is practicable under the circumstances. A contract for professional services that does not exceed \$25,000 may be made in accordance with regulations adopted by the commissioner. Notice of small procurements shall be provided to Alaskan bidders designated by the commissioner under section 36.30.050(d).

Article 5. Preference for Alaska Products.

Sec. 36.30.322. Only timber, lumber, and manufactured lumber products originating in this state from local forests may be procured by an agency or used in construction projects unless manufacturers/suppliers are unable to supply the products at a cost that is within seven percent of the price offered by a manufacturer/supplier of non-Alaska forest products.

Sec. 36.30.324. Alaska products shall be used whenever practicable in procurements for an agency.

Sec. 36.30.326. Contract specifications must include a provision that a bidder or offeror that designates in a bid or proposal the use of Alaska products identified in the specifications will receive the preference granted under AS 36.15.328 in the evaluation of the bid or proposal if the products meet the contract specifications.

Sec. 36.30.328. In evaluation of a bid or proposal that designates the use of Alaska products is decreased by the percentage of the value of the designated Alaska products under AS 36.30.332.

Sec. 36.30.330. Failure to use the designated Alaska product for a reason within the control of the successful bidder or offeror will result in a penalty according to the schedule under this section.

Sec. 36.30.332. A classification system for Alaska products which is based on the manufacturer's quoted price, is contained in this section. A preference schedule is outlined.

Sec. 36.30.334. An agency may identify specific Alaska Products for use in making a procurement.

Sec. 36.30.336. Notwithstanding other provisions of this chapter, AS 36.30.322-36.30.338 apply to all procurements subject to this chapter, except as provided in AS 36.30.170(b) and 36.30.322(b).

Sec. 36.30.338. Definitions for this article.

Article 6. Contract Formation and Modification.

Sec. 36.30.340. If a contract contains a term that is in conflict with a state standard form contract term or if a standard term is deleted or modified by a term that is not standard, the contract must be approved by the Attorney General.

Sec. 36.30.350. Solicitations may be cancelled or any bids or proposals may be rejected, in whole or in part, or the date for opening bids or proposals may be delayed as may be specified in the solicitation, when it is in the best interest of the state. The reasons for cancellation, rejection, or delay in opening bids or proposals shall be made part of the contract file.

Sec. 36.30.360. A written determination of responsibility of a bidder or offeror shall be made by the procurement officer.

Sec. 36.30.362. The procurement officer must issue a written statement explaining the reasons a contract was awarded to a person who does not reside or maintain a place of business in Alaska, if the supplies, services, professional services or construction could have been obtained from in-state sources.

Sec. 36.30.365. At least 10 days before the formal award of a contract the procurement officer shall provide to each bidder or offeror notice of intent to award a contract.

Sec. 36.30.370. Any type of contract that will promote the best interests of the state may be used, except that the use of a cost-plus-a-percentage-of cost contract is prohibited.

Sec. 36.30.380. Except with respect to contracts awarded through competitive sealed bidding or firm fixed-price

contracts, a contract type may not be used unless it has been approved in writing by the procurement officer.

Sec. 36.30.390. Unless otherwise provided by law, multi-term contracts are permitted, but subject to availability and appropriation of funds. Written determination must support multi-term contracts.

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal periods, the contract shall be cancelled. The contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred, but not amortized in the price of the supplies or services delivered under the contract that are not otherwise recoverable.

Sec. 36.30.400. Cost or pricing data must be submitted and certified by contractors. This does not apply when: the contract price is based on adequate price competition; the contract price is set by law or regulation; or it is determined in writing that the requirements of this section are waived and the reasons for waiver are stated in writing.

Sec. 36.30.410. The state has the right to inspect the plant or place of business of a contractor or subcontractor that is related to the performance of a contract awarded or to be awarded by the state.

Sec. 36.30.420. The state may audit books and records of a person who has submitted cost or pricing data or receives a contract.

Sec. 36.30.430. The commissioner shall adopt regulations permitting the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions, and appropriate remedies.

Sec. 36.30.460. Standard clauses in state contract may be modified if supported by a written determination that states the circumstances justifying the variation.

Sec. 36.30.470. If the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget or the total contract budget, the procurement officer may not execute the contract modification, change order, or adjustment in contract price unless sufficient funds are available, or the scope of the project or contract is adjusted to permit the degree of completion that is feasible within the total project budget or total contract budget as it existed before the contract modification, change order, or adjustment in contract price.

Sec. 36.30.480. Cost principle regulations shall be adopted.

Article 7. Procurement Records and Reports.

Sec. 36.30.500. Procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the state archivist.

Sec. 36.30.510. A contract file open for public inspection must be kept by the commissioner and the contracting agency for each contract awarded under competitive sealed proposals. The file kept by the commissioner shall contain a summary of the information in the file of the contracting agency.

Sec. 36.30.520. The commissioner shall maintain for at least 5 years a record listing all sole source and emergency procurement contracts. An agency which has delegated procurement authority shall by October 1, of each year, submit records of all sole source and emergency procurement contracts to the commissioner.

Sec. 35.30.530. Procurement information is public except as otherwise provided by law.

Sec. 36.30.540. The commissioner shall biennially report to the legislature concerning procurements by agencies.

Article 8. Legal and Contractual Remedies.

Sec. 36.30.560. An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for goods, services or construction. The protest shall be filed with the procurement officer of the contracting agency in writing and must contain specified items.

Sec. 36.30.565. Time deadlines for filing protests are specified.

Sec. 36.30.570. Notice of a protest shall immediately be given to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

Sec. 36.30.575. If a protest is filed before a contract is awarded, the award may be made unless the procurement officer of the contracting agency determines in writing that: a reasonable probability exists that the protest will be sustained; or stay of the award is not contrary to the best interests of the state.

Sec. 36.30.580. A written decision by the procurement officer of the contracting agency shall be issued within 14 days after a protest has been filed, unless the time is extended up to 26 days for good cause. Notice shall be sent to the protester. If a decision is not made by the due date, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.

Sec. 36.30.585. If the procurement officer sustains a protest the procurement officer shall implement an appropriate remedy.

Sec. 36.30.590. An appeal from a decision of a procurement officer on a protest must be filed with the appropriate commissioner within 5 days after the decision is received by the protester.

Sec. 36.30.595. The procurement officer shall immediately give notice of an appeal to the contractor if a contract has been awarded, or, if no award has been made, to all interested parties.

Sec. 36.30.600. If a protest appeal is filed before a contract is awarded and the award was stayed, the filing of the appeal automatically continues the stay until the commissioner of administration or transportation and public facilities makes a written determination that the award of the contract is necessary to protect substantial interests of the state.

Sec. 36.30.605. The procurement officer of the contracting agency shall file a complete report on the protest and decision with the commissioner of administration or transportation and public facilities within 7 days after a protest appeal is filed. The protester and all interested parties that have requested a copy of the appeal shall be furnished one. The protester may file comments on the protest report within 7 days after the report is received. Extensions may be granted.

Sec. 36.30.610. The commissioner of administration or transportation and public facilities shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely. The appropriate commissioner may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact.

Sec. 36.30.615. A hearing on a protest appeal shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.620. If a controversy, asserted by a contractor, concerning a contract awarded under this

chapter cannot be resolved by agreement, the procurement officer shall, after receiving a written request by the contractor, issue a written decision no more than 90 days after receipt of all necessary information from the contractor, unless the due date is extended for good cause. 0

The decision shall be sent to the contractor. If a decision is not made by the due date, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor. If a controversy asserted by the state concerning a contract awarded cannot be resolved by agreement, the matter shall be immediately referred to the commissioner of administration or transportation and public facilities.

Sec. 36.30.625. An appeal from a decision of the procurement officer on a contract controversy may be filed by the contractor with the commissioner of administration or transportation and public facilities. The appeal shall be filed within 14 days after the decision is received by the contractor.

Sec. 36.30.630. A hearing on a contract controversy appealed to the commissioner or referred to the commissioner shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.632. The commissioners of administration and transportation and public facilities may delegate responsibilities under Sec. 36.30.590 and Sec. 36.30.630 to the head of the contracting agency.

Sec. 36.30.635. The commissioners of administration and transportation and public facilities may debar or suspend a person from consideration for award of contracts. Notice and opportunity for a hearing are specified.

Sec. 36.30.640. Causes for debarment or suspension are enumerated.

Sec. 36.30.645. The commissioners of administration and transportation and public facilities shall issue a written decision to debar or suspend.

Sec. 36.30.650. A person suspended is entitled to a hearing if the person files a written request for a hearing within 7 days after receipt of the notice of suspension.

Sec. 36.30.655. The commissioner shall maintain a list of all persons debarred or suspended from consideration for award of contracts.

Sec. 36.30.660. The commissioner of administration or the commissioner of transportation and public facilities may, at any time after a final decision to debar a person, reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

A debarred person may request reinstatement. A hearing may be held on a reinstatement petition. A decision on reinstatement shall be made in writing within 7 days after a reinstatement petition is submitted. A decision under this section is not subject to judicial appeal.

Sec. 36.30.665. The commissioner of administration or transportation and public facilities may permit a debarred person to participate in a contract on a limited basis during the debarment period.

Sec. 36.30.670. The commissioner of administration or transportation and public facilities shall act as a hearing officer or appoint a hearing officer for a hearing conducted under this chapter. The provisions of the Administrative Procedure Act do not apply to a hearing conducted under this chapter. The authority of a hearing officer is outlined.

Sec. 36.30.675. If the commissioner of administration or transportation and public facilities is not acting as hearing officer, the hearing officer shall recommend a decision to the appropriate commissioner based on the evidence presented. The recommendation shall include findings of fact and conclusions of law. The appropriate commissioner may affirm, modify or reject the hearing officer's recommendation or take any other appropriate action.

Sec. 36.30.680. A decision by the commissioner of administration is final, and shall be sent within 20 days after a hearing to all parties. A decision by the commissioner of transportation and public facilities involving procurement of construction shall be sent within 90 days after the hearing.

Sec. 36.30.685. A final decision of the commissioner of administration or transportation and public facilities may be appealed to the superior court in accordance with the Alaska Rules of Appellate Procedure.

Sec. 36.30.687. Civil and criminal sanctions are outlined for misrepresentations and fraudulent claims.

Sec. 36.30.690. This chapter and the regulations adopted under it are the exclusive procedures for asserting a claim against the state or an agency arising in relation to a procurement conducted under this chapter.

Sec. 36.30.695. The commissioner of administration may adopt by regulation additional rules of procedure.

Sec. 36.30.699. The definition of interested party is given.

Article 9. Intergovernmental Relations.

Sec. 36.30.700. Cooperative purchasing is authorized between public procurement units or external procurement activities in accordance with an agreement entered into between the participants.

Sec. 36.30.710. Sale, acquisition, or use of supplies among public procurement units or with external procurement activity may be done independent of certain requirements of this chapter.

Sec. 36.30.720. Joint use of facilities is allowable.

Sec. 36.30.730. A public procurement unit may provide personnel, information and technical services to a requesting public procurement unit or external procurement activity.

Sec. 36.30.735. Current Alaska law on restrictions of contracting with or employing experts on radiation hazards is retained.

Sec. 36.30.740. The commissioner may collect information concerning supplies, services or construction being procured or used by state public procurement units.

Sec. 36.30.750. Under a cooperative purchasing agreement, controversies arising between an administering public procurement unit and its bidders, offerors, or contractors shall be resolved in accordance with this chapter.

Sec. 36.30.790. Definitions for this article are provided.

Article 10. General Provisions.

Sec. 36.30.850. This chapter applies to contracts solicited or entered into after January 1, 1987, unless the parties agree to its application to a contract solicited or entered into before that date. This chapter applies to the disposal of state supplies and every expenditure of public funds irrespective of their sources, except as specified in AS 36.30.915.

This chapter does not apply to: grants; contracts for professional witnesses; contracts of the University of Alaska where the work is to be performed substantially by enrolled students; contracts for medical doctors and dentists; contracts for the purchase of residential child care services under AS 47.40; disposals of land or interest in land; disposals under AS 38.05; contracts for the preparation of ballots under AS 15.15.030; acquisitions or disposals of property and other contracts relating to airports; acquisitions of real property or disposals of obsolete property under AS 19.05.060, 19.05.100, 19.05.110 or 19.05.120; disposals of obsolete material or equipment under AS 35.20.060; leases of ferry terminal facilities under AS 19.60.010; contracts of the department of fish and game for non-point-to-point flights requiring specialized flying and piloting skills; or purchases of income-producing assets for the state treasury or a public corporation of the state.

Except for AS 36.30.700-36.30.895, this chapter does not apply to contracts between two or more agencies, the state and its political subdivisions, or the state and other governments.

Sec. 36.30.860. Unless displaced by the particular provision of this chapter, all other principles of law and equity shall supplement the provisions of this chapter.

Sec. 36.30.870. Regulations under this chapter shall be adopted in accordance with the Administrative Procedure Act. Regulations applicable to procurements of construction or procurements for or disposal of property of the state equipment fleet shall be adopted by the commissioner of administration only after consultation with the commissioner of transportation and public facilities.

Sec. 36.30.880. This chapter requires all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

Sec. 36.30.890. If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or a regulation adopted under a provision, the federal statute or regulation shall prevail.

Sec. 36.30.900. This chapter does not modify, amend, or alter laws regarding preference for Alaska forest products or preference to producers or dealers in Alaska, except as provided in AS 36.30.170(b) and (c).

Sec. 36.30.910. This chapter does not prevent purchasing through the general services administration as provided by law.

Sec. 36.30.920. Suspected anticompetitive practices are to be reported to the attorney general.

Sec. 36.30.930. In addition to penalties prescribed for unethical conduct, civil and criminal penalties are provided for violations of this chapter.

Sec. 36.30.940. The attorney general on behalf of the state shall enforce the provisions of this chapter.

Sec. 36.30.950. Severability clause is included.

Sec. 36.30.990. Definitions.

Sec. 36.30.995. This chapter may be cited as the State Procurement Code.

SECTION 3 through SECTION 64 amend other Alaska statutes to reflect the provisions of this chapter.

SECTION 65. The commissioner must report to the legislature by December 1, 1988, concerning procurements by state agencies during the fiscal year 1987.

SECTION 66. The commissioner of administration shall adopt the regulations required under this chapter by July 1, 1987.

SECTION 67. This is the repealer section.

SECTION 68. Section 66 of this Act takes effect immediately.

SECTION 69. Except as provided in sec. 68, this Act takes effect July 1, 1987.

ALASKA STATE AFL-CIO

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MANO FREY
Executive President

April 1, 1986

TESTIMONY ON CS SB 341 (STATE PROCUREMENT PRACTICES AND PROCEDURES)

To the Co-Chair, members of the Committee:

My name is Dixie Hudish and I am here representing the Alaska State AFL-CIO.

I wish to address several concerns in this proposed bill we have before us. On page 3, lines 3,4,5 & 6 we see language that allows for the Univ. of Alaska Board of Regents to adopt regulations that are substantially equivalent to the regulations adopted by the Commissioner of Administration to implement this chapter.

In providing for this provision our question of concern is who will be monitoring the procurement practices of the Board of Regents to insure that their regulations are substantially equivalent? The public? If one looks at the structure of the Board of Regents one realizes that they are not directly answerable to the legislature, that in fact their terms are for 6 years and can only be moved by formal impeachment procedures.

On page 5, lines 9 -13 provisions are also made for the Alaska Railroad as we have for the University of Alaska. Our question is how can we, the public, be insure that if this procurement bill is adopted that the Alaska Railroad Board will in fact change their

Testimony CS SB 341
Dixie Hudish/ AFL-CIO

existing policies in procurement to meet the regulations adopted under this bill? Clearly language needs to be written to insure the above.

We feel what was intended to be an all encompassing bill for procurement for this state, has instead, been "watered down" to only provide for changes in procurement by the Dept. of Transportation and the Dept. of Administration.

As it appears to us, if we have another serious procurement problem such as the procurement situation the state found itself involved in last summer in Fairbanks, it will be because we have not provided for a consistent unified code on procurement for all state agencies.

On page 5, line 19 under Sec. 36.30.030, the new language provided for the court system now allows for the Administrative Director of the Court System to adopt procedures that are based on the competitive principles established under this chapter and the procedures must be adopted to the Special needs of the judicial branch.

If one were to look at the Court System Procurement Guidelines, as they now read, they would not meet the substantially equivalent standard but would certainly meet the broader standard that this new language allows.

Throughout the court system guidelines, procurement for services, goods & construction are all defused together.

Under Competitive Sealed Bidding guidelines of the Court System, there is a provision if all bids are rejected the Director will determine whether it is in the Court Systems interest to solicit new bids, or to directly negotiate in which case the director would sign a bid waiver. If the Director authorizes direct negotiations each bidder must be notified of the intent to negotiate and the 3 lowest bidders are given a reasonable opportunity to negotiate. The negotiated contract can be awarded only if the negotiated price is lower than the lowest rejected bid and it is the lowest negotiated price offered by an competitive offerrer. Now I ask you, if this doesn't sound like bid shopping?

Under the court system, debarment is not mentioned but suspension is. Under this procurement bill, suspension is for 3 months and debarment for 3 years. The Court system allows only for suspension and that being 2 years.

With these two examples given of the Court System Guidelines, we urge that the Court System, the Univ. of Alaska, Legislature, Ak. Railroad fall under this procurement bill.

If there is not support for the above, we urge that you support the previous language under the Court System that will provide that the Court System must adopt regulations that are substantially equivalent to the regulations of this chapter.

In summary, I would like to emphasize that a significant portion of public construction in Alaska is procured with State dollars by

political subdivisions and other "grant" recipients, yet this bill does not require any grant or appropriation recipient to utilize procurement practices consistent with this procurement bill.

See pg 5
line 9-13

If one were to research the abuse in construction, professional and service procurement, ^{in sure} one would find the majority of abuses with the various entities that are not covered under this bill.

If state dollars are spent by others then why not institute similar safeguards on procurement for grant recipients.

Our recommendation is that a new section be provided that will require any grant or appropriation recipient to adopt procedures to govern the procurement of supplies ~~and~~ services and construction to be subject to regulations adopted by the Commissioner of Administration in accordance with this chapter.

Finally,

One must also keep in mind that this Procurement bill does not give preference for American Companies vs Foreign National companies, in the awarding of a procurement contract..Are we going to wait until we put our own American Companies out of business before we tighten up our competitive bidding criteria? We presently have at least 2 Chinese companies bidding on the Bradley Lake Project. Are we going to continue to watch American Construction companies go bankrupt while foreign national companies compete for our work?

AGC AMENDMENTS TO CS SB 341 (Jud)

Assessed
not supported

Page 10, Line 18 After the word "Within" delete "48 hours" and insert two working days

Page 10, Line 19 After the word "bids," delete "each" and insert the apparent low

two lowest bidders shall submit

Page 11, Line 5 After the word "listed;" insert the following:

federal affirmative action requirements

(7) must be substituted in order for the prime contractor to satisfy required Disadvantaged Business Enterprise or Women's Business Enterprise or other contractually imposed requirement; ✓

~~(8) Was listed as a result of clerical error;~~

(9) Refuses to agree or abide with the bidder's labor agreement; ✓

Renumber remaining sections accordingly

Introduced: 1/14/86
Referred: Judiciary and
Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE SENATE SELECT
INTERIM COMMITTEE ON PROCURE-
MENT PRACTICES AND PROCEDURES

1 IN THE SENATE

2

SENATE BILL NO. 341

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to state procurement practices and
7 procedures; and providing for an effective date."

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

9 * Section 1. PURPOSE. This Act shall be construed and applied to
10 promote its underlying purposes and policies. The underlying purposes and
11 policies of this Act are to

12 (1) simplify, clarify, and modernize the law governing pro-
13 curement by the state;

14 (2) make as consistent as possible the procurement practices
15 among the executive branch, the legislative branch, and the judicial branch
16 of state government;

17 (3) provide for increased public confidence in the procedures
18 followed in state procurement;

19 (4) ensure the fair and equitable treatment of all persons who
20 deal with the procurement system of the state;

21 (5) provide increased economy in state procurement activities
22 and maximize to the fullest extent practicable the purchasing value of
23 state funds;

24 (6) foster effective broad-based competition within the free
25 enterprise system;

26 (7) provide safeguards for the maintenance of a procurement
27 system of quality and integrity;

28 (8) permit the continued development of state procurement prac-
29 tices and policies; and

1 (9) eliminate and prevent discrimination in state contracting
2 because of race, religion, color, national origin, sex, age, marital sta-
3 tus, pregnancy, or parenthood.

4 * Sec. 2. AS 36 is amended by adding a new chapter to read:

5 CHAPTER 30. STATE PROCUREMENT CODE.

6 ARTICLE 1. ORGANIZATION OF STATE PROCUREMENT.

7 Sec. 36.30.005. CENTRALIZATION OF PROCUREMENT AUTHORITY. (a)

8 Except as otherwise provided, all rights, powers, duties, and
9 authority relating to the procurement of supplies, services, and
10 professional services, and the control over supplies, services, and
11 professional services vested in or exercised by an agency on
12 January 1, 1987, are transferred to the commissioner of administration
13 and to the chief procurement officer.

14 (b) Except as otherwise provided, all rights, powers, duties,
15 and authority relating to the procurement of construction and
16 procurements to or disposals from the state equipment fleet and the
17 control over construction and the state equipment fleet vested in or
18 exercised by an agency on January 1, 1987, are transferred to the
19 commissioner of transportation and public facilities, subject to
20 regulations adopted by the commissioner of administration.

21 Sec. 36.30.010. CHIEF PROCUREMENT OFFICER. (a) The commis-
22 sioner shall appoint to the partially exempt service the chief
23 procurement officer of the state who is responsible for procurement of
24 supplies, services, and professional services for agencies in the
25 executive branch. The chief procurement officer shall have at least
26 five years of prior experience in public procurement and may be
27 removed by the commissioner only for cause. The term of office of the
28 chief procurement officer expires when the term of the governor
29 expires.

1 (b) Except as otherwise specifically provided in this chapter,
2 the chief procurement officer shall

3 (1) procure or supervise the procurement of all supplies,
4 services, and professional services needed by an agency;

5 (2) exercise general supervision and control over all
6 inventories of supplies belonging to an agency and prescribe the
7 manner in which supplies shall be purchased, delivered, stored, and
8 distributed;

9 (3) prescribe the time, manner, authentication, and form of
10 making requisitions for supplies and services;

11 (4) sell, trade, transfer between agencies, or otherwise
12 dispose of surplus, obsolete, or unused supplies and make proper
13 adjustments in the accounts of agencies concerned;

14 (5) establish and maintain programs for the inspection,
15 testing, and acceptance of supplies and services and the testing of
16 samples submitted with bids;

17 (6) prescribe standard forms for bids and contracts; and

18 (7) provide for other matters that may be necessary to
19 carry out the provisions of this chapter and the regulations adopted
20 under this chapter.

21 Sec. 36.30.015. EXECUTIVE BRANCH AGENCIES. (a) The Department
22 of Transportation and Public Facilities may contract for construction
23 and procurements for the state equipment fleet. The Department of
24 Transportation and Public Facilities may dispose of property of the
25 state equipment fleet. The commissioner of transportation and public
26 facilities may delegate to another agency the authority to contract
27 for construction. Before delegating authority to an agency under this
28 subsection, the commissioner of transportation and public facilities
29 shall make a written determination that the agency is capable of

1 implementing the delegated authority. Contracts for construction and
2 procurements to and disposals from the state equipment fleet are
3 governed by this chapter and regulations adopted by the commissioner
4 of administration under this chapter.

5 (b) The commissioner may delegate to an agency the authority to
6 contract for and manage supplies, except property of the state
7 equipment fleet, services, and professional services. Notwithstanding
8 delegation of authority under this subsection, an agency's authority
9 to contract for supplies, services, and professional services, is
10 governed by this chapter and regulations adopted by the commissioner
11 under this chapter. Before delegating authority to an agency under
12 this subsection, the commissioner shall make a written determination
13 that the agency is capable of implementing the delegated authority.

14 (c) The commissioner may not delegate the authority to adopt
15 regulations under this chapter.

16 (d) An agency may not contract for the services of legal counsel
17 without the approval of the attorney general.

18 (e) The board of directors of the Alaska Railroad Corporation
19 shall adopt procedures to govern the procurement of supplies, ser-
20 vices, professional services, and construction by the corporation.
21 The procedures must be substantially equivalent to the procedures pre-
22 scribed in this chapter and in regulations adopted under this chapter.

23 Sec. 36.30.020. LEGISLATURE. The Legislative Council shall
24 adopt procedures to govern the procurement of supplies, services,
25 professional services, and construction by the legislature, legisla-
26 tors, and legislative agencies and committees. The procedures must be
27 substantially equivalent to the procedures prescribed in this chapter.

28 Sec. 36.30.030. COURT SYSTEM. The supreme court shall adopt
29 procedures to govern the procurement of supplies, services,

1 professional services, and construction by the judicial branch. The
2 procedures must be substantially equivalent to the procedures pre-
3 scribed in this chapter.

4 Sec. 36.30.040. PROCUREMENT REGULATIONS. (a) The commissioner
5 shall adopt regulations governing the procurement, management, con-
6 trol, and disposal of supplies by agencies and the procurement,
7 management, and control of services, professional services and
8 construction by agencies. The commissioner may audit and monitor the
9 implementation of the regulations and the requirements of this chapter
10 with respect to using agencies.

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

13 (1) suspension, debarment, and reinstatement of prospective
14 bidders and contractors;

15 (2) bid protests;

16 (3) conditions and procedures for the procurement of per-
17 ishables and items for resale;

18 (4) conditions and procedures for the use of source selec-
19 tion methods authorized by this chapter, including sole source pro-
20 curements, emergency procurements, and small procurements;

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

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

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

26 (8) storerooms and inventories, including determination of
27 appropriate stock levels and the management, transfer, sale, or other
28 disposal of agency supplies;

29 (9) definitions and classes of contractual services and

- 1 procedures for acquiring them;
- 2 (10) providing for conducting price analysis;
- 3 (11) use of payment and performance bonds in connection with
- 4 contracts for supplies and services;
- 5 (12) guidelines for use of cost principles in negotiations,
- 6 adjustments, and settlements; and
- 7 (13) the elimination and prevention of discrimination in
- 8 state contracting because of race, religion, color, national origin,
- 9 sex, age, marital status, pregnancy, or parenthood.

10 Sec. 36.30.050. LISTS OF CONTRACTORS. (a) The commissioner

11 shall establish and maintain lists of persons who desire to provide

12 supplies, services, professional services, or construction services to

13 the state.

14 (b) A person who desires to be on a list shall submit to the

15 commissioner evidence of a valid Alaska business license together with

16 a biennial fee in an amount established by regulation. A construction

17 contractor shall also submit a valid certificate of registration

18 issued under AS 08.18. The commissioner, by regulation, may require

19 submission of additional information.

20 (c) The lists shall be used by the chief procurement officer or

21 an agency when issuing invitations to bid or requests for proposals

22 under this chapter.

23 (d) The lists shall be used by the Legislative Council, the

24 court system, and the Alaska Railroad Corporation.

25 Sec. 36.30.060. SPECIFICATIONS. (a) The commissioner shall

26 adopt regulations governing the preparation, revision, and content of

27 specifications for supplies, services, professional services, and

28 construction required by an agency. The commissioner shall monitor

29 the use of these specifications.

1 (b) Specifications for construction of highways must conform as
2 closely as practicable to those adopted by the American Association of
3 State Highway and Transportation Officials.

4 (c) The commissioner may obtain expert advice and assistance
5 from personnel of using agencies in the development of specifications.
6 Specifications must promote overall economy for the purposes intended
7 and encourage competition in satisfying the state's needs, and may not
8 be unduly restrictive. The requirements of this subsection regarding
9 the purposes and nonrestrictiveness of specifications apply to all
10 specifications, including those prepared by architects, engineers,
11 designers, and other professionals.

12 (d) In this section, "specification" means a description of the
13 physical or functional characteristics, or of the nature of a supply,
14 service, professional service, or construction project; it may include
15 requirements for inspecting, testing, and delivery.

16 Sec. 36.30.070. SUPPLY MANAGEMENT. The commissioner shall adopt
17 regulations governing the

18 (1) management of supplies during their entire life cycle;

19 (2) sale, lease, or disposal of surplus supplies by public
20 auction, competitive sealed bidding, or other appropriate method
21 designated by regulation;

22 (3) purchase of surplus supplies by an employee of the
23 using or disposing agency; and

24 (4) transfer of excess supplies.

25 Sec. 36.30.080. LEASES. (a) The department shall lease space
26 for the use of the state or an agency wherever it is necessary and
27 feasible, subject to compliance with the requirements of this chapter.
28 A lease may not provide for a period of occupancy greater than 40
29 years. An agency requiring office, warehouse, or other space shall

1 lease the space through the department.

2 (b) The department may enter into lease-financing agreements,
3 including lease-purchase agreements and agreements related to the
4 issuance of certificates of participation. A lease-financing agree-
5 ment must provide that lease payments are subject to annual appropria-
6 tion.

7 (c) If the department intends to enter into a lease or lease-
8 financing agreement with an annual rent to the state anticipated to
9 exceed \$1,000,000, the department shall provide notice to the legisla-
10 ture. The notice must include the anticipated annual lease obligation
11 amount and the anticipated total construction, acquisition, or other
12 costs of the project. The department may not enter into an agreement
13 under this subsection unless the project has been approved by the
14 legislature by law. An appropriation for the project does not consti-
15 tute approval of the project for purposes of this subsection.

16 ARTICLE 2. COMPETITIVE SEALED BIDDING.

17 Sec. 36.30.100. GENERAL POLICY. (a) Except as otherwise pro-
18 vided in this chapter, or unless specifically exempted by law, an
19 agency contract shall be awarded by competitive sealed bidding.

20 (b) Competitive sealed bidding is not required

21 (1) when the commissioner determines in writing that food,
22 clothing, or medical supplies, or materials for use in laboratory or
23 medical studies may be purchased otherwise to the best advantage of
24 the state;

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

26 (3) for contracts for the operation of transportation
27 systems for students to and from the schools within the state, as are
28 authorized under AS 14.09.010; these contracts may be awarded by bid
29 or negotiation and, at the discretion of the Board of Education, may

1 be awarded for periods of three years or less;

2 (4) for the purchase of products or services manufactured
3 or provided by a sheltered workshop;

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

6 (6) for professional services; or

7 (7) for concessions operated on state property.

8 (c) In this section "sheltered workshop" means a place where
9 manufacture or handiwork is carried on, and that is operated for the
10 primary purpose of providing remunerative employment to individuals
11 with physical or mental disabilities that constitute substantial
12 handicaps to employment.

13 Sec. 36.30.110. INVITATION TO BID. (a) When competitive sealed
14 bidding is used, the procurement officer shall issue an invitation to
15 bid. It must include a date by which the bid must be received, pur-
16 chase description, and all contractual terms and conditions applicable
17 to the procurement.

18 (b) The invitation to bid shall require the bidder to list
19 subcontractors the bidder proposes to use in the performance of the
20 contract. When responding to the invitation, the bidder shall also
21 supply evidence of the bidder's valid Alaska business license and
22 evidence of a valid Alaska business license for each listed
23 subcontractor. A bidder for a construction contract shall also submit
24 evidence of the bidder's registration under AS 08.18 and evidence of
25 registration for each listed subcontractor.

26 Sec. 36.30.120. BID SECURITY. (a) Bid security shall be re-
27 quired for all competitive sealed bidding for construction contracts
28 when the price is estimated by the procurement officer to exceed an
29 amount established by regulation of the commissioner. Bid security on

1 construction contracts under the amount set by the commissioner may be
2 required when the circumstances warrant. Bid security may be required
3 for competitive sealed bidding for contracts for supplies, services,
4 or professional services in accordance with regulations of the
5 commissioner when needed for the protection of the state.

6 (b) Bid security must be a bond provided by a surety company
7 authorized to do business in the state, or the equivalent in cash, or
8 otherwise supplied in a form satisfactory to the commissioner. Bid
9 security must be in an amount equal to at least

10 (1) 10 percent of the amount of the bid if the bid does not
11 exceed \$100,000; or

12 (2) five percent of the amount of the bid if the bid
13 exceeds \$100,000.

14 (c) When the invitation to bid requires security, the procure-
15 ment officer shall reject a bid that does not comply with the bid
16 security requirement unless, in accordance with regulations, the
17 officer determines that the bid fails to comply in a nonsubstantial
18 manner with the security requirements.

19 Sec. 36.30.130. PUBLIC NOTICE OF INVITATION TO BID. (a) The
20 procurement officer shall give adequate public notice of the invita-
21 tion to bid at least 21 days before the date for the opening of bids.
22 If a determination is made in writing that a shorter notice period is
23 necessary for a particular bid, the 21-day period may be shortened.
24 The determination shall be made by the chief procurement officer for
25 bids for supplies, services, or professional services. The
26 determination shall be made by the commissioner of transportation and
27 public facilities for bids for construction or acquisition of property
28 for the state equipment fleet. Notice shall be mailed to all active
29 prospective contractors on the appropriate list maintained under

1 AS 36.30.050. The time and manner of notice must be in accordance
2 with regulations adopted by the commissioner of administration. When
3 practicable, notice may include

4 (1) publication in a newspaper calculated to reach prospec-
5 tive bidders;

6 (2) notices posted in public places within the area where
7 the work is to be performed or the material furnished; and

8 (3) publication in the Alaska Administrative Journal.

9 (b) Failure to comply with the notice requirements of this
10 section does not invalidate a bid or the award of a contract. The
11 state is not liable for damages caused by failure to comply with this
12 section.

13 Sec. 36.30.140. BID OPENING. (a) The procurement officer shall
14 open bids publicly in the presence of one or more witnesses at the
15 time and place designated in the invitation to bid. The amount of
16 each bid and other relevant information that is specified by regula-
17 tion of the commissioner, together with the name of each bidder, shall
18 be recorded.

19 (b) The information recorded under (a) of this section is open
20 to public inspection as soon as practicable before the contract is
21 awarded. The bids are not open for public inspection until after a
22 contract is awarded. To the extent the bidder designates and the
23 procurement officer concurs, trade secrets and other proprietary data
24 contained in a bid document are confidential.

25 Sec. 36.30.150. BID ACCEPTANCE AND BID EVALUATION. Bids shall
26 be unconditionally accepted without alteration or correction, except
27 as authorized in AS 36.30.160. The procurement officer shall evaluate
28 bids based on the requirements set out in the invitation to bid, which
29 may include criteria to determine acceptability such as inspection,

1 testing, quality, delivery, and suitability for a particular purpose.
2 The criteria that will affect the bid price and be considered in
3 evaluation for award must be objectively measurable, such as dis-
4 counts, transportation costs, and total or life cycle costs. The
5 invitation to bid must set out the evaluation criteria to be used.
6 Criteria may not be used in bid evaluation if they are not set out in
7 the invitation to bid.

8 Sec. 36.30.160. LATE BIDS; CORRECTION OR WITHDRAWAL OF BIDS;
9 CANCELLATION OF AWARDS. (a) Bids received after the bid due date
10 indicated on the invitation to bid may not be accepted unless the
11 delay was due to an error of a state employee directly responsible for
12 opening the bids.

13 (b) Correction or withdrawal of inadvertently erroneous bids
14 before or after bid opening, or cancellation of awards or contracts
15 based on bid mistakes may be permitted in accordance with regulations
16 adopted by the commissioner. After bid opening, changes in bid prices
17 or other provisions of bids prejudicial to the interest of the state
18 or fair competition may not be permitted. Except as otherwise
19 provided by regulation, a decision to permit the correction or with-
20 drawal of a bid, or to cancel an award or contract based on a bid
21 mistake, shall be supported by a written determination made by the
22 procurement officer. If a bidder is permitted to withdraw a bid
23 before award, an action may not be maintained against the bidder or
24 the bid security.

25 Sec. 36.30.170. CONTRACT AWARD AFTER BIDS. (a) Except as
26 provided in (b) of this section, the procurement officer shall award a
27 contract based on the solicited bids with reasonable promptness by
28 written notice to the lowest responsible and responsive bidder whose
29 bid conforms in all material respects to the requirements and criteria

1 set out in the invitation to bid.

2 (b) The procurement officer shall award a contract based on
3 solicited bids to the lowest responsible and responsive Alaska bidder
4 if the bid is not more than five percent higher than the lowest non-
5 resident bidder's. In this subsection, "Alaska bidder" means a person
6 who

7 (1) holds a current Alaska business license;

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

11 (3) has maintained a place of business within the state for
12 a period of six months immediately preceding the date of the bid; and

13 (4) if a joint venture, is composed entirely of ventures
14 that qualify under (1) - (3) of this subsection.

15 (c) The provisions of (b) of this section do not apply to con-
16 struction contracts for highways and public works if the construction
17 contract exceeds \$5,000.

18 Sec. 36.30.190. MULTI-STEP SEALED BIDDING. When it is con-
19 sidered impractical to initially prepare a definitive purchase de-
20 scription to support an award based on price, the procurement officer
21 may issue an invitation to bid requesting the submission of unpriced
22 technical offers to be followed by an invitation to bid limited to the
23 bidders whose offers are determined to be technically qualified under
24 the criteria set out in the first solicitation.

25 ARTICLE 3. COMPETITIVE SEALED PROPOSALS.

26 Sec. 36.30.200. CONDITIONS FOR USE. (a) Except as otherwise
27 provided in this chapter, or unless specifically exempted by law, an
28 agency contract shall be awarded by competitive sealed proposals if it
29 is not awarded by competitive sealed bidding.

1 (b) The commissioner may provide by regulation that it is either
2 not practicable or not advantageous to the state to procure specified
3 types of supplies, services, or construction by competitive sealed
4 bidding that would otherwise be procured by that method. When the
5 chief procurement officer, or for construction contracts or
6 procurements for the state equipment fleet, the commissioner of
7 transportation and public facilities, determines in writing that the
8 use of competitive sealed bidding is either not practicable or not
9 advantageous to the state, a contract may be entered into by
10 competitive sealed proposals in accordance with the regulations. When
11 it is determined that it is practicable but not advantageous to use
12 competitive sealed bidding, the chief procurement officer or
13 commissioner of transportation and public facilities shall specify
14 with particularity the basis for the determination.

15 Sec. 36.30.210. REQUEST FOR PROPOSALS. (a) A request for
16 competitive sealed proposals must contain the date by which the pro-
17 posal must be received, a description of the supplies, construction,
18 services, or professional services to be provided under the contract,
19 and the terms under which the supplies, construction, services, or
20 professional services are to be provided. The request shall require
21 the offeror to list subcontractors the offeror proposes to use in the
22 performance of the contract. The offeror must also supply evidence of
23 the offeror's valid Alaska business license together with evidence of
24 a valid Alaska business license for each listed subcontractor. An
25 offeror for a construction contract shall also submit evidence of the
26 offeror's registration under AS 08.18 and evidence of registration for
27 each listed subcontractor.

28 (b) A request for proposals must contain that information
29 necessary for an offeror to submit a proposal or contain references to

1 any information that cannot reasonably be included with the request.
2 The request must provide a description of the factors that will be
3 considered by the procurement officer when evaluating the proposals
4 received, including the relative importance of price and other
5 evaluation factors.

6 (c) Notice of a request for proposals shall be given in accor-
7 dance with procedures under AS 36.30.130. The procurement officer may
8 use additional means considered appropriate to notify prospective
9 offerors of the intent to enter into a contract through competitive
10 sealed proposals.

11 Sec. 36.30.220. STANDARD OVERHEAD RATE. (a) If an agency
12 submits a proposal in response to a request for competitive sealed
13 proposals, the agency must include its standard overhead rate within
14 its proposal.

15 (b) In this section, "standard overhead rate" means a charge
16 established for services and professional services from an agency that
17 is designed to compensate the agency for administration and support
18 services incidentally provided with the services contracted for.

19 Sec. 36.30.230. TREATMENT OF PROPOSALS. The procurement officer
20 shall open proposals so as to avoid disclosure of contents to compet-
21 ing offerors during the process of negotiation. A register of pro-
22 posals containing the name and address of each offeror shall be pre-
23 pared in accordance with regulations adopted by the commissioner. The
24 register and the proposals are open for public inspection after the
25 contract is awarded. To the extent that the offeror designates and
26 the procurement officer concurs, trade secrets and other proprietary
27 data contained in the proposal documents are confidential.

28 Sec. 36.30.240. DISCUSSION WITH RESPONSIBLE OFFERORS AND REVI-
29 SIONS TO PROPOSALS. As provided in the request for proposals, and

1 under regulations adopted by the commissioner, discussions may be
2 conducted with responsible offerors who submit proposals determined to
3 be reasonably susceptible of being selected for award for the purpose
4 of clarification to assure full understanding of, and responsiveness
5 to, the solicitation requirements. Offerors shall be accorded fair
6 and equal treatment with respect to any opportunity for discussion and
7 revision of proposals, and revisions may be permitted after submis-
8 sions and before the award of the contract for the purpose of
9 obtaining best and final offers. In conducting discussions, the
10 procurement officer may not disclose information derived from
11 proposals submitted by competing offerors.

12 Sec. 36.30.250. AWARD OF CONTRACT. The procurement officer
13 shall award a contract under competitive sealed proposals to the
14 responsible and responsive offeror whose proposal is determined in
15 writing to be the most advantageous to the state taking into
16 consideration price and the evaluation factors set out in the request
17 for proposals. Other factors and criteria may not be used in the
18 evaluation. The contract file must contain the basis on which the
19 award is made.

20 Sec. 36.30.260. CONTRACT EXECUTION. A contract awarded under
21 competitive sealed proposals must contain

- 22 (1) the amount of the contract stated on its first page;
23 (2) the date for the supplies to be delivered or the dates
24 for construction, services, or professional services to begin and be
25 completed;
26 (3) a description of the supplies, construction, services,
27 or professional services to be provided; and
28 (4) certification by the project director for the contract-
29 ing agency, the head of the contracting agency, or a designee that

1 sufficient funds are available in an appropriation to be encumbered
2 for the amount of the contract.

3 Sec. 36.30.270. REVIEW AND APPROVAL BY DEPARTMENT OF LAW. If a
4 contract contains a term that is in conflict with a state standard
5 form contract term or if a standard term is deleted or modified by a
6 term that is not standard, the contract must be reviewed by the De-
7 partment of Law and approved as to form.

8 ARTICLE 4. OTHER PROCUREMENT METHODS.

9 Sec. 36.30.300. SOLE SOURCE PROCUREMENTS. (a) A contract may
10 be awarded for supplies, services, professional services, or
11 construction without competitive sealed bidding, competitive sealed
12 proposals, or other competition in accordance with regulations adopted
13 by the commissioner of administration. A contract may be awarded
14 under this section only when the commissioner of administration or,
15 for construction contracts or procurements for the state equipment
16 fleet, the commissioner of transportation and public facilities
17 determines in writing that there is only one source for the required
18 supplies, services, professional services, or construction. A sole
19 source procurement may not be awarded if a reasonable alternative
20 source exists. The written determination must include findings of
21 fact that support by clear and convincing evidence the determination
22 that only one source exists. The authority to make the determination
23 required by this subsection may not be delegated.

24 (b) The using agency shall submit written evidence to support a
25 sole source determination. The commissioner of administration or the
26 commissioner of transportation and public facilities, as appropriate,
27 may also require the submission of cost or pricing data in connection
28 with an award under this section.

29 (c) The procurement officer shall negotiate with the single

1 supplier, to the extent practicable, to obtain a contract advantageous
2 to the state.

3 Sec. 36.30.310. EMERGENCY PROCUREMENTS. Procurements may be
4 made under emergency conditions as defined in regulations adopted by
5 the commissioner when there exists a threat to public health, welfare,
6 or safety, when a situation exists that makes a procurement through
7 competitive sealed bidding or competitive sealed proposals
8 impracticable or contrary to the public interest, or to protect public
9 or private property. An emergency procurement need not be made
10 through competitive sealed bidding or competitive sealed proposals but
11 shall be made with competition that is practicable under the
12 circumstances. A written determination by the procurement officer of
13 the basis for the emergency and for the selection of the particular
14 contractor shall be included in the contract file. The written deter-
15 mination must include findings of fact that support the determination.

16 Sec. 36.30.320. SMALL PROCUREMENTS. (a) A procurement for
17 supplies, services, or construction that does not exceed an aggregate
18 dollar amount of \$5,000 may be made in accordance with regulations
19 adopted by the commissioner for small procurements.

20 (b) A contract for professional services that does not exceed
21 \$25,000 may be made under regulations adopted by the commissioner for
22 small procurements, except that an agency may not contract

23 (1) for the services of legal counsel without the approval
24 of the attorney general; or

25 (2) with a person under this subsection if the total amount
26 of professional services contracts awarded to that person from the
27 agency exceeds \$25,000 in a 12-month period.

28 (c) Small procurements need not be made through competitive
29 sealed bidding or competitive sealed proposals but shall be made with

1 competition that is practicable under the circumstances.

2 (d) Procurement requirements may not be artificially divided or
3 fragmented so as to constitute a purchase under this section or to
4 circumvent the source selection procedures required by AS 36.30.100 -
5 36.30.270.

6 ARTICLE 5. CONTRACT FORMATION AND MODIFICATION.

7 Sec. 36.30.350. BID CANCELLATION, REJECTION. An invitation to
8 bid, a request for proposals, or other solicitation may be cancelled
9 or any or all bids or proposals may be rejected in whole or in part or
10 the date for opening bids or proposals may be delayed when it is in
11 the best interests of the state in accordance with regulations adopted
12 by the commissioner. The reasons for cancellation, rejection, or
13 delay in opening bids or proposals shall be made part of the contract
14 file.

15 Sec. 36.30.360. DETERMINATION OF RESPONSIBILITY. (a) A written
16 determination of responsibility of a bidder or offeror shall be made
17 by the procurement officer in accordance with regulations adopted by
18 the commissioner. The unreasonable failure of a bidder or offeror to
19 promptly supply information in connection with an inquiry with respect
20 to responsibility is grounds for a determination of nonresponsibility
21 with respect to the bidder or offeror.

22 (b) Information furnished by a bidder or offeror under (a) of
23 this section is confidential and may not be disclosed without prior
24 written consent by the bidder or offeror.

25 Sec. 36.30.365. NOTICE OF INTENT TO AWARD A CONTRACT. At least
26 10 days before the formal award of a contract under this chapter the
27 procurement officer shall provide to each bidder or offeror notice of
28 intent to award a contract. The notice shall conform to regulations
29 adopted by the commissioner.

1 Sec. 36.30.370. TYPES OF CONTRACTS. Subject to limitations of
2 this section, any type of contract that will promote the best inter-
3 ests of the state may be used, except that the use of a cost-plus-
4 a-percentage-of-cost contract is prohibited. A cost-reimbursement
5 contract may be used only when a determination is made in writing by
6 the procurement officer that a cost-reimbursement contract is likely
7 to be less costly to the state than any other type or that it is
8 impracticable to obtain the supplies, services, professional services,
9 or construction required except under a cost-reimbursement contract.

10 Sec. 36.30.380. APPROVAL OF ACCOUNTING SYSTEM. Except for a
11 contract awarded through competitive sealed bidding and a firm fixed-
12 price contract, a contract type may not be used unless it has been
13 determined in writing by the procurement officer that the proposed
14 contractor's accounting system

15 (1) will permit timely development of all necessary cost
16 data in the form required by the specific contract type contemplated;
17 and

18 (2) is adequate to allocate costs in accordance with gen-
19 erally accepted accounting principles.

20 Sec. 36.30.390. MULTI-TERM CONTRACTS. (a) Unless otherwise
21 provided by law, a contract for supplies, services, or professional
22 services may be entered into for any period of time considered to be
23 in the best interests of the state provided the term of the contract
24 and conditions of renewal or extension, if any, are included in the
25 solicitation and funds are available for the first fiscal period at
26 the time of contracting. Payment and performance obligations for
27 succeeding fiscal periods shall be subject to the availability and
28 appropriation of funds for them.

29 (b) Before using a multi-term contract, the procurement officer

1 shall determine in writing that

2 (1) estimated requirements cover the period of the contract
3 and are reasonably firm and continuing; and

4 (2) the contract will serve the best interests of the state
5 by encouraging effective competition or otherwise promoting economies
6 in state procurement.

7 (c) When funds are not appropriated or otherwise made available
8 to support continuation of performance in a subsequent fiscal period,
9 the contract shall be cancelled. The contractor may only be reim-
10 bursed for the reasonable value of any nonrecurring costs incurred but
11 not amortized in the price of the supplies, services, or professional
12 services delivered under the contract that are not otherwise
13 recoverable. The cost of cancellation may be paid from any appropria-
14 tions available for these purposes.

15 Sec. 36.30.400. COST OR PRICING DATA. (a) Before an award of a
16 contract or a change order or contract modification, the contractor or
17 prospective contractor shall submit cost and pricing data. The con-
18 tractor or prospective contractor shall certify that, to the best of
19 the contractor's or prospective contractor's knowledge and belief, the
20 data submitted is accurate, complete, and current as of a mutually
21 determined specified date and will continue to be accurate and com-
22 plete during the performance of the contract.

23 (b) When a contractor becomes aware of a situation that may form
24 the basis of a claim for compensation in addition to that provided for
25 under the contract and before performing work or supplying materials
26 not required under the contract, the contractor shall submit cost and
27 pricing data on the additional work or materials. The contractor
28 shall certify that, to the best of the contractor's knowledge and
29 belief, the data submitted is accurate, complete, and current and is

1 the actual cost to the contractor of performing the additional work or
2 supplying the additional materials.

3 (c) A contract, change order, or contract modification under
4 which a certificate is required under (a) or (b) of this section must
5 contain a provision that the price to the state, including the con-
6 tractor's profit or fee, will be adjusted to exclude any significant
7 sums by which the state finds that the price is increased because the
8 cost or pricing data furnished by the contractor or prospective
9 contractor is inaccurate, incomplete, or not current as of the date
10 agreed upon by the parties.

11 (d) The requirements of this section do not apply when

12 (1) the contract price is based on adequate price competi-
13 tion;

14 (2) the contract price is set by law or regulation; or

15 (3) it is determined by the procurement officer in writing
16 and in accordance with regulations adopted by the commissioner that
17 the requirements of this section may be waived, and the reasons for
18 waiver are stated.

19 Sec. 36.30.410. RIGHT TO INSPECT PLANT. The state may, at
20 reasonable times, inspect the part of the plant or place of business
21 of a contractor or subcontractor that is related to the performance of
22 a contract awarded or to be awarded by an agency.

23 Sec. 36.30.420. RIGHT TO AUDIT RECORDS. (a) The state may, at
24 reasonable times and places, audit the books and records of a person
25 who has submitted cost or pricing data under AS 36.30.400 to the
26 extent that the books and records relate to the cost or pricing data.
27 A person who receives a contract, change order, or contract modifica-
28 tion for which cost or pricing data is required, shall maintain books
29 and records that relate to the cost or pricing data for three years

1 after the date of final payment under the contract, unless a shorter
2 period is authorized in writing by the commissioner.

3 (b) The state may audit the books and records of a contractor or
4 a subcontractor to the extent that the books and records relate to the
5 performance of the contract or subcontract. Books and records shall
6 be maintained by the contractor for a period of three years after the
7 date of final payment under the prime contract and by the subcontrac-
8 tor for a period of three years after the date of final payment under
9 the subcontract, unless a shorter period is authorized in writing by
10 the commissioner.

11 Sec. 36.30.430. STANDARD MODIFICATION CLAUSES FOR CONTRACTS.

12 (a) The commissioner shall adopt regulations permitting the inclusion
13 of clauses providing for adjustments in prices, time of performance,
14 or other contract provisions as appropriate.

15 (b) The commissioner shall adopt regulations permitting or
16 requiring the inclusion in state contracts of clauses providing for
17 appropriate remedies and covering the following subjects:

- 18 (1) liquidated damages;
- 19 (2) specified excuses for delay or nonperformance;
- 20 (3) termination of the contract for default; and
- 21 (4) termination of the contract in whole or in part for the
22 convenience of the state.

23 Sec. 36.30.460. MODIFICATION OF STANDARD CLAUSES. The procure-
24 ment officer or the head of a contracting agency may vary the clauses
25 adopted under AS 36.30.430 for inclusion in a particular state con-
26 tract if the

- 27 (1) variations are supported by a written determination
28 that states the circumstances justifying the variation; and
- 29 (2) approval required by AS 36.30.270 is obtained.

1 Sec. 36.30.470. FISCAL RESPONSIBILITY. A contract modification,
2 change order, or contract price adjustment under a construction con-
3 tract in excess of an amount established by regulation of the commis-
4 sioner is subject to prior written certification by the fiscal officer
5 of the agency responsible for funding the project or the contract, or
6 other official responsible for monitoring and reporting upon the
7 status of the costs of the total project budget or contract budget, as
8 to the effect of the contract modification, change order, or adjust-
9 ment in contract price on the total project budget or the total con-
10 tract budget. If the certification of the fiscal officer or other
11 responsible official discloses a resulting increase in the total
12 project budget or the total contract budget, the procurement officer
13 may not approve the contract modification, change order, or adjustment
14 in contract price unless sufficient funds are available, or the scope
15 of the project or contract is adjusted to permit the degree of
16 completion that is feasible within the total project budget or total
17 contract budget as it existed before the contract modification, change
18 order, or adjustment in contract price under consideration. A
19 contract modification change order, or adjustment in contract that is
20 signed by both parties and has been reasonably relied on by a
21 contractor, is presumed to be valid even if the provisions of this
22 section have not been met.

23 Sec. 36.30.480. COST PRINCIPLE REGULATIONS. The commissioner
24 shall adopt regulations setting out cost principles that shall be used
25 to determine the allowability of incurred costs for the purpose of
26 reimbursing costs under contract provisions that provide for the
27 reimbursement of costs. If a written determination is approved at a
28 level above the procurement officer, the cost principles may be
29 modified by contract.

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ARTICLE 6. PROCUREMENT RECORDS AND REPORTS.

Sec. 36.30.500. RETENTION OF PROCUREMENT RECORDS. Procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the state archivist. Retained documents shall be made available to the attorney general or a designee upon request and proper receipt.

Sec. 36.30.510. RECORDS OF CONTRACTS AWARDED UNDER COMPETITIVE SEALED PROPOSALS. A contract file open for public inspection must be kept by the commissioner and the contracting agency for each contract awarded under competitive sealed proposals. The file must contain

- (1) a copy of the contract;
- (2) the register of proposals prepared under AS 36.30.230 and a copy of each proposal submitted;
- (3) the written determination to award the contract prepared under AS 36.30.250; and
- (4) a summary of the information required under (1) - (3) of this section.

Sec. 36.30.520. RECORDS OF SOLE SOURCE AND EMERGENCY PROCUREMENTS. (a) The commissioner shall maintain for a minimum of five years a record listing all sole source procurement contracts made under AS 36.30.300 and emergency procurements made under AS 36.30.310. The record must contain

- (1) each contractor's name;
- (2) the amount and type of each contract; and
- (3) a listing of the supplies, services, professional services, or construction procured under each contract.

(b) The Department of Transportation and Public Facilities and any agency to whom the commissioner of administration or the commissioner of transportation and public facilities has delegated

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1 procurement authority under AS 36.30.015 shall, by October 1 of each
2 year, submit to the commissioner of administration records of the type
3 specified in (a) of this section. The commissioner of administration
4 shall maintain these records as required by (a) of this section.

5 Sec. 36.30.530. PUBLIC ACCESS TO PROCUREMENT INFORMATION.

6 Procurement information is public except as otherwise provided by law.

7 Sec. 36.30.540. REPORT TO LEGISLATURE. Beginning with Decem-
8 ber 1, 1989, the commissioner shall biennially report to the legisla-
9 ture concerning procurements by agencies. The report must include

10 (1) the records prepared under AS 36.30.510(4) and 36.30.-
11 520(a) for the previous two fiscal years;

12 (2) recommendations for changes in this chapter or other
13 laws based on implementation of this chapter in the previous two
14 fiscal years; and

15 (3) a description of any matters that involved litigation
16 concerning this chapter in the previous two fiscal years.

17 ARTICLE 7. LEGAL AND CONTRACTUAL REMEDIES.

18 Sec. 36.30.560. FILING OF A PROTEST. An interested party may
19 protest the award of a contract, the proposed award of a contract, or
20 a solicitation for supplies, services, professional services, or
21 construction by an agency. The protest shall be filed with the
22 procurement officer of the contracting agency in writing and include
23 the following information:

24 (1) the name, address, and telephone number of the pro-
25 tester;

26 (2) the signature of the protester or the protester's
27 representative;

28 (3) identification of the contracting agency and the solici-
29 tation or contract at issue;

1 (4) a detailed statement of the legal and factual grounds
2 of the protest, including copies of relevant documents; and

3 (5) the form of relief requested.

4 Sec. 36.30.565. TIME FOR FILING A PROTEST. (a) A protest based
5 upon alleged improprieties in a solicitation involving competitive
6 sealed bidding that are apparent before the bid opening shall be filed
7 before the bid opening. A protest based on alleged improprieties in a
8 solicitation involving competitive sealed proposals that are apparent

9 (1) before the due date for receipt of initial proposals
10 shall be filed before that due date;

11 (2) after the due date for receipt of initial proposals
12 shall be filed before the next due date for receipt of adjusted pro-
13 posals that occurs after the improprieties are apparent.

14 (b) In situations not covered under (a) of this section, pro-
15 tests shall be filed within 10 days after a notice of intent to award
16 the contract is issued by the procurement officer.

17 (c) If the protester shows good cause, the procurement officer
18 of the contracting agency may consider a filed protest that is not
19 timely.

20 Sec. 36.30.570. NOTICE OF A PROTEST. The procurement officer
21 shall immediately give notice of a protest filed under AS 36.30.565 to
22 the contractor if a contract has been awarded or, if no award has been
23 made, to all interested parties.

24 Sec. 36.30.575. STAY OF AWARD. If a protest is filed the award
25 may be made unless the procurement officer of the contracting agency
26 determines in writing that a

27 (1) reasonable probability exists that the protest will be
28 sustained; or

29 (2) stay of the award is not contrary to the best interests

1 of the state.

2 Sec. 36.30.580. DECISION BY THE PROCUREMENT OFFICER. (a) The
3 procurement officer of the contracting agency shall issue a written
4 decision containing the basis of the decision within 14 days after a
5 protest has been filed. A copy of the decision shall be furnished to
6 the protester by certified mail or other method that provides evidence
7 of receipt.

8 (b) The time for a decision may be extended up to 26 days for
9 good cause by the commissioner of administration, or for protests
10 involving construction or procurements for the state equipment fleet,
11 the commissioner of transportation and public facilities. If an
12 extension is granted, the procurement officer shall notify the
13 protester in writing of the date the decision is due.

14 (c) If a decision is not made by the date it is due, the pro-
15 tester may proceed as if the procurement officer had issued a decision
16 adverse to the protester.

17 Sec. 36.30.585. PROTEST REMEDIES. (a) If the procurement
18 officer sustains a protest in whole or in part, the procurement offi-
19 cer shall implement an appropriate remedy.

20 (b) In determining an appropriate remedy, the procurement offi-
21 cer shall consider the circumstances surrounding the solicitation or
22 procurement including the seriousness of the procurement deficiencies,
23 the degree of prejudice to other interested parties or to the
24 integrity of the procurement system, the good faith of the parties,
25 the extent the procurement has been accomplished, costs to the agency
26 and other impacts on the agency of a proposed remedy, and the urgency
27 of the procurement to the welfare of the state.

28 Sec. 36.30.590. APPEAL ON A PROTEST. (a) An appeal from a
29 decision of a procurement officer on a protest may be filed by the

1 protester with the commissioner of administration, or for protests
2 involving construction or procurements for the state equipment fleet,
3 the commissioner of transportation and public facilities. An appeal
4 shall be filed within five days after the decision is received by the
5 protester. The protester shall file a copy of the appeal with the
6 procurement officer.

7 (b) An appeal must contain the information required under
8 AS 36.30.560. In addition, the appeal must include

9 (1) a copy of the decision being appealed; and

10 (2) identification of the factual or legal errors in the
11 decision that form the basis for the appeal.

12 Sec. 36.30.595. NOTICE OF A PROTEST APPEAL. (a) The procure-
13 ment officer shall immediately give notice of an appeal filed under
14 AS 36.30.590 to the contractor if a contract has been awarded or, if
15 no award has been made, to all interested parties.

16 (b) The commissioner of administration or the commissioner of
17 transportation and public facilities, as appropriate, shall, on
18 request, furnish a copy of the appeal to a person notified under (a)
19 of this section, except that confidential material shall be deleted
20 from the copy.

21 Sec. 36.30.600. STAY OF AWARD DURING PROTEST APPEAL. If a
22 protest appeal is filed before a contract is awarded and the award was
23 stayed under AS 36.30.575, the filing of the appeal automatically
24 continues the stay until the commissioner of administration or the
25 commissioner of transportation and public facilities, as appropriate,
26 makes a written determination that the award of the contract without
27 further delay is necessary to protect substantial interests of the
28 state.

29 Sec. 36.30.605. PROTEST REPORT. (a) The procurement officer of

1 the contracting agency shall file a complete report on the protest and
2 decision with the commissioner of administration or the commissioner
3 of transportation and public facilities, as appropriate, within seven
4 days after a protest appeal is filed. The procurement officer shall
5 furnish a copy of the report to the protester and to interested par-
6 ties that have requested a copy of the appeal under AS 36.30.595(b).

7 (b) The procurement officer may request an extension of time to
8 prepare the protest report. The request must be in writing listing
9 the reasons for the request. The commissioner of administration or
10 the commissioner of transportation and public facilities, as
11 appropriate, shall respond to the request in writing. If an extension
12 is granted, the commissioner shall list the reasons for granting the
13 extension and indicate the date the protest report is due. The com-
14 missioner shall notify the protester in writing that the time for
15 submission of the report has been extended and the date the report is
16 due.

17 (c) The protester may file comments on the protest report with
18 the commissioner of administration or the commissioner of
19 transportation and public facilities, as appropriate, within seven
20 days after the report is received. The protester shall provide copies
21 of the comments to the procurement officer and to interested parties
22 that have requested a copy of the appeal under AS 36.30.595(b).

23 (d) The protester may request an extension of time to prepare
24 the comments on the protest report. The request must be in writing
25 listing the reasons for the request. The commissioner of
26 administration or the commissioner of transportation and public
27 facilities, as appropriate, shall respond to the request in writing.
28 If an extension is granted, the commissioner shall list the reasons
29 for granting the extension and indicate the date the comments are due.

1 The commissioner shall notify the procurement officer in writing that
2 the time for submission of the comments has been extended and the date
3 the comments are due.

4 Sec. 36.30.610. DECISION WITHOUT HEARING. (a) The commissioner
5 of administration or the commissioner of transportation and public
6 facilities, as appropriate, shall dismiss a protest appeal before a
7 hearing is held if it is determined in writing that the appeal is
8 untimely under AS 36.30.590(a).

9 (b) The commissioner of administration or the commissioner of
10 transportation and public facilities, as appropriate, may issue a
11 decision on an appeal without a hearing if the appeal involves ques-
12 tions of law without genuine issues of fact.

13 Sec. 36.30.615. HEARING ON PROTEST APPEAL. A hearing on a
14 protest appeal shall be conducted in accordance with AS 36.30.670 and
15 regulations adopted by the commissioner.

16 Sec. 36.30.620. CONTRACT CONTROVERSIES. (a) A contractor shall
17 file a claim concerning a contract awarded under this chapter with the
18 procurement officer. The contractor shall certify that the claim is
19 made in good faith, that the supporting data are accurate and complete
20 to the best of the contractor's knowledge and belief, and that the
21 amount requested accurately reflects the contract adjustment for which
22 the contractor believes the state is liable.

23 (b) If a controversy asserted by a contractor concerning a
24 contract awarded under this chapter cannot be resolved by agreement,
25 the procurement officer shall, after receiving a written request by
26 the contractor for a decision, issue a written decision. The decision
27 shall be made no more than 90 days after receipt by the procurement
28 officer of all necessary information from the contractor. Failure of
29 the contractor to furnish necessary information to the procurement

1 officer constitutes a waiver of the claim. Before issuing the
2 decision the procurement officer shall review the facts relating to
3 the controversy and obtain necessary assistance from legal, fiscal,
4 and other advisors.

5 (c) The time for issuing a decision under (b) of this section
6 may be extended for good cause by the commissioner of administration,
7 or for a controversy involving a construction contract or procurement
8 for the state equipment fleet, the commissioner of transportation and
9 public facilities, if the controversy concerns an amount in excess of
10 \$50,000. The procurement officer shall notify the contractor in
11 writing that the time for the issuance of a decision has been extended
12 and of the date by which a decision shall be issued.

13 (d) The procurement officer shall furnish a copy of the decision
14 to the contractor by certified mail or other method that provides
15 evidence of receipt. The decision shall include a

- 16 (1) description of the controversy;
- 17 (2) reference to the pertinent contract provisions;
- 18 (3) statement of the agreed upon and disputed facts;
- 19 (4) statement of reasons supporting the decision; and
- 20 (5) statement substantially as follows:

21 "This is the final decision of the procurement officer.

22 This decision may be appealed to the commissioner of
23 _____ (administration/transportation
24 and public facilities). If you appeal, you must file
25 a written notice of appeal with the commissioner within
26 five days after you receive this decision."

27 (e) If a decision is not made by the date it is due, the con-
28 tractor may proceed as if the procurement officer had issued a deci-
29 sion adverse to the contractor.

1 (f) If a controversy asserted by the state concerning a contract
2 awarded under this chapter cannot be resolved by agreement the matter
3 shall be immediately referred to the commissioner of administration or
4 the commissioner of transportation and public facilities, as
5 appropriate.

6 Sec. 36.30.625. APPEAL ON A CONTRACT CONTROVERSY. (a) An
7 appeal from a decision of the procurement officer on a contract con-
8 troversy may be filed by the contractor with the commissioner of
9 administration, or for a controversy involving a construction contract
10 or procurement for the state equipment fleet, the commissioner of
11 transportation and public facilities. The appeal shall be filed
12 within five days after the decision is received by the contractor.
13 The contractor shall file a copy of the appeal with the procurement
14 officer.

15 (b) An appeal shall contain a copy of the decision being ap-
16 pealed and identification of the factual or legal errors in the deci-
17 sion that form the basis for the appeal.

18 Sec. 36.30.630. HEARING ON A CONTRACT CONTROVERSY. (a) Except
19 as provided in (b) of this section, a hearing shall be conducted
20 according to AS 36.30.670 and regulations adopted by the commissioner
21 of administration on a contract controversy appealed to the commis-
22 sioner of administration or the commissioner of transportation and
23 public facilities or referred to either commissioner under
24 AS 36.30.620(f).

25 (b) Within 15 days after receipt of an appeal on a contract
26 controversy the commissioner of administration or the commissioner of
27 transportation and public facilities, as appropriate, may adopt the
28 decision of the procurement officer as the final decision without a
29 hearing.

1 Sec. 36.30.632. DELEGATION. The commissioner of administration
2 and the commissioner of transportation and public facilities may
3 delegate responsibilities under AS 36.30.590 and 36.30.630 to the head
4 of the contracting agency.

5 Sec. 36.30.635. AUTHORITY TO DEBAR OR SUSPEND. (a) After
6 consultation with the using agency and the attorney general and after
7 a hearing conducted according to AS 36.30.670 and regulations adopted
8 by the commissioner of administration, the commissioner of administra-
9 tion or the commissioner of transportation and public facilities may
10 debar a person for cause from consideration for award of contracts.
11 Notice of a debarment hearing shall be provided in writing at least
12 seven days before the hearing. The debarment may not be for a period
13 of more than three years.

14 (b) The commissioner of administration or the commissioner of
15 transportation and public facilities, after consultation with the
16 using agency and the attorney general, may suspend a person from
17 consideration for award of contracts if there is probable cause for
18 debarment and compelling reasons require suspension to protect state
19 interests. The suspension may not be for a period exceeding three
20 months.

21 (c) The authority to debar or suspend shall be exercised in
22 accordance with regulations adopted by the commissioner of adminis-
23 tration.

24 Sec. 36.30.640. CAUSES FOR DEBARMENT OR SUSPENSION. The causes
25 for debarment or suspension include the following:

26 (1) conviction for commission of a criminal offense as an
27 incident to obtaining or attempting to obtain a public or private
28 contract or subcontract, or in the performance of the contract or
29 subcontract;

1 (2) conviction under state or federal statute of embezzle-
2 ment, theft, forgery, bribery, falsification or destruction of re-
3 cords, receiving stolen property, or other offense indicating a lack
4 of business integrity or business honesty that currently and seriously
5 affects responsibility as a state contractor;

6 (3) conviction or civil judgment finding a violation under
7 state or federal antitrust statutes;

8 (4) violation of contract provisions of a character that is
9 regarded by the commissioner to be so serious as to justify debarment
10 action, such as

11 (A) knowing failure without good cause to perform in
12 accordance with the specifications or within the time limit
13 provided in the contract; or

14 (B) failure to perform or unsatisfactory performance
15 in accordance with the terms of one or more contracts, except
16 that failure to perform or unsatisfactory performance caused by
17 acts beyond the control of the contractor is not be considered
18 to be a basis for debarment;

19 (5) for violation of the ethical standards set out in law
20 or regulation;

21 (6) for a violation of this chapter punishable under
22 AS 36.30.930(2); and

23 (7) any other cause listed in regulations of the
24 commissioner determined to be so serious and compelling as to affect
25 responsibility as a state contractor, including debarment by another
26 governmental entity for a cause listed in the regulations.

27 Sec. 36.30.645. WRITTEN DETERMINATIONS. (a) The commissioner
28 of administration or the commissioner of transportation and public
29 facilities shall issue a written decision to debar or suspend. The

1 decision must

2 (1) state the reasons for the action taken; and

3 (2) inform the debarred person of rights to judicial appeal
4 or inform the suspended person of rights to administrative and judi-
5 cial appeal.

6 (b) A copy of the decision under (a) of this section shall be
7 mailed or otherwise furnished immediately to the debarred or suspended
8 person and any other intervening party.

9 Sec. 36.30.650. HEARING ON A SUSPENSION. (a) A person suspend-
10 ed under AS 36.30.635 is entitled to a hearing conducted according to
11 AS 36.30.670 and regulations adopted by the commissioner of adminis-
12 tration if the person files a written request for a hearing with the
13 commissioner of administration or the commissioner of transportation
14 and public facilities, as appropriate, within seven days after receipt
15 of the notice of suspension under AS 36.30.645.

16 (b) If a suspended person requests a hearing the commissioner of
17 administration or the commissioner of transportation and public
18 facilities, as appropriate, shall schedule a prompt hearing unless the
19 attorney general determines that a hearing at the proposed time is
20 likely to jeopardize an investigation. A hearing may not be delayed
21 longer than six months after notice of the suspension is provided
22 under AS 36.30.645.

23 Sec. 36.30.655. LIST OF PERSONS DEBARRED OR SUSPENDED. The
24 commissioner shall maintain a list of all persons debarred or suspend-
25 ed from consideration for award of contracts.

26 Sec. 36.30.660. REINSTATEMENT. (a) The commissioner of
27 administration or the commissioner of transportation and public
28 facilities may at any time after a final decision to debar a person
29 from consideration for award of contracts reinstate the person after

1 determining that the cause for which the person was debarred no longer
2 exists or has been substantially mitigated.

3 (b) A debarred person may request reinstatement by submitting a
4 petition to the commissioner of administration or the commissioner of
5 transportation and public facilities supported by evidence showing
6 that the cause for debarment no longer exists or has been substantial-
7 ly mitigated.

8 (c) The commissioner of administration or the commissioner of
9 transportation and public facilities may require a hearing on a
10 reinstatement petition. A decision on reinstatement shall be made in
11 writing within seven days after a reinstatement petition is submitted.
12 The decision shall specify the factors on which it is based. A
13 decision under this section is not subject to judicial appeal.

14 Sec. 36.30.665. LIMITED PARTICIPATION. The commissioner of
15 administration or the commissioner of transportation and public
16 facilities may permit a debarred person to participate in a contract
17 on a limited basis during the debarment period if the commissioner
18 determines in writing that the participation is advantageous to the
19 state. The determination shall specify the factors on which it is
20 based and the limits imposed on the debarred person.

21 Sec. 36.30.670. HEARING PROCEDURES. (a) The commissioner of
22 administration or the commissioner of transportation and public
23 facilities shall act as a hearing officer or appoint a hearing officer
24 for a hearing conducted under this chapter. The hearing officer shall
25 arrange for a prompt hearing and notify the parties in writing of the
26 time and place of the hearing. The hearing shall be conducted in an
27 informal manner. The provisions of AS 44.62 (Administrative Procedure
28 Act) do not apply to a hearing conducted under this chapter.

29 (b) The hearing officer may

1 (1) hold prehearing conferences to settle, simplify, or
2 identify the issues in a proceeding, or to consider other matters that
3 may aid in the expeditious disposition of the proceeding;

4 (2) require parties to state their positions concerning the
5 various issues in the proceeding;

6 (3) require parties to produce for examination those rele-
7 vant witnesses and documents under their control;

8 (4) rule on motions and other procedural matters;

9 (5) regulate the course of the hearing and conduct of the
10 participants;

11 (6) establish time limits for submission of motions or
12 memoranda;

13 (7) impose appropriate sanctions against a person who fails
14 to obey an order of the hearing officer, including

15 (A) prohibiting the person from asserting or opposing
16 designated claims or defenses or introducing designated matters
17 into evidence;

18 (B) excluding all testimony of an unresponsive or
19 evasive witness; and

20 (C) excluding a person from further participation in
21 the hearing;

22 (8) take official notice of a material fact not appearing
23 in evidence, if the fact is among the traditional matters subject to
24 judicial notice;

25 (9) administer oaths or affirmations.

26 (c) A transcribed record of the hearing shall be made available
27 at cost to a party that requests it.

28 Sec. 36.30.675. RECOMMENDATION BY THE HEARING OFFICER. (a) If
29 the commissioner of administration or the commissioner of

1 transportation and public facilities is not acting as hearing officer,
2 the hearing officer shall recommend a decision to the commissioner
3 based on the evidence presented. The recommendation shall include
4 findings of fact and conclusions of law.

5 (b) The commissioner of administration or the commissioner of
6 transportation and public facilities may affirm, modify, or reject the
7 hearing officer's recommendation in whole or in part, may remand the
8 matter to the hearing officer with instructions, or take other
9 appropriate action.

10 Sec. 36.30.680. FINAL DECISION BY THE COMMISSIONER. A decision
11 by the commissioner of administration or the commissioner of
12 transportation and public facilities after a hearing under this
13 chapter is final. A decision shall be sent within 20 days after the
14 hearing to all parties by personal service or certified mail, except
15 that a decision by the commissioner of transportation and public
16 facilities involving procurement of construction shall be sent within
17 90 days after the hearing to all parties by personal service or
18 certified mail.

19 Sec. 36.30.685. JUDICIAL APPEAL. (a) A final decision of the
20 commissioner of administration or the commissioner of transportation
21 and public facilities under AS 36.30.610, 36.30.635(a), 36.30.650, or
22 36.30.680 may be appealed to the superior court in accordance with the
23 Alaska Rules of Appellate Procedure.

24 (b) A final decision of the commissioner of administration or
25 the commissioner of transportation and public facilities under
26 AS 36.30.630(b) may be appealed to the superior court for a trial de
27 novo.

28 Sec. 36.30.690. EXCLUSIVE REMEDY. Notwithstanding AS 44.77 or
29 other law to the contrary, AS 36.30.560 - 36.30.699 and regulations

1 adopted under those sections provide the exclusive procedure for
2 asserting a claim against an agency arising in relation to a
3 procurement under this chapter.

4 Sec. 36.30.695. OTHER RULES OF PROCEDURE. The commissioner may
5 adopt by regulation additional rules of procedure providing for the
6 expeditious administrative review of all contract claims or contro-
7 versies, both before the contracting agency and through an appeal
8 heard de novo.

9 Sec. 36.30.699. DEFINITION. In AS 36.30.560 - 36.30.695,
10 "interested party" means an actual or prospective bidder or offeror
11 whose economic interest may be affected substantially and directly by
12 the issuance of a contract solicitation, the award of a contract, or
13 the failure to award a contract; whether an actual or prospective
14 bidder or offeror has an economic interest depends on the
15 circumstances.

16 ARTICLE 8. INTERGOVERNMENTAL RELATIONS.

17 Sec. 36.30.700. COOPERATIVE PURCHASING AUTHORIZED. A public
18 procurement unit may either participate in, sponsor, conduct, or
19 administer a cooperative purchasing agreement for the procurement of
20 supplies, services, professional services, or construction with one or
21 more public procurement units or external procurement activities in
22 accordance with an agreement entered into between the participants.
23 Cooperative purchasing may include joint or multi-party contracts
24 between public procurement units and open-ended state public procure-
25 ment unit contracts that are made available to local public procure-
26 ment units.

27 Sec. 36.30.710. SALE, ACQUISITION, OR USE OF SUPPLIES BY A
28 PUBLIC PROCUREMENT UNIT. (a) A public procurement unit may sell to,
29 acquire from, or use any supplies belonging to another public

1 procurement unit or external procurement activity independent of the
2 requirements of AS 36.30.070 and 36.30.100 - 36.30.280.

3 (b) A public procurement unit may enter into an agreement,
4 independent of the requirements of AS 36.30.060 and 36.30.100 - 36.-
5 30.280, with another public procurement unit or external procurement
6 activity for the cooperative use of supplies or services under the
7 terms agreed upon between the parties.

8 Sec. 36.30.720. JOINT USE OF FACILITIES. A public procurement
9 unit may enter into agreements for the common use or lease of ware-
10 housing facilities, capital equipment, and other facilities with
11 another public procurement unit or an external procurement activity
12 under the terms agreed upon between the parties.

13 Sec. 36.30.730. SUPPLY OF PERSONNEL, INFORMATION, AND TECHNICAL
14 SERVICES. (a) A public procurement unit may, upon written request
15 from another public procurement unit or external procurement activity,
16 provide personnel to the requesting public procurement unit or exter-
17 nal procurement activity. The public procurement unit or external
18 procurement activity making the request shall pay the public procure-
19 ment unit providing the personnel the direct and indirect cost of
20 furnishing the personnel, in accordance with an agreement between the
21 parties.

22 (b) The informational, technical, and other services of a public
23 procurement unit may be made available to another public procurement
24 unit or external procurement activity except that the requirements of
25 the public procurement unit tendering the services has precedence over
26 the requesting public procurement unit or external procurement activi-
27 ty. The requesting public procurement unit or external procurement
28 activity shall pay for the expenses of the services so provided, in
29 accordance with an agreement between the parties.

1 (c) Upon request, the commissioner may make available to public
2 procurement units or external procurement activities the following
3 services, among others:

- 4 (1) standard forms;
- 5 (2) printed manuals;
- 6 (3) product specifications and standards;
- 7 (4) quality assurance testing services and methods;
- 8 (5) qualified products lists;
- 9 (6) source information;
- 10 (7) common use commodities listings;
- 11 (8) supplier performance ratings;
- 12 (9) lists of persons debarred or suspended from considera-
13 tion for award of state contracts;
- 14 (10) forms for invitations for bids, requests for proposals,
15 instructions to bidders, general contract provisions, and other con-
16 tract forms; and
- 17 (11) contracts or published summaries of them, including
18 price and time of delivery information.

19 (d) The commissioner may provide the following technical ser-
20 vices, among others:

- 21 (1) development of product specifications;
- 22 (2) development of quality assurance test methods, includ-
23 ing receiving, inspection, and acceptance procedures;
- 24 (3) use of product testing and inspection facilities; and
- 25 (4) use of personnel training programs.

26 (e) The commissioner may enter into contractual arrangements and
27 publish a schedule of fees for the services provided under (c) and (d)
28 of this section.

29 Sec. 36.30.735. RESTRICTION ON CONTRACTING WITH OR EMPLOYING

1 **EXPERTS ON RADIATION HAZARDS.** (a) Except for the Department of
2 Health and Social Services, the Department of Labor, the Department of
3 Environmental Conservation, and the Department of Military and Veter-
4 ans' Affairs, a state agency may not

5 (1) contract, other than with the Department of Health and
6 Social Services, to have services performed that require expertise in
7 determining or reducing the hazards of radiation; or

8 (2) employ a person whose duties require expertise in
9 determining or reducing the hazards of radiation.

10 (b) In this section, "state agency" means a state department or
11 agency, whether in the legislative, judicial, or executive branch,
12 including such entities as the Alaska State Housing Authority, but not
13 including the University of Alaska, a municipality, or an agency of a
14 municipality.

15 (c) In this section, "radiation" does not include radiation
16 emitted from a Federal Communications Commission licensed facility
17 emitting radiation of a wave length longer than one centimeter and an
18 average power output not exceeding two kilowatts.

19 Sec. 36.30.740. **REVIEW OF PROCUREMENT REQUIREMENTS.** To the
20 extent possible, the commissioner may collect information concerning
21 the type, cost, quality, and quantity of commonly used supplies,
22 equipment for the state fleet, services, or construction being
23 procured or used by state public procurement units. The commissioner
24 may also collect this information from local public procurement units.
25 The commissioner may make this information available to a public
26 procurement unit upon request.

27 Sec. 36.30.750. **CONTRACT CONTROVERSIES.** (a) Under a coopera-
28 tive purchasing agreement, controversies arising between an adminis-
29 tering public procurement unit and its bidders, offerors, or

1 contractors shall be resolved in accordance with AS 36.30.560 -
2 36.30.699.

3 (b) A local public procurement unit that is not subject to
4 AS 36.30.560 - 36.30.699 may enter into an agreement with another
5 local public procurement unit or external procurement activity to
6 establish procedures or use that unit's or activity's existing proce-
7 dures to resolve controversies with contractors, whether or not the
8 controversy arose under a cooperative purchasing agreement.

9 Sec. 36.30.790. DEFINITIONS. In AS 36.30.700 - 36.30.790

10 (1) "cooperative purchasing" means procurement conducted
11 by, or on behalf of, more than one public procurement unit, or by a
12 public procurement unit with an external procurement activity;

13 (2) "external procurement activity" means a buying orga-
14 nization not located in this state that, if located in this state,
15 would qualify as a public procurement unit; an agency of the United
16 States is an external procurement activity;

17 (3) "local public procurement unit" means a municipality or
18 other subdivision of the state or other entity that expends public
19 funds for the procurement of supplies, services, professional ser-
20 vices, and construction, and any nonprofit corporation operating a
21 charitable hospital;

22 (4) "public procurement unit" means either a local public
23 procurement unit or a state public procurement unit;

24 (5) "state public procurement unit" means the Department of
25 Administration and any other contracting agency of the state.

26 ARTICLE 9. GENERAL PROVISIONS.

27 Sec. 36.30.850. APPLICATION OF THIS CHAPTER. (a) This chapter
28 applies only to contracts solicited or entered into after January 1,
29 1987, unless the parties agree to its application to a contract

1 solicited or entered into before that date.

2 (b) This chapter applies to the disposal of state supplies and
3 every expenditure of state funds irrespective of their sources, in-
4 cluding federal assistance except as otherwise specified in AS 36.-
5 30.890, by the state, acting through an agency, under a contract,
6 except that this chapter does not apply to

7 (1) grants;

8 (2) contracts for professional witnesses to provide for
9 professional services or testimony relating to existing or probable
10 lawsuits in which the state is or may become a party;

11 (3) contracts of the University of Alaska where the work is
12 to be performed substantially by students enrolled in the university;

13 (4) contracts for medical doctors and dentists;

14 (5) contracts for the purchase of residential child care
15 services under AS 47.40;

16 (6) disposals of land or interests in land;

17 (7) disposals under AS 38.05;

18 (8) contracts for the preparation of ballots under AS 15.-
19 15.030;

20 (9) acquisitions or disposals of property and other con-
21 tracts relating to airports under AS 02.15.070, 02.15.090, and 02.15.-
22 091;

23 (10) acquisitions of real property or disposals of obsolete
24 property under AS 19.05.060, 19.05.100, 19.05.110, or 19.05.120;

25 (11) disposals of obsolete material or equipment under
26 AS 35.20.060; or

27 (12) leases of ferry terminal facilities under AS 19.60.010.

28 (c) Except for AS 36.30.700 - 36.30.790, this chapter does not
29 apply to contracts between two or more agencies, the state and its

1 political subdivisions, or the state and other governments.

2 (d) Nothing in this chapter or in regulations adopted under this
3 chapter prevents an agency or political subdivision from complying
4 with the terms and conditions of a grant, gift, bequest, or coopera-
5 tive agreement.

6 Sec. 36.30.860. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLIC-
7 ABLE. Unless displaced by the particular provisions of this chapter,
8 the principles of law and equity, including the Uniform Commercial
9 Code (AS 45.01 - AS 45.09), the law merchant, and law relative to
10 capacity to contract, agency, fraud, misrepresentation, duress, coer-
11 cion, mistake, or bankruptcy shall supplement the provisions of this
12 chapter.

13 Sec. 36.30.870. ADOPTION OF REGULATIONS. (a) Regulations under
14 this chapter shall be adopted in accordance the Administrative
15 Procedure Act (AS 44.62).

16 (b) Regulations under this chapter applicable to procurements of
17 construction or procurements for or disposal of property of the state
18 equipment fleet shall be adopted by the commissioner of administration
19 only after consultation with the commissioner of transportation and
20 public facilities.

21 Sec. 36.30.880. REQUIREMENT OF GOOD FAITH. All parties involved
22 in the negotiation, performance, or administration or state contracts
23 shall act in good faith.

24 Sec. 36.30.890. FEDERAL ASSISTANCE. If a procurement involves
25 the expenditure of federal funds or federal assistance and there is a
26 conflict between a provision of this chapter or a regulation adopted
27 under a provision of this chapter and a federal statute or regulation
28 the federal statute or regulation shall prevail.

29 Sec. 36.30.900. PREFERENCE FOR ALASKA PRODUCTS. This chapter

1 does not modify, amend, or alter AS 36.15.010 and 36.15.020 regarding
2 preference for Alaska forest products, or AS 36.20.010 regarding
3 preference to producers or dealers in Alaska except as provided in
4 AS 36.30.170(b).

5 Sec. 36.30.910. PURCHASES THROUGH GENERAL SERVICES ADMINISTRA-
6 TION. This chapter does not prevent purchasing through the general
7 services administration as provided by law.

8 Sec. 36.30.920. REPORTING OF ANTICOMPETITIVE PRACTICES. When
9 for any reason collusion or other anticompetitive practices are sus-
10 pected among bidders or offerors, a notice of the relevant facts shall
11 be transmitted to the attorney general by the person who suspects the
12 collusion or other anticompetitive practices.

13 Sec. 36.30.930. CIVIL AND CRIMINAL PENALTIES. The following
14 penalties apply to violations of this chapter:

15 (1) a person who contracts for or purchases supplies,
16 equipment for the state fleet, services, professional services, or
17 construction in a manner contrary to the requirements of this chapter
18 or the regulations adopted under this chapter is personally liable for
19 the recovery of all state money paid plus 20 percent of that amount,
20 legal interest from the date of payment, and all costs and damages
21 arising out of the violation;

22 (2) a person who intentionally or knowingly contracts for
23 or purchases supplies, equipment for the state fleet, services,
24 professional services, or construction under a scheme or artifice to
25 avoid the requirements of this chapter is guilty of a class C felony.

26 Sec. 36.30.940. ENFORCEMENT. The attorney general on behalf of
27 the state shall enforce the provisions of this chapter.

28 Sec. 36.30.990. DEFINITIONS. In this chapter, unless the con-
29 text in which a term is used clearly requires a different meaning or a

1 different definition is prescribed for a particular provision,

2 (1) "agency" means a department, institution, board, com-
3 mission, division, authority, public corporation, the Alaska Pioneers'
4 Home, or other administrative unit of the executive branch of state
5 government, including the University of Alaska; it does not include
6 the Alaska Railroad Corporation;

7 (2) "change order" means a written order signed by the
8 procurement officer, directing the contractor to make changes that the
9 changes clause of the contract authorizes the procurement officer to
10 order without the consent of the contractor;

11 (3) "commissioner" means the commissioner of the Department
12 of Administration;

13 (4) "competitive sealed bidding" means the procedure under
14 AS 36.30.100 - 36.30.190;

15 (5) "competitive sealed proposals" means the procedure
16 under AS 36.30.200 - 36.30.270;

17 (6) "construction" means the process of building, altering,
18 repairing, maintaining, improving, or demolishing a public highway,
19 structure, building, or other public improvement of any kind to real
20 property; it includes planning and design required for the construc-
21 tion; it does not include the routine operation of a public improve-
22 ment to real property;

23 (7) "contract" means all types of state agreements, regard-
24 less of what they may be called, for the procurement or disposal of
25 supplies, equipment for the state fleet, services, professional
26 services, or construction;

27 (8) "contract modification" means a written alteration in
28 specifications, delivery point, rate of delivery, period of perfor-
29 mance, price, quantity, or other provisions of a contract accomplished

1 by mutual action of the parties to the contract;

2 (9) "department" means the Department of Administration;

3 (10) "grant" means the furnishing by the state of assis-
4 tance, whether financial or otherwise, to a person to support a pro-
5 gram authorized by law; it does not include an award whose primary
6 purpose is to procure an end product, whether in the form of supplies,
7 services, professional services, or construction; a contract resulting
8 from such an award is not a grant but a procurement contract;

9 (11) "person" means a business, individual, union, commit-
10 tee, club, other organization, or group of individuals;

11 (12) "procurement" means buying, purchasing, renting, leas-
12 ing, or otherwise acquiring supplies, equipment for the state fleet,
13 services, or construction; it also includes functions that pertain to
14 the obtaining of a supply, equipment for the state fleet, service, or
15 construction, including description of requirements, selection and
16 solicitation of sources, preparation and award of contract, and all
17 phases of contract administration;

18 (13) "procurement officer" means a person authorized to
19 enter into and administer contracts for an agency and make written
20 determinations with respect to them; it also includes an authorized
21 representative of a procurement officer acting within the limits of
22 authority;

23 (14) "professional services" means professional, technical,
24 or consultant's services that are predominantly intellectual in char-
25 acter, result in the production of a report or the completion of a
26 task, and include analysis, evaluation, prediction, planning, or
27 recommendation; "professional services" does not include services
28 performed under an employment contract for services to be performed
29 under direct supervision, regardless of whether there is an employer-

1 employee relationship, if the person responsible for awarding the
2 contract files with the commissioner of administration a written
3 justification for the contract;

4 (15) "services" means the furnishing of labor, time, or
5 effort by a contractor, not involving the delivery of a specific end
6 product other than reports that are merely incidental to the required
7 performance; it does not include employment agreements or collective
8 bargaining agreements;

9 (16) "supplies" means all property procured for the use of
10 an agency, including equipment, materials, and insurance; it includes
11 leases of privately owned real property for the use of agencies, such
12 as office space, but does not include the procurement or disposition
13 of other interests in land; and

14 (17) "using agency" means an agency that uses supplies,
15 equipment from the state fleet, services, professional services, or
16 construction procured under this chapter.

17 Sec. 36.30.995. SHORT TITLE. This chapter may be cited as the
18 State Procurement Code.

19 * Sec. 3. AS 03.22.030 is amended to read:

20 Sec. 03.22.030. CENTER SITE, BUILDINGS AND EQUIPMENT. The
21 department shall obtain a site, either by donation, lease, or pur-
22 chase, and erect suitable buildings on the site, if they are needed
23 for the use of the plant materials center. The department shall also
24 acquire the agricultural land, scientific instruments and equipment
25 necessary to carry on the work of the center. Acquisition of scien-
26 tific instruments and equipment under this section is governed by
27 AS 36.30 (State Procurement Code).

28 * Sec. 4. AS 05.20.040 is amended to read:

29 Sec. 05.20.040. PERSONNEL TO INSPECT DEVICES. The department

1 shall designate a person qualified in experience and training as the
2 inspector of devices. The department may employ additional employees
3 as are necessary to administer this chapter. The inspector and the
4 employees may be hired on a temporary basis or borrowed from other
5 state departments or political subdivisions of the state, or the
6 department may contract with individuals or firms for the inspecting
7 service on an independent basis. The department shall prescribe the
8 salary or other remuneration for this service. Contracting under this
9 section is governed by AS 36.30 (State Procurement Code).

10 * Sec. 5. AS 09.50.250 is amended to read:

11 Sec. 09.50.250. ACTIONABLE CLAIMS AGAINST THE STATE. A person
12 or corporation having a contract, quasi-contract, or tort claim
13 against the state may bring an action against the state in the superi-
14 or court. A person who may present the claim under AS 44.77 may not
15 bring an action under this section except as set out in AS 44.77.-
16 040(c). A person who may bring an action under AS 36.30.560 - 36.30.-
17 695 may not bring an action under this section except as set out in
18 AS 36.30.685. However, no action may be brought under this section if
19 the claim

20 (1) is an action for tort, and is based upon an act or
21 omission of an employee of the state, exercising due care, in the
22 execution of a statute or regulation, whether or not the statute or
23 regulation is valid; or is an action for tort, and based upon the
24 exercise or performance or the failure to exercise or perform a dis-
25 cretionary function or duty on the part of a state agency or an em-
26 ployee of the state, whether or not the discretion involved is abused;

27 (2) is for damages caused by the imposition or establish-
28 ment of a quarantine by the state;

29 (3) arises out of assault, battery, false imprisonment,

1 false arrest, malicious prosecution, abuse of process, libel, slander,
2 misrepresentation, deceit, or interference with contract rights.

3 * Sec. 6. AS 14.08.101 is amended to read:

4 Sec. 14.08.101. POWERS. A regional school board may

5 (1) sue and be sued;

6 (2) contract with the department, the Bureau of Indian
7 Affairs, or any other school district, agency, or regional board for
8 the provision of services, facilities, supplies or utilities;

9 (3) determine its own fiscal procedures including but not
10 limited to policies and procedures for the purchase of supplies and
11 equipment; the regional school boards are exempt from the Fiscal
12 Procedures Act (AS 37.05) and the State Procurement Code (AS 36.30);

13 (4) appoint, compensate and otherwise control all school
14 employees in accordance with this title; these employees are not
15 subject to the State Personnel Act (AS 39.25);

16 (5) adopt regulations governing organization, policies and
17 procedures for the operation of the schools;

18 (6) establish, maintain, operate, discontinue and combine
19 schools subject to the approval of the commissioner;

20 (7) recommend to the department projects for construction,
21 rehabilitation, and improvement of schools and education-related
22 facilities as specified in AS 14.11.010(a), and plan, design, and
23 construct the project when the responsibility for it is assumed under
24 AS 14.11.020;

25 (8) exercise those other functions that may be necessary
26 for the proper performance of its responsibilities;

27 (9) by resolution adopted by a majority of all the members
28 of the board and provided to the commissioner of the department,
29 assume ownership of all land and buildings used in relation to the

1 schools in the regional educational attendance area;

2 (10) provide housing for rental to teachers, by leasing
3 existing housing from a local agency or individual, or by entering
4 into contractual arrangements with a local agency or individual to
5 lease housing that will be constructed by the local agency or indi-
6 vidual for that purpose.

7 * Sec. 7. AS 16.05.050 is amended to read:

8 Sec. 16.05.050. POWERS AND DUTIES OF COMMISSIONER. The commis-
9 sioner has, but not by way of limitation, the following powers and
10 duties:

11 (1) assist the United States Fish and Wildlife Service in
12 the enforcement of federal laws and regulations pertaining to fish and
13 game;

14 (2) through the appropriate state agency and under the
15 provisions of AS 36.30 (State Procurement Code), acquire by gift,
16 purchase, or lease, or other lawful means, land, buildings, water,
17 rights-of-way, or other necessary or proper real or personal property
18 when the acquisition is in the interest of furthering an objective or
19 purpose of the department and the state;

20 (3) under the provisions of AS 36.30, design and construct
21 hatcheries, pipelines, rearing ponds, fishways, and other projects
22 beneficial for the fish and game resources of the state;

23 (4) accept money from any person under conditions requiring
24 the use of the money for specific purposes in the furtherance of the
25 protection, rehabilitation, propagation, preservation, or investiga-
26 tion of the fish and game resources of the state or in settlement of
27 claims for damages to fish or game resources;

28 (5) collect, classify, and disseminate statistics, data and
29 information that, in the commissioner's discretion, will tend to

1 promote the purposes of this title except AS 16.51 and AS 16.52;

2 (6) capture, propagate, transport, buy, sell, or exchange
3 fish or game or eggs for propagating, scientific or stocking purposes;

4 (7) under the provisions of AS 36.30, provide public facil-
5 ities where necessary or proper to facilitate the taking of fish or
6 game, and enter into cooperative agreements with any person to effect
7 them;

8 (8) exercise administrative, budgeting, and fiscal powers;

9 (9) under the provisions of AS 36.30, construct, operate,
10 supervise, and maintain vessels used by the Department of Fish and
11 Game;

12 (10) authorize the holder of an interim-use permit under
13 AS 16.43 to engage on an experimental basis in commercial taking of a
14 fishery resource with vessel, gear, and techniques not presently
15 qualifying for licensing under this chapter in conformity with stand-
16 ards established by the Alaska Commercial Fisheries Entry Commission;

17 (11) not later than January 31 of each year, provide to the
18 commissioner of revenue the names of those fish and shellfish species
19 which the commissioner of fish and game designates as developing
20 commercial fish species for that calendar year; a fish or shellfish
21 species is a developing commercial fish species if, within a specified
22 geographical region,

23 (A) the optimum yield from the harvest of the species
24 has not been reached;

25 (B) a substantial portion of the allowable harvest of
26 the species has been allocated to fishing vessels of a foreign
27 nation; or

28 (C) a commercial harvest of the fish species has
29 recently developed;

1 (12) initiate or conduct research necessary or advisable to
2 carry out the purposes of this title except AS 16.51 and AS 16.52;

3 (13) enter into cooperative agreements with agencies of the
4 federal government, educational institutions, or other agencies or
5 organizations, when in the public interest, to carry out the purposes
6 of this title except AS 16.51 and AS 16.52.

7 * Sec. 8. AS 16.05.826(c) is amended to read:

8 (c) The department may contract to others the performance of the
9 department's responsibilities under this section. Contracting under
10 this subsection is governed by AS 36.30 (State Procurement Code),
11 except that a [A] contract may include provisions for advance payment
12 or reimbursement for services performed under the contract. All costs
13 incurred under this section may be paid from the fish and game fund.

14 * Sec. 9. AS 18.15.120 is amended to read:

15 Sec. 18.15.120. TUBERCULOSIS CONTROL PROGRAM AUTHORIZED. The
16 department may establish a comprehensive program for the control of
17 tuberculosis in the state, and may

18 (1) arrange means by which persons in the state may be
19 X-rayed to determine the presence of tuberculosis;

20 (2) establish necessary out-patient clinics for the care of
21 tuberculosis;

22 (3) encourage and promote the establishment of adequate
23 sanatorium facilities within the state to care for persons suffering
24 from tuberculosis and allied conditions;

25 (4) under the provisions of AS 36.30 (State Procurement
26 Code), obtain, by purchase or donation from surplus federal property
27 or otherwise, medical supplies and equipment useful in carrying out
28 this program and to allot or resell these supplies and equipment to
29 private institutions engaged by the department to carry out this

1 program;

2 (5) under the provisions of AS 36.30, contract with hos-
3 pitals, associations, or sanatoria qualified and equipped to give
4 adequate care inside or outside the state;

5 (6) employ necessary and trained personnel to carry out the
6 purposes of AS 18.15.120 - 18.15.140;

7 (7) pay the costs of care and incidental expenses for
8 residents of the state, in whole or in part, depending on the ability
9 of each patient to pay, and the temporary costs of care and transpor-
10 tation for nonresidents on the same basis until they can be trans-
11 ferred to their residence;

12 (8) enlist the cooperation of state and federal agencies
13 operating in the state for the furtherance of this program;

14 (9) establish standards in accordance with department
15 procedure for the care of tuberculars receiving treatment under
16 AS 18.15.120 - 18.15.140.

17 * Sec. 10. AS 18.55.100 is amended by adding a new subsection to read:

18 (d) The authority's power to contract, lease, rent, construct,
19 acquire, procure, and provide for services under this section is
20 governed by AS 36.30.

21 * Sec. 11. AS 19.05.020 is amended to read:

22 Sec. 19.05.020. REGULATIONS. The department shall adopt regu-
23 lations necessary to carry out the purpose of AS 19.05 - AS 19.25.
24 The regulations may not conflict with AS 36.30 (State Procurement
25 Code) or regulations adopted by the Department of Administration to
26 implement that chapter.

27 * Sec. 12. AS 19.05.080 is amended to read:

28 Sec. 19.05.080. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-
29 RIALS BY PURCHASE OR EMINENT DOMAIN. The department on behalf of the

1 state and as part of the cost of constructing or maintaining a highway
2 may purchase in the open market, acquire, take over, or condemn under
3 the right and power of eminent domain land in fee simple or easements
4 which it considers necessary for present public use, either temporary
5 or permanent, or which it considers necessary and reasonable for the
6 public use. By the same means, the department may obtain material,
7 including clay, gravel, sand, or rock, or the land necessary to obtain
8 material, including access to it. The department may acquire the land
9 or materials notwithstanding the fact that title to it is vested in
10 the state or a department, agency, commission or institution of the
11 state. Acquisition of materials by purchase in the open market under
12 this section is governed by AS 36.30 (State Procurement Code).

13 * Sec. 13. AS 19.10.160 is amended to read:

14 Sec. 19.10.160. STANDARD PLANS AND SPECIFICATIONS. The depart-
15 ment shall prepare and adopt uniform standard plans and specifications
16 for the establishment, construction and maintenance of highways in the
17 state. The department may amend the plans and specifications as it
18 considers advisable. The standards shall conform as closely as
19 practicable to those adopted by the American Association of State
20 Highway and Transportation Officials.

21 * Sec. 14. AS 19.10.170(a) is amended to read:

22 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is
23 [SHALL BE] the general policy of the state [DEPARTMENT] to require the
24 construction of all highways under bid contract in accordance with
25 AS 36.30 (State Procurement Code). However, subject to the provisions
26 of (b) of this section, when the estimated cost of a construction
27 project is less than \$100,000 or when it appears to be in the best
28 interests of the state, the department may perform the work notwith-
29 standing any other provisions of law.

1 * Sec. 15. AS 19.10.180 is repealed and reenacted to read:

2 Sec. 19.10.180. REQUEST FOR PUBLIC BIDS. Requests for public
3 bids are governed by AS 36.30 (State Procurement Code). The request
4 for public bids may require the contractor to furnish equipment,
5 labor, materials, and supplies for the project, or it may state that
6 the department will furnish the materials and supplies. If the de-
7 partment elects to provide materials and supplies for a project, it
8 shall do so at the time it adopts the construction program. The
9 department shall acquire these materials and supplies under AS 36.30
10 by requesting bids for them according to the class, type, and nature
11 of the materials and supplies. The contract for materials and sup-
12 plies may be awarded either upon the basis of delivery to the con-
13 struction project directly or to a central storehouse or storehouses
14 maintained by the department. Those materials and supplies so pur-
15 chased by the department may be delivered to the project site without
16 expense to the contractor, or it may sell them to the contractor at
17 cost and make the materials and supplies a part of the construction
18 cost.

19 * Sec. 16. AS 19.10.200 is repealed and reenacted to read:

20 Sec. 19.10.200. PROCEDURES FOR THE AWARD OF CONTRACTS. The
21 award of a contract for highway construction work is governed by
22 AS 36.30 (State Procurement Code), AS 19.05 - AS 19.25, and regula-
23 tions adopted under those laws.

24 * Sec. 17. AS 19.30.070 is amended to read:

25 Sec. 19.30.070. CONTRACTS FOR CONSTRUCTION OF ROADS. The
26 director of the division of lands may contract with private persons
27 for the construction of roads to and on state lands programmed for
28 surface disposal which are not more than six miles from existing roads
29 or highways. Contracts under this section are governed by AS 36.30

1 (State Procurement Code).

2 * Sec. 18. AS 19.30.080 is amended to read:

3 Sec. 19.30.080. CONSTRUCTION STANDARDS AND MAINTENANCE. An
4 access road constructed under AS 19.30.060 - 19.30.100 shall be of low
5 standard, not necessarily suitable for all weather use. The state is
6 not under obligation to maintain an access road constructed under AS
7 19.30.060 - 19.30.100. If an access road is constructed outside a
8 municipality that has zoning ordinances, the right-of-way width for
9 the road shall be determined by the division of lands and the Depart-
10 ment of Transportation and Public Facilities. If an access road is
11 constructed within the boundaries of a municipality that has zoning
12 ordinances, the right-of-way width shall conform to the subdivision
13 control ordinances of the municipality. Contracts for the work on an
14 access road are governed by AS 36.30 (State Procurement Code) [SHALL
15 BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER QUALIFIED TO CONTRACT WITH
16 THE STATE].

17 * Sec. 19. AS 19.60.010 is amended to read:

18 Sec. 19.60.010. ACQUISITION AND MAINTENANCE OF FERRY TERMINAL
19 FACILITIES. The department shall construct, purchase or lease ferry
20 terminal facilities at locations it selects for the loading and un-
21 loading of passengers and vehicles under their own power, on and off
22 ferries. The department shall repair and maintain these facilities.
23 Construction and purchasing under this section are governed by
24 AS 36.30 (State Procurement Code).

25 * Sec. 20. AS 23.15.611(a) is amended to read:

26 (a) The department may [IS AUTHORIZED TO] participate in pro-
27 grams of manpower training if it finds they are necessary to meet the
28 occupational needs of the state. This authorization includes authori-
29 ty to execute on behalf of the state agreements or contracts which may

1 be necessary or desirable to enable the state to participate in a
2 program, to receive and expend all appropriate funds made available
3 for programs by the state or from other sources, to supervise the
4 expenditure of the funds and conduct of the programs by other public
5 and private agencies of the state, and to make the reports and certifi-
6 cates which are called for, and in cooperative arrangements with the
7 Department of Education. Contracts with private entities under this
8 subsection are governed by AS 36.30 (State Procurement Code).

9 * Sec. 21. AS 23.20.075(a) is amended to read:

10 (a) The department may acquire in the name of the state by term
11 purchase agreements based on competitive bids in accordance with
12 AS 36.30 (State Procurement Code) land and buildings upon terms and
13 conditions that [WHICH] are approved by the Bureau of Employment
14 Security of the United States, or its successor, for the purpose of
15 providing office space for the department at a place which the depart-
16 ment finds necessary and suitable.

17 * Sec. 22. AS 23.35.110 is amended to read:

18 Sec. 23.35.110. CONTRACTS FOR CARE. In carrying out this
19 chapter, the department may enter into contracts or other arrangements
20 with hospitals and doctors in the state for furnishing care on an
21 annual basis to persons entitled to benefits. Contracting under this
22 section is governed by AS 36.30 (State Procurement Code).

23 * Sec. 23. AS 24.55.275 is amended to read:

24 Sec. 24.55.275. CONTRACT PROCEDURES. The ombudsman shall adopt
25 by regulation procedures consistent with AS 36.30 [AS 24.23] to be
26 followed by the office of the ombudsman in contracting for services.
27 However, the procedure for requests for proposals does not apply to
28 contracts for investigations under AS 24.55.100.

29 * Sec. 24. AS 24.60.040(a) is amended to read:

1 (a) A person to whom this chapter applies may not be a party to
2 or have an interest in a state contract or lease unless the contract
3 or lease is let under the competitive bid procedure in AS 36.30 (State
4 Procurement Code) [AS 37.05.230] or the total annual amount of the
5 state contract or lease is \$1,000 or less, or is a standardized con-
6 tract or lease which was developed under publicly established guide-
7 lines and is generally available to the public at large, members of a
8 profession, occupation or group. A person has an interest in a state
9 contract or lease under this section if the person receives direct or
10 indirect financial benefits.

11 * Sec. 25. AS 26.05.230(a) is amended to read:

12 (a) Buildings and sites for armory purposes may be leased or
13 constructed, based upon location and size of units to be organized,
14 and shall be financed through state and federal appropriations or
15 both. These facilities may be made available by local communities or
16 by the cooperative arrangement between the state and the federal
17 government and any local community. Leasing and construction under
18 this subsection are governed by AS 36.30 (State Procurement Code).

19 * Sec. 26. AS 26.05.280 is amended to read:

20 Sec. 26.05.280. TRANSPORTATION, SUBSISTENCE, AND SUPPLIES.
21 There shall be provided by the state, transportation and subsistence
22 for all officers and enlisted persons who are ordered into active
23 service by the state for encampment, field duty, or other duty. Neces-
24 sary transportation, stores and subsistence for troops when ordered on
25 duty shall be contracted by the proper officers and paid for as other
26 military bills. Contracting under this section is governed by AS 36.-
27 30 (State Procurement Code).

28 * Sec. 27. AS 27.21.030 is amended to read.

29 Sec. 27.21.030. GENERAL POWERS. To accomplish the purposes of

1 this chapter, the commissioner may

2 (1) in accordance with the Administrative Procedure Act
3 (AS 44.62) adopt, amend, and enforce regulations pertaining to surface
4 coal mining and reclamation operations;

5 (2) issue permits;

6 (3) conduct hearings and conferences;

7 (4) issue orders requiring an operator to take the actions
8 necessary to comply with this chapter and the regulations adopted
9 under this chapter;

10 (5) issue orders modifying previous orders;

11 (6) after opportunity for a due process hearing, issue a
12 final order revoking the permit of an operator who has failed to
13 comply with an order of the commissioner to take action required by
14 this chapter or regulations adopted under this chapter;

15 (7) order the immediate cessation of all or part of a
16 surface coal mining and reclamation operation if the commissioner
17 finds that the operation or part of the operation creates an imminent
18 danger to the health or safety of the public or is causing or can
19 reasonably be expected to cause significant imminent harm to land,
20 air, or water resources, and, to the extent reasonably necessary to
21 eliminate or alleviate those conditions, take other action or make
22 changes in a permit, as provided in this chapter;

23 (8) hire and authorize the hiring of employees and private
24 contractors, subject to the conflict of interest provisions of this
25 chapter and subject to AS 36.30 (State Procurement Code), to assist in
26 carrying out the requirements of this chapter;

27 (9) enter and inspect a surface coal mining operation that
28 is subject to the provisions of this chapter to assure that the opera-
29 tion is in compliance with this chapter;

1 (10) conduct, encourage, request, and participate in
2 studies, surveys, investigations, research, experiments, training, and
3 demonstrations;

4 (11) prepare reports and require permittees to prepare
5 reports;

6 (12) accept, receive, and administer grants, gifts, or other
7 money made available for the purposes of this chapter regardless of
8 the source of the grants, gifts, or money;

9 (13) take the steps necessary to allow the state to partici-
10 pate to the fullest extent practicable in the abandoned mine land
11 program provided in Title IV of the Surface Mining Control and Recla-
12 mation Act of 1977, including engaged in any work and adopting, amend-
13 ing and enforcing regulations;

14 (14) take the actions necessary to establish and maintain
15 exclusive jurisdiction over surface coal mining and reclamation opera-
16 tions in the state under the provisions of the Surface Mining Control
17 and Reclamation Act of 1977, including making recommendations for
18 legislation to clarify or amend this chapter to conform with the terms
19 of the Surface Mining Control and Reclamation Act of 1977;

20 (15) contract with state agencies to obtain the professional
21 and technical services necessary to carry out the provisions of this
22 chapter;

23 (16) coordinate the review of applications and issuance of
24 permits for surface coal mining and reclamation operations with other
25 federal or state permit processes applicable to those operations;

26 (17) enter into cooperative agreements with the Secretary of
27 the United States Department of the Interior for the regulation of
28 surface coal mining operations on federal land in accordance with the
29 Surface Mining Control and Reclamation Act of 1977; and

1 (18) perform other duties required by this chapter.

2 * Sec. 28. AS 33.30.050 is amended to read:

3 Sec. 33.30.050. COMMISSIONER TO PROVIDE MEDICAL SERVICES. The
4 commissioner shall detail physicians, nurses, and psychiatrists, or
5 their aides, and laboratory technicians, employed by the department to
6 any prison facility where state prisoners are detained or confined,
7 for the purpose of furnishing necessary medical services, including
8 examinations for communicable and infectious diseases. However, if
9 medical services cannot be furnished by physicians, nurses, psychia-
10 trists, or their aides, and laboratory technicians, regularly employed
11 by the department, the commissioner may contract with private practi-
12 tioners located in the area of a prison facility to furnish these
13 services. The cost of contracted services shall be paid out of appro-
14 priations made to the department. Contracting for services under this
15 section is governed by AS 36.30 (State Procurement Code).

16 * Sec. 29. AS 33.30.062(a) is amended to read:

17 (a) The commissioner may enter into an agreement with a private-
18 ly operated correctional facility, but only if the facility is located
19 in the state and if the purpose of the agreement is to involve prison-
20 ers in a work or rehabilitation furlough program established under
21 this chapter, to provide necessary facilities under AS 33.30.282 -
22 33.30.288, or to confine prisoners convicted of a misdemeanor. An
23 [NOTWITHSTANDING AS 37.05.230(1)(B), AN] agreement awarded under this
24 subsection is governed by AS 36.30 (State Procurement Code) [SHALL BE
25 BASED ON COMPETITIVE BIDS].

26 * Sec. 30. AS 33.32.015(b) is amended to read:

27 (b) The commissioner of corrections may
28 (1) subject to AS 36.30 (State Procurement Code) [THE
29 FISCAL PROCEDURES ACT (AS 37.05)], use, purchase, lease, equip, and

1 maintain buildings, machinery, and other equipment, and may purchase
2 materials and enter into contracts, which may be necessary for the
3 correctional industries program;

4 (2) provide for prisoners to be employed in rendering
5 services and producing articles, materials, and supplies needed by a
6 state agency, a political subdivision of the state, an agency of the
7 federal government, other states or their political subdivisions, or
8 for use by nonprofit organizations;

9 (3) if the Correctional Industries Commission established
10 in AS 33.32.070 approves, employ prisoners to provide services or
11 products as needed by private industry if the services or products
12 have potential for contributing to the economy of the state and will
13 have minimal negative impact on an existing private industry or labor
14 force in the state.

15 * Sec. 31. AS 35.05.010 is amended to read:

16 Sec. 35.05.010. PLANNING AND CONSTRUCTION. The department is
17 responsible for the planning and construction of public works except
18 as provided for court facilities in AS 22.05.025. Contracts for
19 planning and construction of public works are governed by AS 36.30
20 (State Procurement Code).

21 * Sec. 32. AS 35.05.020 is amended to read:

22 Sec. 35.05.020. RULES AND REGULATIONS. The department shall
23 adopt [RULES AND] regulations that [WHICH] it considers necessary to
24 carry out the purpose of this title. The regulations may not conflict
25 with AS 36.30 (State Procurement Code) or the regulations adopted by
26 the Department of Administration under that chapter.

27 * Sec. 33. AS 35 is amended by adding a new section to read:

28 Sec. 35.10.195. CONFORMANCE WITH AS 36.30. The contractual
29 techniques for the procurement of labor, materials, and contractual

1 services under the policies developed under this chapter must conform
2 to the requirements of AS 36.30 (State Procurement Code).

3 * Sec. 34. AS 35.15.010(a) is amended to read:

4 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is
5 [SHALL BE] the general policy of the state [DEPARTMENT] to require the
6 construction of all public works under bid contract in accordance with
7 AS 36.30 (State Procurement Code). However, when the estimated cost
8 of a construction project is less than \$100,000, or when it appears to
9 be in the best interests of the state, the department may perform the
10 work, notwithstanding any other provisions of law. A complete record
11 shall be kept by the commissioner or the commissioner's designee of
12 all transactions entered into under this section including names of
13 employees involved in the transactions.

14 * Sec. 35. AS 35.15.020 is repealed and reenacted to read:

15 Sec. 35.15.020. REQUEST FOR PUBLIC BIDS. The solicitation of
16 bids for construction of public works is governed by AS 36.30 (State
17 Procurement Code). The request for bids may require the contractor to
18 furnish equipment, labor, materials, and supplies for the project, or
19 it may state that the department will furnish the materials and sup-
20 plies. If the department elects to provide materials and supplies for
21 a project, it shall make the election at the time it adopts the con-
22 struction program. The department shall acquire these materials and
23 supplies under AS 36.30 by requesting bids for them according to the
24 class, type, and nature of the materials and supplies. The contract
25 may be awarded either upon the basis of delivery to the construction
26 project directly or to a central storehouse or storehouses maintained
27 by the department. Those materials and supplies so purchased by the
28 department may be delivered to the project site without expense to the
29 contractor, or it may sell them to the contractor at cost and make the

1 materials and supplies a part of the construction cost.

2 * Sec. 36. AS 35.15.040 is repealed and reenacted to read:

3 Sec. 35.15.040. PROCEDURES FOR THE AWARD OF CONTRACTS. Award of
4 a contract for the construction of a public work shall comply with
5 this title, AS 36.30 (State Procurement Code), and the regulations
6 adopted under those laws.

7 * Sec. 37. AS 35.20.010 is amended to read:

8 Sec. 35.20.010. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-
9 RIALS BY PURCHASE OR EMINENT DOMAIN. The department, on behalf of the
10 state and as part of the cost of constructing or maintaining a public
11 work, may purchase in the open market, acquire, take over, or condemn
12 under the right and power of eminent domain land in fee simple or
13 easements which it considers necessary for present public use, either
14 temporary or permanent, or which it considers necessary and reasonable
15 for the public use. By the same means, the department may obtain
16 material including clay, gravel, sand, or rock, or the land necessary
17 to obtain the material, and the necessary land or easements to provide
18 access to it. The department may acquire the land or material
19 notwithstanding the fact that the title to it is in the state or a
20 department, agency, commission or institution of the state.
21 Acquisition of material in the open market under this section is
22 governed by AS 36.30 (State Procurement Code).

23 * Sec. 38. AS 37.05 is amended by adding a new section to read:

24 Sec. 37.05.232. PETTY CASH ACCOUNTS. The department shall
25 determine the amount of the petty cash accounts needed by each state
26 agency and inspect the petty cash accounts at least once each year to
27 determine that the total plus amounts of receipts for unreplenished
28 disbursements is equal to the fixed sum of cash set aside. Shortages
29 in petty cash accounts are a personal liability of the responsible

1 head of the agency to whom the account is set aside. The department
2 shall adopt necessary regulations governing use and replenishment of
3 petty cash funds.

4 * Sec. 39. AS 41.21.020(a) is amended to read:

5 (a) The Department of Natural Resources shall

6 (1) develop a continuing plan for the conservation and
7 maximum use in the public interest of the scenic, historic, archaeo-
8 logic, scientific, biological, and recreational resources of the
9 state;

10 (2) plan for and develop a system of state parks and recre-
11 ational facilities, to be established as the legislature authorizes
12 and directs;

13 (3) acquire by gift, purchase, or transfer from state or
14 federal agencies, or from individuals, corporations, partnerships or
15 associations, land necessary, suitable and proper for roadside, pic-
16 nic, recreational or park purposes;

17 (4) control, develop and maintain state parks and recrea-
18 tional areas;

19 (5) provide for the acquisition, care, control, supervi-
20 sion, improvement, development, extension and maintenance of public
21 recreational land, and make necessary arrangements, contracts or
22 commitments for the improvement and development of land acquired under
23 AS 41.21.010 - 41.21.040; contracting for improvement and development
24 under this paragraph is governed by AS 36.30 (State Procurement Code);

25 (6) adopt, in accordance with this section and the Adminis-
26 trative Procedure Act (AS 44.62), regulations governing the use and
27 designating incompatible uses within the boundaries of state park and
28 recreational areas to protect the property and to preserve the peace;

29 (7) cooperate with the United States and its agencies and

1 local subdivisions of the state to secure the effective supervision,
2 improvement, development, extension, and maintenance of state parks,
3 state monuments, state historical areas, and state recreational areas,
4 and secure agreements or contracts for the purpose of AS 41.21.010 -
5 41.21 040;

6 (8) encourage the organization of state public park and
7 recreational activities in the local political subdivisions of the
8 state;

9 (9) provide for consulting service designed to develop
10 local park and recreation facilities and programs;

11 (10) provide clearing-house services for other state agen-
12 cies concerned with park and recreation matters; and

13 (11) perform other duties as are prescribed by executive
14 order or by law;

15 (12) maintain memorials to Alaska veterans located in state
16 parks;

17 (13) adopt, in accordance with the Administrative Procedure
18 Act (AS 44.62), regulations governing the use of the Chena River State
19 Recreation Area and designating incompatible uses within the bound-
20 aries of the Chena River State Recreation Area in accordance with
21 AS 41.21.490.

22 * Sec. 40. AS 42.40.920(b) is amended to read:

23 (b) Unless specifically provided otherwise in this chapter, the
24 following laws do not apply to the operations of the corporation:

25 (1) AS 19;

26 (2) AS 30.15;

27 (3) AS 35;

28 (4) AS 36.30, except as specifically provided in AS 36.30

29 (State Procurement Code);

- 1 (5) AS 37.05;
2 (6) [(5)] AS 37.07;
3 (7) [(6)] AS 37.10.010 - 37.10.060;
4 (8) [(7)] AS 37.10.085;
5 (9) [(8)] AS 37.20;
6 (10) [(9)] AS 37.25;
7 (11) [(10)] AS 38;
8 (12) [(11)] AS 44.62.040 - 44.62.320.

9 * Sec. 41. AS 44.21.310(a) is amended to read:

10 (a) The telecommunications divisions, as directed by the deputy
11 commissioner, shall

12 (1) advise the governor on matters of policy and comprehen-
13 sive state planning for telecommunications services;

14 (2) make an annual report to the governor and to the legis-
15 lature on the activities of the telecommunications divisions;

16 (3) coordinate, manage, and supervise state programs in
17 telecommunications, including the management of those telecommunica-
18 tion services for the state obtained from common carriers and from the
19 communications industry;

20 (4) when requested, provide technical and consulting assis-
21 tance to the executive, judicial, and legislative branches of state
22 government, to the University of Alaska, and to private noncommercial
23 entities which request that assistance in facility procurement and
24 leasing and in identifying long-range goals and objectives for the
25 state and its political subdivisions in all aspects of telecommunica-
26 tions, including public, educational, and instructional telecommunica-
27 tions;

28 (5) prepare and maintain a state comprehensive telecommu-
29 nications development plan to further state telecommunications devel-

1 opment and to meet state telecommunications needs and prepare and
2 maintain a comprehensive inventory of all state communications facil-
3 ities;

4 (6) whenever feasible, procure services from private enter-
5 prise or certified and franchised utilities and contract for the
6 construction, management, operation and maintenance of telecommunica-
7 tions systems, and develop a procurement policy consistent with
8 AS 36.30 (State Procurement Code) [UNDER AS 37.05.010 - 37.05.410];
9 the procurement policy must seek to achieve the maximum benefit to the
10 public, and methods of procurement, including lease, purchase, rental,
11 or combinations of lease, purchase, and rental, must be selected on
12 the basis of factors such as the ratio of long-range costs versus
13 benefits, life cycle costing, and the costs to the communications
14 industry to the extent that these costs may affect local and long
15 distance basic telephone rates; procurement, contracting, construc-
16 tion, and maintenance under this paragraph is governed by AS 36.30;

17 (7) provide information and assistance to state agencies to
18 promote governmental coordination and unity in the preparation of
19 agency plans and programs involving the use of telecommunications;

20 (8) apply for and accept federal and private money, proper-
21 ty, or assistance, that may be appropriated, granted, or otherwise
22 made available to the telecommunications divisions and use and dis-
23 burse money and property for purposes consistent with AS 44.21.300 -
24 44.21.330 and AS 44.21.256 - 44.21.290, subject to reasonable limita-
25 tions imposed by the grantor;

26 (9) participate with other governmental units in planning,
27 and assist local governments and governmental conferences and councils
28 in the state in planning and coordinating their activities relating to
29 telecommunications;

1 (10) provide for the orderly transition to new telecommu-
2 nications services and systems by state agencies;

3 (11) serve as a clearinghouse for information, data, and
4 other materials which may be necessary or helpful to federal, state,
5 or local governmental agencies in the development of telecommunication
6 systems;

7 (12) coordinate their services and activities with those of
8 other state departments and agencies to the fullest extent possible to
9 avoid unnecessary duplication; and

10 (13) provide that all activities of the telecommunications
11 divisions are responsive to state statutes and regulations, and to the
12 regulations and rulings of the Federal Communications Commission.

13 * Sec. 42. AS 44.19.144(b) is amended to read:

14 (b) The director may

15 (1) with the written concurrence of the governor, enter
16 into contracts and subcontracts on behalf of the state to carry out
17 the provisions of AS 44.19.141 - 44.19.152; contracting under this
18 paragraph is governed by AS 36.30 (State Procurement Code);

19 (2) act for the state in the initiation, investigation,
20 evaluation of or participation in any program relative to the stated
21 purpose of AS 44.19.141 - 44.19.152 which may involve more than one
22 government or governmental unit;

23 (3) on behalf of the state, accept and expend any gifts or
24 grants made to the state with the approval of the governor where such
25 gifts or grants were made for the purposes of furthering the objec-
26 tives of the office.

27 * Sec. 43. AS 44.33.300 is amended to read:

28 Sec. 44.33.300. WAIVER OF CERTAIN PROVISIONS. When the
29 governor has by proclamation declared an area impacted by an economic

1 disaster, the following provisions regarding public contracts may be
2 waived to the extent specified in the proclamation.

3 (1) the requirement of a contractor's bond as prescribed in
4 AS 36.25.010 may be waived if the contract amount does not exceed
5 \$100,000;

6 (2) the public bid requirements as contained in AS 19.10.-
7 170, AS [19.10.190,] 19.30.191(b), AS 35.15.010 - 35.15.020, and
8 AS 36.30 (State Procurement Code) [AND AS 35.15.010 - 35.15.030] may
9 be waived if the contract is to be performed by a contractor whose
10 principal office is in the designated area and the contract amount
11 does not exceed \$50,000;

12 (3) the general policy to require all construction to be
13 under bid contract as contained in AS 19.10.170, AS 35.15.010, and
14 AS 36.30 (State Procurement Code) may be waived if the contract is to
15 be performed by the state, another governmental entity, or a nonprofit
16 entity.

17 * Sec. 44. AS 44.47.250 is amended by adding a new subsection to read:

18 (c) Contracts with persons or nongovernmental entities under
19 this section are governed by AS 36.30.

20 * Sec. 45. AS 44.47.490(a) is amended to read:

21 (a) The director may establish field offices under this chapter,
22 may hire one or more lending officers, and, under AS 36.30 (State
23 Procurement Code), may contract for the services of

24 (1) real property appraisers who are familiar with rural
25 construction; and

26 (2) engineers who are familiar with engineering problems in
27 arctic and subarctic regions.

28 * Sec. 46. AS 44.71.010 is amended to read:

29 Sec. 44.71.010. DISPOSITION OF OBSOLETE OR SURPLUS STATE PROP-

1 ERTY. The Department of Administration shall take possession of
2 obsolete or surplus property of the state for which there is no imme-
3 diate or prospective use, except abandoned or obsolete school build-
4 ings and other school property. It shall also take possession of
5 property remaining in the control of a commission or board of the
6 state government after the commission or board stops functioning. The
7 Department of Administration shall sell, lease, license, or dispose of
8 the property on the terms it considers for the best interests of the
9 state in conformance with regulations adopted under AS 36.30 (State
10 Procurement Code)

11 * Sec. 47. AS 44.77.010(a) is amended to read:

12 (a) Except as provided in (d) of this section, every [EVERY]
13 claim for reimbursement for money expended, or for compensation for
14 labor, materials, or supplies furnished, or services given to or for
15 the state, whether based on a contract or on a ratification, shall be
16 promptly presented to the appropriate administrative or executive
17 officer for approval and payment.

18 * Sec. 48. AS 44.77.010 is amended by adding a new subsection to read:

19 (d) A claim that is governed by AS 36.30.560 - 36.30.699 is not
20 governed by this chapter.

21 * Sec. 49. AS 44.85.120 is amended to read:

22 Sec. 44.85.120. CARE AND CUSTODY OF BONDS. The bond bank
23 authority, in accordance with AS 36.30 (State Procurement Code), may
24 enter into agreements or contracts with a bank, trust company, banking
25 or financial institution inside or outside the state as may be neces-
26 sary, desirable or convenient, in the opinion of the bond bank author-
27 ity, for rendering services in connection with the care, custody or
28 safekeeping of municipal bonds or other investments held or owned by
29 the bond bank authority, for rendering services in connection with the

1 payment or collection of amounts payable as to principal or interest,
2 and for rendering services in connection with the delivery to the bond
3 bank authority of municipal bonds or other investments purchased by it
4 or sold by it, and to pay the cost of those services. The bond bank
5 authority may also, in connection with any of the services to be
6 rendered by a bank, trust company or banking or financial institution
7 as to the custody and safekeeping of its municipal bonds or invest-
8 ments, require security in the form of collateral bonds, surety agree-
9 ments or security agreements in such form and amount as, in the opin-
10 ion of the bond bank authority, is necessary or desirable.

11 * Sec. 50. AS 44.99.001 is amended to read:

12 Sec. 44.99.001. ADMINISTRATION OF HIGHWAY SAFETY PROGRAM. The
13 governor may contract and do all other things necessary on behalf of
14 this state under 23 U.S.C. 401-404 (Highway Safety Act of 1966), and
15 may cooperate with interested persons and agencies to effectuate the
16 purposes of that Act. Contracting under this section is governed by
17 AS 36.30 (State Procurement Code). The governor may designate a
18 person to serve as the governor's highway safety representative;
19 however, the governor is the official in this state having the ulti-
20 mate responsibility for dealing with the federal government with
21 respect to programs and activities under the Federal Highway Safety
22 Act of 1966. The governor shall coordinate the activities relating to
23 highway safety of state departments, agencies and subdivisions and of
24 the Governor's Commission on Transportation Safety established in
25 AS 44.19.190.

26 * Sec. 51. AS 46.04.090(a) is amended to read:

27 (a) The department, when feasible, shall enter into contracts
28 with persons or private organizations to provide the personnel,
29 equipment, or other services or supplies which may be required to

1 carry out this chapter. Contracts under this section are governed by
2 AS 36.30 (State Procurement Code). When private contracting is not
3 feasible, the department may establish and maintain at ports, harbors,
4 or other locations in the state, the cleanup personnel, equipment, and
5 supplies which, in its judgment, are necessary to carry out this
6 chapter.

7 * Sec. 52. AS 46.07.040(a) is amended to read:

8 (a) The commissioner shall provide for the construction of
9 facilities under this chapter, and is authorized to provide for the
10 construction by contract or through grants to public agencies or
11 private nonprofit organizations, or otherwise. A [NO] contribution
12 toward the cost of the construction of a facility may not be required
13 from its users. Construction under this section by contract is gov-
14 erned by AS 36.30 (State Procurement Code).

15 * Sec. 53. AS 46.15.020(a) is amended to read:

16 (a) The commissioner shall exercise all those powers and do all
17 those acts necessary to carry out the provisions and objectives of
18 this chapter. The commissioner may

19 (1) subject to AS 36.30 (State Procurement Code), enter
20 into contractual agreements necessary to carry out the provisions of
21 this chapter including agreements with federal, state and local agen-
22 cies;

23 (2) apply for, accept, administer and expend grants, gifts,
24 and loans from the federal government and any other public or private
25 sources for the purposes of this chapter, and adopt procedures and do
26 acts not otherwise restricted by law which are necessary to qualify
27 the state to receive grants, gifts and loans;

28 (3) establish a division of water in the Department of
29 Natural Resources and assign to that division the responsibility for

1 carrying out the provisions of this chapter.

2 * Sec. 54. AS 47.05.015(c) is amended to read:

3 (c) A contract authorized under this section is exempt from the
4 competitive bid requirements of AS 36.30 (State Procurement Code)
5 [AS 37.05.230]. In awarding a contract under this section the depart-
6 ment shall [PUBLISH A] request [FOR] proposals in accordance with
7 regulations of the Department of Administration under AS 36.30 (State
8 Procurement Code) [DEPARTMENT].

9 * Sec. 55. AS 47.30.350(a) is amended to read:

10 (a) The department shall

11 (1) develop and submit to the Surgeon General of the United
12 States Public Health Service a comprehensive program for the con-
13 structing and equipping of hospitals and other facilities for the
14 examination, observation, care, and treatment of the mentally ill;

15 (2) develop and submit to the Surgeon General plans and
16 specifications for the constructing and equipping of the hospitals and
17 other facilities;

18 (3) construct and equip the hospitals and other facilities
19 in accordance with the program, plans, and specifications approved by
20 the Surgeon General; construction and equipping under this paragraph
21 is governed by AS 36.30 (State Procurement Code);

22 (4) cooperate, coordinate, and contract, wherever indicated
23 and desirable, with other state boards, departments and agencies, and
24 agencies of the United States in the construction program, and hire
25 necessary personnel and enter into contracts with private individuals
26 and companies, to the end that the hospitals and other facilities are
27 constructed in the most economical and expeditious manner; contracting
28 and construction under this section are governed by AS 36.30 (State
29 Procurement Code).

1 Sec. 56. AS 47.30.660 is amended to read:

2 Sec. 47.30.660. POWERS AND DUTIES OF DEPARTMENT. The depart-
3 ment is the mental health authority of the state and shall

4 (1) administer a comprehensive program for the prevention
5 of mental illness and the care and treatment of the mentally ill,
6 including inpatient and outpatient care and treatment and the procure-
7 ment of services of specialists or other persons on a contractual or
8 other basis;

9 (2) take the actions and undertake the obligations which
10 are necessary to participate in federal grants-in-aid programs and
11 accept federal or other financial aid from whatever sources for the
12 study, examination, care, and treatment of the mentally ill;

13 (3) administer AS 47.30.660 - 47.30.915;

14 (4) designate, operate, and maintain treatment facilities
15 equipped and qualified to provide inpatient and outpatient care and
16 treatment for the mentally ill;

17 (5) provide for the placement of mentally ill patients in
18 designated treatment facilities;

19 (6) enter into arrangements with governmental agencies for
20 the care or treatment of the mentally ill in facilities of the govern-
21 mental agencies in the state or in another state;

22 (7) enter into contracts with treatment facilities for the
23 custody and care or treatment of the mentally ill; contracts under
24 this paragraph are governed by AS 36.30 (State Procurement Code);

25 (8) enter into contracts which incorporate safeguards
26 consistent with AS 47.30.660 - 47.30.915 and the preservation of the
27 civil rights of the patients with another state for the custody and
28 care or treatment of patients previously committed from this state
29 under 48 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd

1 Session, 70 Stat. 709;

2 (9) prescribe the form of applications, records, reports,
3 requests for release, and consents to medical or psychological treat-
4 ment required by AS 47.30.660 - 47.30.915;

5 (10) require reports from the head of a treatment facility
6 concerning the care of patients;

7 (11) visit each treatment facility at least annually to
8 review methods of care or treatment for patients;

9 (12) investigate complaints made by a patient or an inter-
10 ested party on behalf of a patient;

11 (13) delegate upon mutual agreement to another officer or
12 agency of it, or a political subdivision of the state, or a treatment
13 facility designated, any of the duties and powers imposed upon it by
14 AS 47.30.660 - 47.30.915; and

15 (14) adopt regulations to implement the provisions of
16 AS 47.30.660 - 47.30.915.

17 * Sec. 57. AS 47.35.010(a) is amended to read:

18 (a) The department may

19 (1) license and supervise boarding homes, foster homes,
20 group homes, nurseries, institutions caring for children and foster
21 homes, group homes and institutions caring for dependent adults;

22 (2) investigate and supervise licensees;

23 (3) enforce the standards established by it;

24 (4) contract with private or municipal agencies to investi-
25 gate and make recommendations to the department for the licensing and
26 supervision of boarding homes, foster homes, group homes, nurseries,
27 institutions caring for children and foster homes, group homes and
28 institutions caring for dependent adults under procedures and
29 standards of operation established by the department; contracts with

1 private agencies under this paragraph are governed by AS 36.30 (State
2 Procurement Code).

3 * Sec. 58. AS 47.37.030 is amended to read:

4 Sec. 47.37.030. POWERS OF OFFICE. The office may

5 (1) plan, establish, and maintain treatment programs as
6 appropriate;

7 (2) make contracts and award grants necessary or incidental
8 to the performance of its duties and the execution of its powers,
9 including contracts with and grants to public and private agencies,
10 organizations, and individuals, to pay them for services rendered or
11 furnished to alcoholics or intoxicated persons; to the maximum extent
12 possible, contracts and grants shall be for a period of two years;
13 contracts under this paragraph are governed by AS 36.30 (State Pro-
14 urement Code);

15 (3) solicit and accept for use a gift of money or property
16 or a grant of money, services, or property from the federal govern-
17 ment, the state, or a political subdivision of it or a private source,
18 and do all things necessary to cooperate with the federal government
19 or any of its agencies in making an application for a grant;

20 (4) administer or supervise the administration of the
21 provisions relating to alcoholics and intoxicated persons of any state
22 plan submitted for federal funding under federal health, welfare, or
23 treatment legislation;

24 (5) coordinate its activities and cooperate with alcoholism
25 programs in this and other states, and make contracts and other joint
26 or cooperative arrangements with state, local, or private agencies for
27 the treatment of alcoholics and intoxicated persons and for the common
28 advancement of alcoholism programs in this and other states:

29 (6) keep records and engage in research and the gathering

1 of relevant statistics;

2 (7) do other acts necessary to implement the authority
3 expressly granted to it;

4 (8) acquire, hold, or dispose of real property or any
5 interest in it, and construct, lease, or otherwise provide treatment
6 facilities for alcoholics and intoxicated persons; however, the office
7 shall encourage local initiative, involvement and financial participa-
8 tion under grants-in-aid whenever possible in preference to the con-
9 struction or operation of facilities directly by the office; contract-
10 ing and construction under this paragraph are governed by AS 36.30.

11 * Sec. 59. AS 47.37.130(g) is amended to read:

12 (g) The office may contract for the use of any facility as an
13 approved public treatment facility if the coordinator, subject to the
14 regulations of the department, considers this an effective and econom-
15 ical course to follow. Contracting under this subsection is governed
16 by AS 36.30 (State Procurement Code).

17 * Sec. 60. AS 47.90.010(a) is amended to read:

18 (a) The commissioner, in consultation with state and local
19 government agencies, community groups, and groups concerned with
20 displaced homemakers, may

21 (1) contract with eligible private profit and nonprofit
22 corporations for multipurpose service centers for displaced home-
23 makers; contracting under this paragraph is governed by AS 36.30
24 (State Procurement Code); and

25 (2) coordinate existing state programs for displaced home-
26 makers.

27 * Sec. 61. AS 47.40.041(b) is amended to read:

28 (b) Notices published by the department concerning the opening
29 of the application process for a grant award shall specify the geo-

1 graphical area in which services are needed, the type of services, the
2 number of beds anticipated to be needed, the maximum number of days of
3 care, and any other requirements established by the department.
4 Grants authorized under this section are exempt from AS 36.30 (State
5 Procurement Code) [THE COMPETITIVE BID REQUIREMENTS OF AS 37.05.230].

6 * Sec. 62. REPORT. By December 1, 1987, the commissioner of adminis-
7 tration and the commissioner of transportation and public facilities shall
8 report to the legislature concerning procurements by state agencies during
9 the first six months of 1987. The report must include

10 (1) the records prepared under AS 36.30.510(4);

11 (2) recommendations for changes in AS 36.30 or other laws based
12 on implementation of AS 36.30 in those six months; and

13 (3) a description of any matters that involved litigation con-
14 cerning AS 36.30 during those six months.

15 * Sec. 63. REGULATIONS DEADLINE. The regulations required under
16 AS 36.30 as added by sec. 2 of this Act, shall be adopted by January 1,
17 1987 and shall be effective on that date. Regulations adopted under laws
18 repealed in sec. 64 of this Act become ineffective January 1, 1987.

19 * Sec. 64. REPEALER. The following laws are repealed: AS 14.40.340;
20 AS 19.10.190, 19.10.210; AS 24.23; AS 35.15.030, 35.15.050; AS 36.98;
21 AS 37.05.220, 37.05.230, 37.05.231, 37.05.240, 37.05.250, 37.05.260, 37.-
22 05.270, 37.05.280, 37.05.290, 37.05.400(2) and (3); AS 44.65; AS 44.77.-
23 010(c); and AS 47.90.010(c).

24 * Sec. 65. Section 63 of this Act takes effect immediately in accor-
25 dance with AS 01.10.070(c).

26 * Sec. 66. Except as provided in sec. 65, this Act takes effect Janu-
27 ary 1, 1987.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS SB 341 (Fin)
 Title : Act relating to state procurement practices & procedures
 Sponsor : Rules by Request
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Dept of Administration
 BRU : General Services & Supply
 Components : Purchasing

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		350.0	367.5	385.9	405.2	425.4

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND		350.0	367.5	385.9	405.2	425.4
FEDERAL FUNDS						
OTHER						
TOTAL		350.0	367.5	385.9	405.2	425.4

POSITIONS :

FULL-TIME		6				
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Senator Jan Faiks, Co-chairman *Jan Faiks* Phone : 465-4523
 Division : Senate Finance Committee *Jan Faiks* Date : 4/1/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS SB 341 (Jud)
 Title : Act relating to state
procurement practices & procedures
 Sponsor : Rules by Request
 Requester : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Dept of Administration
 BRU : Div of Admin Services
 Components : Administrative Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Senator Jan Faiks, Co-chairman *Jan Faiks* Phone : 465-4523
 Division : Senate Finance Committee Date : 4/1/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS SB 341 (Jud)
 Title : Act relating to state
procurement practices & procedures

Sponsor Rules by Request _____
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Commerce & Economic Dev
BRU: Alaska State Housing Authority

Components : Housing Management

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Senator Jan Faiks, Co-chairman Phone : 465-4523
 Division : Senate Finance Committee Date : 4/1/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No.: CSSB 341 (Jud)
 Title: Act relating to state
procurement practices & procedures

 Sponsor: Rules by Request
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Community & Regional Affairs
 BRU: Local Govt Assistance;
Child Assistance, Displaced
Homemakers, Admin & Support
 Components: Grants Admin, Child Care,
Displaced Homemakers,
Admin Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Senator Jan Faiks, Co-chairman Phone: 465-4523
 Division: Senate Finance Committee Date: 4/1/86

Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS SB 341 (Jud)
 Title : Act relating to state

Sponsor : Rules by Request
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Dept of Natural Resources
 BRU : Management & Administration

Components : Administrative Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Senator Jan Faiks, Co-chairman *Jan Faiks* Phone : 465-4523
 Division : Senate Finance Committee Date : 4/1/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS SB 341 (Jud)
 Title : Act relating to state
procurement practices & procedures

 Sponsor : Rules by Request
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Dept of Environmental
Conservation
 BRU : _____

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL		0	0	0	0	0
REVENUE		0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Senator Jan Faiks, Co-chairman Phone : 465-4523
 Division : Senate Finance Committee Date : 4/1/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution NS SB 341 (Jud)
 Title State Procurement Practices

Sponsor : Rules Committee
 Requestor : Interim Comm. on Procurement
 Date of Request : 1/16/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : Administration

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Sid LaMonica, Administrative Officer Phone : 465-4328
 Division : Public Safety Date : 1/16/86

Approved by Commissioner [Signature] Date : 1-22-86
 Agency : Public Safety

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS SB 341 (Jud)
 Title : Act relating to state
procurement practices & procedures
 Sponsor : Rules by Request
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected: Dept of Transportation
and Public Facilities
 BRU: _____
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL		0	0	0	0	0
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REVENUE		0	0	0	0	0
----------------	--	---	---	---	---	---

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Senator Jan Faiks, Co-chairman Phone: 4654523
 Division: Senate Finance Committee Date: _____
 Approved by Commissioner: _____ Date: _____
 Agency: _____

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811-3300

RECEIVED
ASHA

February 25, 1986

FEB 28 1986

Mr. Wayne I. Tucker
Office of Inspector General
Western Regional Office
P.O. Box 5400
Albuquerque, NM 87115

Route	2X
Route	DSX
Route	2X
File	H

Dear Mr. Tucker:

In your February 14, 1986 letter, you inquired about the audit coverage of certain federal funds expended by the Alaska Department of Commerce and Economic Development (DCED). Specifically, your concerns centered around Alaska State Housing Authority (ASHA) which is an independent, quasi-corporation that is related to DCED only in an administrative way as specified by State statute. Because of this operational separation, we exclude ASHA from our State Department audit of DCED.

A public accounting firm audits ASHA of which you have received a copy of their 1984 combined financial statements. The auditor's opinion references a scope exclusion which includes, "and certain federally subsidized activities." This exclusion relates to federally subsidized Department of Housing and Urban Development (HUD) programs referenced in Note 1 to the financial statements.

The HUD programs are audited by the same public accounting firm (Coopers and Lybrand) but are done so on a two-year cycle. The last audit report we received by this office was for the two years ended 3/31/84, and entitled "Examination of Financial Statements and Supplementary Data of: Annual Contribution Contracts, Preliminary Loan Contract, Section 8, S-014E."

If you haven't received a copy of this report, I would suggest you contact Mr. Paul Harris of ASHA. Furthermore, you may consider contacting HUD directly regarding federal compliance audit coverage of ASHA.

Mr. Wayne Tucker

-2-

February 25, 1986

If we can be of further assistance, feel free to contact me.

Sincerely,



Merle R. Jenson
Deputy Legislative Auditor
Division of Legislative Audit

cc: Paul Harris, ASHA



U.S. Department of Housing and Urban Development
 Anchorage Office, Region X
 701 "C" Street, Box 64
 Anchorage, Alaska 99513

RECEIVED
 ASHA

JAN 31 '86

JAN 31 1986

Barbara Morse-Quinn, Executive Director
 Alaska State Housing Authority
 Post Office Box 100080
 Anchorage, Alaska 99510-0080

Route	EX cc
Route	DEX cc
Route	All Dept leads cc
File	EX Sec
	Board

Dear Ms. Morse-Quinn:

Subject: Senate Bill 8001
 Proposed State Procurement Act

It has just come to our attention that Senate Bill 8001 does provide for an amendment to AS 18.55.100 by adding, "(d) The authority's power to contract, lease, rent, construct, acquire, procure and provide for services under this section is governed by AS 36.30."

We think the only logical application of this subsection with respect to leasing and renting is where Alaska State Housing Authority is procuring a lease for itself, equipment rentals, or similar transactions.

We do not recall any aspect of Senate Bill 8001 which would apply to the leasing of space to tenants. Inasmuch as Alaska State Housing Authority's tenant leasing policies and practices are subject to the U. S. Department of Housing and Urban Development's regulations and other requirements, we would find objectionable any application of Senate Bill 8001 in this regard. ✓

Sincerely,

Michael P. Kulick
 Michael P. Kulick
 Manager

AGU

A M E N D M E N T

TO: Proposed CS For SB 341 (Jud)
Dated: March 7, 1986

- (1) Page 10, line 18 and 19:

Sec. 36.30.115. SUBCONTRACTORS. (a) Within ~~72~~ [24] hours after the opening of bids, the apparent low [EACH] bidder shall submit a list of subcontractors the bidder proposes to use in the performance of the contract.

- (2) Page 11, line 8, a new section to read:

(c) The listing of a subcontractor by a prime contractor is not an expressed or implied acceptance of a subcontractor's bid by a prime contractor.

Renumber following sections accordingly.

- (3) Page 17, line 6:

Alaska business license and, within ~~72~~ [24] hours after the date by

must be substituted in order form

FISCAL NOTE SUMMARY FOR SENATE BILL 341

<u>Department</u>	<u>Amount</u>	<u>Positions</u>
✓ Community and Regional Affairs	\$ 243,200	10 F/T
✓ Alaska State Housing Authority	\$2,890,310	13 F/T
✓ Department of Administration General Services	\$ 493,700	9 F/T
✓ Department of Administration Administrative Services	\$ 136,800	3 F/T
✓ Department of Natural Resources	\$ 33,500	1 F/T
Department of Environmental Conservation	\$ 49,400	1 F/T
Department of Transportation	<u>\$ 200,000</u>	<u>1 F/T</u>
TOTAL	\$4,046,910	38 F/T

Public Safety

- 0 -

- 0 -

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER POSITION PAPER

**POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700**

**949 E. 38TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
PHONE: (907) 583-1073**

RE: CS for SB 341

SPONSOR: Senate Rules Committees

Comments

This bill provides for a major restructuring and revision of the statutes governing the procurement of supplies, services, professional services, and construction by State agencies. Several of the requirements currently existing in statutes concerning procurement would be changed. The bill would affect all of the Department's procurement activities.

Grants Definition

Of greatest concern to the Department of Community and Regional Affairs is the possibility the definition of "procurement" in the bill may be too broad and could be interpreted as applying to many of the Department's grant activities.

At issue is the basic distinction between the definitions of procurements and grants. Under Section 36.30.850(b)(1), "grants" are exempted from the provisions of the bill. Sections 36.30.990 (10) and (12) of the bill provide the definitions of "grants" and "procurements", respectively. The Department does not believe that these definitions are adequate to differentiate between the two.

If our existing grants are redefined as procurement contracts, as defined under Section 36.30.990 (12), the Department would be required to implement a considerable number of additional administrative activities in order to comply with the provisions of CS SB 341. This, in turn, would substantially increase the need for additional staff and administrative dollars.

For example, due to the limitations on sole source procurements contained in Section 36.30.300 of the bill, this Department would be required to prepare a competitive sealed bid or proposal for each of the Legislative Grants (grants authorized under AS 37.05.316 and AS 37.05.317) administered by the Department. A significant number of these grants are appropriated annually to the Department. These new administrative procedures would increase the amount of time required to develop and obtain a signed contract and due to the solicitation requirements may lead, in this example, to the grant being provided to an entity different than that intended to receive the grant by the Legislature.

The Department also notes that Sections 46 and 65 of CS SB 341 subject the Day Care Assistance program and the Displaced Homemaker's program, respectively, to the provisions of the bill. The Department considers these programs to be grants and not procurements and suggests that these sections should be deleted.

Department Recommendations

The Department of Community and Regional Affairs believes that one of the major problems with the definitions of grants and procurements in the bill, is that neither provide an indication of the main beneficiary of the funds.

The Department suggests that procurements are primarily for the acquisition of services or supplies to enable the agency to conduct its operations and hence, are for the direct benefit of the State agency. Conversely, a grant is primarily to serve or fulfill some needed public purpose within the recipient's community and hence, directly benefits that community. The State or grantor agency only benefits indirectly from the project through the increase in the general welfare of the State.

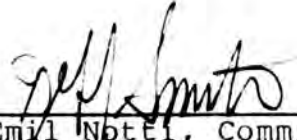
The Department of Community and Regional Affairs suggests that another major distinction between grants and procurements is that grantees are most typically entities which are organized for a public purpose and/or operate in a manner which does not yield them a profit. Conversely, procurements are most typically made with entities which are organized for profit.

In view of the above, the Department of Community and Regional Affairs recommends the following language be used in CS SB 341 as the definition of a grant.

GRANT: An agreement between a State agency and an entity which is typically not organized for profit (e.g., municipal corporation, non-profit corporation, tribal organization organized under the Indian Reorganization Act, traditional councils) and which typically represents a public interest group (e.g., community, region). The agreement provides for the performance of a public purpose which is primarily for direct benefit to the people which the grant recipient represents. The State gains only indirectly through the benefit derived by the community or region.

The Department believes this definition helps clarify the distinction between grants and procurements. This definition would ensure that grants are not mistakenly classified as procurements and subject to the greater administrative requirements provided in CS SB 341. This, in turn, would significantly reduce the fiscal impact on this Department expected under the present language of the bill.

The Department of Community and Regional Affairs does favor the overall intent of the bill. If the above enumerated concerns are properly addressed, the Department's fiscal note could be reduced to 47.7; these costs are associated with the Administrative Officer I position in the Division of Administrative Services.



Emil Notti, Commissioner
March 28, 1986

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS SB 341
 Title : An Act relating to State procurement practices and procedures
 Sponsor : Rules Committee by request
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Community & Regional Affairs
 BRU : Local Government Assistance; Child Assistance, Displaced Homemakers, Administration and Support
 Components : Grants Administration, Child Care, Displaced Homemakers, Administrative Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		202.1	404.1	416.2	428.7	441.6
TRAVEL		9.2	18.4	19.0	19.6	20.2
CONTRACTUAL		11.6	23.2	23.9	24.6	25.3
SUPPLIES		1.8	3.7	3.8	3.9	4.0
EQUIPMENT		18.5				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		243.2	449.4	462.9	476.8	491.1

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		243.2	449.4	462.9	476.8	491.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		10	10	10	10	10
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary. This bill provides for a major restructuring and revision of the statutes governing the procurement of supplies, services, professional services, and construction by State agencies. Several of the requirements currently existing in statutes concerning procurement would be changed. The bill would affect all of the Department's procurement activities.

Prepared by : Remond Henderson Remond Henderson Phone : 465-4708
 Division : Administrative Services Date : 3/28/86

Approved by Commissioner : Emil Notti Emil Smith Date : 3/28/86
 Agency : Community and Regional Affairs

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 341

This fiscal note is a combination of the fiscal impact of CS SB 341 on various BRU's and components within the Department. Following is a summary of the fiscal impact on each Division.

Assumptions

1. The definition of "procurement" in CS SB 341 is interpreted as applying to projects currently treated as grants creating an increase in time to prepare and review the required documents.
2. Number of grants each staff could effectively administer would be greatly reduced.
3. The Department receives a significant number of new grants each year.
4. The Department would need to provide increased oversight of procurement documents in order to provide some measure of quality control within the Department.

Municipal and Regional Assistance Division

4 Grants Administrators to more closely monitor grants and meet increased requirements under proposed procurement provisions - \$182.7

1 Clerk Typist III and 1 Administrative Assistant to provide additional clerical and technical support for increased professional staff - \$66.6

Community Development Division

1 Grants Administrator and 1 Community Development Specialist I/II to more closely monitor grants and meet increased requirements under proposed procurement provisions \$112.5

1 Clerk Typist III to provide additional clerical support - \$32.4

Administrative Services Division

One Administrative Officer I position to provide training and technical assistance to departmental staff to assure compliance with the procurement provisions and to serve as final review of all documents - \$47.4

All positions are full-time 12-month positions. However, since CS SB 341 is effective January 1, 1987, FY 87 costs are for six months.

NOTE: If the definition of procurement is amended to exclude the bulk of grants administered by the Department, the fiscal impact of the bill would be greatly reduced.

Position Title Grants Administrator - Beginning FY 87			No. of Positions 4	Range/Step 17/A	Barg. Unit GGU	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 12	RP Number	Location Anchorage	Election District		Leg.		
Type of Expenditure			Justification					
1		2	CS SB 341, as written, would subject virtually all of the Division's grants to unincorporated communities and nonprofit organizations to the provisions of the proposed State procurement practices and procedures. The fiscal impact of this would be significant as virtually all grants would have to be treated as Professional Services Contracts. The procurement practices of the grantee would have to be more closely monitored with corresponding increases in oversight and reporting. The number of grants each administrator could adequately monitor would be greatly reduced. For purposes of this fiscal note, it is assumed the average number of grants per administrator would have to be reduced from about 75 per person to 20 grants per person.					
		3						
Salary	34,740 x 4	138,960						
Benefits	10,930 x 4	43,720						
Premium Pay								
Other		182,680						
Total Personal Services								
Travel		5,000						
Contractual		12,000						
Commodities		1,000						
Equipment		8,000						
Other								
Total Cost		208,680						
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
			208.7					
For B&M Use Only								
Key Number _____								

These four Grants Administrator positions would prepare grant contracts and procurement documents, closely monitor grant progress, provide advice and grant administration technical assistance, and assist grantees in finishing and closing out contracts. This would require funding for toll calls and some travel funds.

**Request For
New Position**

Agency Community and Regional Affairs
 BRU Local Government Assistance
 Component Grants Administration

FY 87

Page 1 of 1
 Revised Date _____

Position Title Administrative Assistant (Beginning FY87)			No. of Positions	Range/Step 12/A	Base Unit GSV	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 12	RP Number	Location Anchorage		Election District	Leg.		
Type of Expenditure			Justification					
			This position would be needed to support the activities of the four (4) additional Grants Administrators required in FY 87, the four (4) new Grants Administrators needed in FY 88 and the three (3) new Grants Administrators needed in FY 89 (see attached related Requests for New Positions).					
			The Administrative Assistant would assist in maintaining files, keeping grant balances current, advertising and documentation needed to meet procurement and contract requirements, and other general support staff functions					
Amount								
1	2	3						
Salary	24,865							
Benefits	8,683							
Premium Pay								
Other								
Total Personal Services		33,548						
Travel		-0-						
Contractual		800						
Commodities		200						
Equipment		2,000						
Other								
Total Cost		36,548						
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
			36.5					
For B&M Use Only								
Key Number								

**Request For
New Position**

Agency Community & Regional Affairs
 BRU Local Government Assistance
 Component Grants Administration

Page 1 of 1
 Revised Date _____

FY 87

Position Title Clerk Typist III - Beginning FY 87			No. of Positions 1	Range/Step 8/A	Barg. Unit GGU	Gov.	Appov.	Disapp.																																															
Time Status PFT	Staff Months 12	RP Number	Location Anchorage	Election District		Leg.																																																	
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>1</th> <th>2</th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td></td> <td>19,573</td> <td></td> </tr> <tr> <td>Benefits</td> <td></td> <td>7,479</td> <td></td> </tr> <tr> <td>Premium Pay</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td></td> <td></td> <td>27,052</td> </tr> <tr> <td>Travel</td> <td></td> <td></td> <td>-0-</td> </tr> <tr> <td>Contractual</td> <td></td> <td></td> <td>700</td> </tr> <tr> <td>Commodities</td> <td></td> <td></td> <td>300</td> </tr> <tr> <td>Equipment</td> <td></td> <td></td> <td>2,000</td> </tr> <tr> <td>Other</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total Cost</td> <td></td> <td></td> <td>30,052</td> </tr> </tbody> </table>			Type of Expenditure	1	2	3	Salary		19,573		Benefits		7,479		Premium Pay				Other				Total Personal Services			27,052	Travel			-0-	Contractual			700	Commodities			300	Equipment			2,000	Other				Total Cost			30,052	Justification This clerical position is needed to support the four (4) additional Grants Administrator positions required in FY 87 to provide increased oversight and monitoring of grants. This Clerk Typist position would type reports and correspondence, file, photocopy, and provide other clerical support to assist the Grants Administrators.				
Type of Expenditure	1	2	3																																																				
Salary		19,573																																																					
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0317F/3

**Request For
New Position**

Agency Community and Regional Affairs
BRU Local Government Assistance
Component Grants Administration

Page 1 of 1
Revised Date

FY 87

Position Title Grants Administrator			No. of Positions 1	Range/Step 17A	Barg. Unit GGU	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 12	RP Number	Location Anchorage		Election District	Leg.		
Type of Expenditure			Justification					
			Generally, Child Care grants are awarded to the same contractors yearly. Under CS SB 341, the Child Care monies would have to go out to bid, probably resulting in new contractors and new local administrators. Therefore, this position would need to provide training and technical assistance to the new recipients.					
Amount			An additional Grants Administrator is needed in order to process the increased amount of paperwork under CS SB 341.					
1	2	3						
Salary	34,740							
Benefits	10,930							
Premium Pay								
Other								
Total Personal Services		45,670						
Travel		5,200						
Contractual		5,900						
Commodities		600						
Equipment		700						
Other								
Total Cost		58,070						
Receipt Code	Funding Source							
	Federal Receipts	1002						
	G. F. Match	1003						
	General Funds	1004	58.1					
	I-A Receipts	1005						
	Program Receipts	1028						
	CIP Receipts	1061						
	Other							
For B&M Use Only								
Key Number								

**Request For
New Position**

Agency Community and Regional Affairs
 BRU Child Assistance
 Component Child Care

Page 1 of 1
 Revised Date

FY 87

Position Title Clerk Typist III			No. of Positions 1	Range/Step 8A	Barg. Unit GGU	Gov.	Approv.	Disapp.																																													
Time Status PFT	Staff Months 12	RP Number	Location Anchorage, AK		Election District	Leg.																																															
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Type of Expenditure	1	2	3																																																		
Salary		19,572																																																			
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**Request For
New Position**

Agency Community and Regional Affairs
BRU Child Assistance
Component Child Care

Page 1 of 1
Revised Date _____

FY 87

Position Title Community Development Specialist I/II			No. of Positions 1	Range/Step 16A	Barg. Unit CGU	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 12	RP Number	Location Anchorage, AK		Election District	Leg.		
Type of Expenditure			Justification					
Amount			Currently, no administrative dollars are associated with this program.					
1	2	3	CS SB 341 would impose additional regulations that would need to be addressed by a staff member.					
Salary	32,424		Presently the program is being administered by a number of different people who spend a portion of their time on this program and are basically funded by other sources. This was an emergency type response to the exclusion by the Legislature of administrative dollars for this program.					
Benefits	10,403		If the administration of this program continued to function in this manner, we would be unable to implement the requirements set forth in CS SB 341 in a timely manner.					
Premium Pay			This new position would centrally locate the administration of this program and would be responsible for the requirements that would be placed on this program as a result of CS SB 341.					
Other			Presently the program is handled like "pass through" grants. CS SB 341 would require this program to be handled as professional services contracts.					
Total Personal Services		42,827						
Travel		8,200						
Contractual		2,400						
Commodities		500						
Equipment		500						
Other								
Total Cost		54,427						
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004 54.4					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
For B&M Use Only								
Key Number								

**Request For
New Position**

Agency Community & Regional Affairs
 BRU Job Training Partnership Act
 Component Displaced Homemakers

FY 87

Page 1 of 1
 Revised Date

RECEIVED MAR 24 1986



The Honorable Jan Faiks
Senator
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SB 341

Dear Senator Faiks:

The Senate Finance Committee is scheduled to discuss SB 341, the Procurement Bill, on Tuesday, March 25, 1986. The Alaska State Housing Authority (ASHA), as the conduit for the receipt of federal assistance for low-income and senior housing, seeks specific exemption from SB 341 on all federally-assisted operations. ASHA is comprehensively regulated by the U.S. Department of Housing and Urban Development in its housing programs. The bill, as proposed, will substantially impact the Alaska State Housing Authority (ASHA) in the following areas:

1. Increase the duration of vacancies between tenant occupancy to insure new State procedures are being followed;
2. Create a corresponding increase in waiting lists for public housing, as tenants will not be moved into vacated units as rapidly as they now are;
3. Reduce federal funds to ASHA based on intricate funding formulas that consider vacant unit turnover and occupancy levels;
4. Require increased personnel in management, maintenance and accounting for which the federal government will not pay;
5. Jeopardize ASHA's status as a "public housing authority" for continued receipt of federal funds at a time of federal cutbacks. These funds will revert to Seattle, Portland or San Francisco rather than stay in Alaska.

A convoluted system of double regulation under which ASHA follows both federal and state regulations when they are not explicitly inconsistent, and either state or federal regulation on a case-by-case basis when there is inconsistency, creates a scenario only a



lawyer could love. Section 10 of the bill in its references to AS 18.55.100 and 18.55.110 and the proposed 36.30.890 will create such a scenario. ASHA requests your consideration of a specific exemption for ASHA.

Attached are copies of three letters received by ASHA from Michael Kulick, Manager, Anchorage Office of the U.S. Department of Housing and Urban Development, registering HUD's concerns with regard to ASHA's inclusion in SB 341. These were included in the materials previously submitted to the Senate Judiciary Committee in support of an exemption for ASHA.

Since testifying before the Senate Judiciary Committee, we have prepared a fiscal note, which assumes full delegation to the Alaska State Housing Authority, as provided in the legislation. Federal funds to implement this legislation are not and will not be available, leaving a cost to the State General Fund as described in the fiscal note.

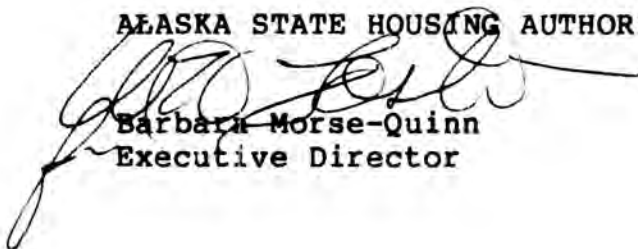
Also enclosed is a section analysis and narrative outlining ASHA's reasons for requesting an exemption. ASHA's concerns are that this legislation is in part duplicative, contradictory and unnecessarily burdensome for ASHA because of ASHA's relationship to the U.S. Department of Housing and Urban Development. Under SB 341, the procurement code will be applied to this housing authority, while all other housing authorities in the state are being exempted. No tenant, vendor or contractor will note benefits or receive increased services from this agency's application of this law. In fact, the agency's purpose will be descoped, muddled, made controversial, and its activities will cost significantly more to administer.

In a time of both federal and state monetary restraint, we advocate for available funds to go for housing, not administration.

On behalf of all our tenants and supporters of public housing, thank you for your consideration of our remarks.

Sincerely,

ALASKA STATE HOUSING AUTHORITY



Barbara Morse-Quinn
Executive Director

BMQ/sms

Enclosures



U.S. Department of Housing and Urban Development

Anchorage Office, Region X
701 "C" Street, Box 64
Anchorage, Alaska 99513

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ASHA

JAN 19 1986

JAN 24 '86

Barbara Morse-Quinn, Executive Director
Alaska State Housing Authority
Post Office Box 100080
Anchorage, Alaska 99510-0080

EX CC
DEX CC
Ex. Dept
EX Sec
Board

Dear Ms. Morse-Quinn:

Subject: Relationship of Alaska State Housing Authority
and the U. S. Department of Housing and Urban Development

This is in response to your letter dated January 17, 1986, requesting our comments on the relationship of Alaska State Housing Authority (ASHA) and U. S. Department of Housing and Urban Development (HUD).

The relationship is a contractual one which is defined by the terms of the Annual Contributions Contract. Under that document a public housing authority (PHA) is provided federal funds for the specific purpose of providing and operating housing for families of lower income. The funding is designated for specific projects and may only be used in accordance with the HUD-approved development program, contract terms, and HUD regulations and policies. Should the funding approved by HUD for a particular project not be made available to the PHA, it would be necessary for the federal government to provide additional funding in order for HUD to meet its contractual responsibilities to the PHA. For this reason, HUD cannot approve any arrangement whereby the PHA does not have total access to and control of, the funds supplied by HUD. As a small example of this, HUD requires the PHA to invest the funds provided in order to earn interest. The amount of funding provided has been calculated on the basis that a certain amount of interest will have been received by the PHA. Any attempt to make HUD funds provided to ASHA restricted as to access or control or subject to legislative approval would be strongly opposed by HUD. In this regard, I have been advised by our Headquarters' office that the Department has already taken such a position with another state when it recently advised the governor of that state that remedial legislation must be enacted to eliminate legislative control over HUD funds.

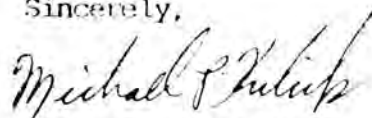
I am not in a position to discuss how HUD's legislation compares with that of other federal agencies. It is my impression, however, that HUD may have more authority, than other agencies, to become directly responsible

for the activities usually undertaken by a state agency using federal funds. For example, the default provisions of the statute and Annual Contributions Contract provide that title and/or possession be given to the Secretary, at the Secretary's discretion, should the PHA fail to observe the terms of the contract. In any case, HUD funds are specifically designated for an identifiable project to be developed or managed by a named PHA and are not considered generalized housing funds earmarked particular to be used in a state.

For additional comments, I refer you to the Regional Counsel's letter dated October 17, 1985, which speaks to the relationship between ASHA and HUD. Finally, we do believe the Attorney General's Opinion of June 9, 1983, interpreting AS 18.55.110 may have direct relevance to the issues you raised.

I hope this is of some assistance to you. Please keep us fully informed of your discussions on this matter and feel free to contact Susan Olsen, Chief Counsel, at 271-4683 for additional comments.

Sincerely,



Michael P. Kulick
Manager



U.S. Department Housing and Urban Development

Anchorage Office, Region X
701 "C" Street, Box 64
Anchorage, Alaska 99513

JAN 14 1986

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ASHA

JAN 12 '86

Barbara Morse-Quinn, Executive Director
Alaska State Housing Authority
Post Office Box 100080
Anchorage, Alaska 99510-0080

EX-100
Bus
DEF
All Dept
EX Sec
H-3 ext
Board

Dear Ms. Morse-Quinn:

Subject: Senate Bill 8001
Proposed State Procurement Act

In response to your inquiry of December 13, 1985, we have reviewed the above-referenced bill from the perspective of its impact on Alaska State Housing Authority (ASHA) and U. S. Department of Housing and Urban Development (HUD) programs and operations. We find that, overall, as written, it may be viewed as burdensome and restrictive from a practical standpoint, and as undesirable to HUD in terms of foreseeable increased costs, time delays, and lack of adequate protections for federally-funded housing projects. We do not find the proposed act to be of particular value to either ASHA or HUD, inasmuch as we firmly believe that there are adequate and appropriate safeguards currently in place to meet any concerns the state may have with regard to fairness, economy, and control. This is accomplished by way of ASHA regulations and HUD's regulations and policies, and the requirements of the Annual Contributions Contract between HUD and ASHA.

While it is difficult to analyze the full impact, on an agency or federally-funded program, of a law for which regulations have not yet been written, we offer the following comments on the bill, along with responses to your comments to Senator Faiks.

As to the delegability of professional services authority, as well as the authority to procure supplies and other services (as referenced in your first two pages of comments), we think that the only logical interpretation of AS 36.30.015(b) is that such authority is delegable. However, there is no requirement that the authority be delegated, and, clearly, the adoption of regulations is not delegable, nor is there any requirement that the individual departments or agencies participate in the formulation of the regulations. While ASHA presently has the power under AS 18.55.100 to adopt its own regulations, the proposed legislation would apparently remove this power,

and we see this as a significant deficiency of the law from a practical and policy standpoint. We think that any applicable regulations should be written in accordance with HUD requirements. Additionally, as you are aware, HUD is particularly concerned with contracting for construction and has developed extensive "boiler-plate" provisions which are required to be utilized in any such contracts. We see great possibilities for conflict should the authority not be delegated to ASHA and should the regulations not comport with HUD's requirements.

We agree that most matters covered in your numbered paragraphs (2) and (3) are covered by HUD regulations, procedures, or other requirements which variously are less, or more, restrictive than that proposed by the state bill. This is true, of course, about most of the sections of the legislation. In HUD's view, a few of the areas which would raise immediate and strong conflict are: Section 36.30.080, which could involve the administration of federal funds for lease purposes through the state treasury; Section 36.30.170, which provides for an Alaska bidder preference; Section 36.30.270, which requires the approval of the Department of Law to alter any contract terms, rather than HUD's counsel; and Section 36.30.015, which requires the attorney general's approval of any contract for legal services. As an additional note, it appears that use of the consolidated supply program would be seriously curtailed or delayed in that already selected competitive bid suppliers would have to resubmit to the state's competitive bid process.

The extensive bid documentation required in Section 36.30.110, as discussed in your paragraph (5), does appear to be cumbersome and bound to cause delays. Further, we think the requirements for Alaska business licenses, as applied to subcontractors in supply contracts, is unduly restrictive and burdensome. HUD policy expects procurement procedures to be as broad and competitive as possible. As mentioned earlier, the provision for Alaska bidder preference is totally unacceptable for federally-funded ASHA projects. This raises questions also about the acceptability of Section 36.30.050, which requires every agency's use of a centrally maintained list of contractors.

Regarding your paragraph (6), HUD requires acceptable bid security of five percent. We would undoubtedly find that the ten percent requirement would be unacceptably excessive and would not be willing to approve these extra costs to a project.

Section 36.30.200(b), as referenced in your paragraph (8), appears to be unduly burdensome in that written determinations must be obtained from the chief procurement officer or the commissioner of transportation and public facilities prior to ASHA's ability to enter a contract by other means than a competitive bid (except where emergency or small procurement standards are met). Under the proposed legislation, authority for these determinations is not delegable.

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 1985 8672
1452 SCOMM 54: SEN. SELECT INTERIM COMM. ON PROCUREMENT PRACTICES.

We agree that ASHA's current regulations regarding emergency conditions are more narrowly defined than the proposed language, and, therefore, less apt to present grounds for disputes, either before or after a procurement action is taken [reference your paragraph (9)].

As to your paragraphs (10) and (11), we do not believe that either Section 36.30.370 or Section 36.30.380 conflicts with HUD regulations. However, to require an agency to review and analyze the capability of a proposed contractor's accounting system is, we think, excessively burdensome.

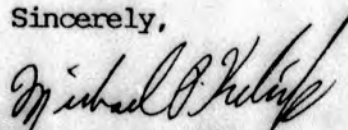
As you point out in your paragraph (12), HUD's policies, procedures and contract provisions, as well as its regulations, do govern the distribution and administration of federal monies designated for public housing projects. Section 36.30.890 of the proposed bill, therefore, provides only a limited exemption to ASHA. Limited exemption could jeopardize ASHA's receipt of HUD funds in an instance of conflict with the state procurement statute. We note the relevance of the Alaska Attorney General's opinion of June 9, 1983, on the applicability of Title 36 to ASHA, wherein he discusses AS 18.55.110 as follows:

. . . We believe the more probable legislative intent was to provide an explicit statutory exemption in instances where the application of state law would jeopardize the receipt of federal assistance. . . . By the statute's own terms, the focus of the exemption is 'to secure [federal] financial aid for housing projects.' . . . Consequently, we interpret AS 18.55.110 as exempting the application of state or local law when a federal funding entity, properly exercising its discretion, notifies ASHA in writing that the receipt of federal funds would be jeopardized were State or local law deemed applicable.

It seems to us that this opinion may be an instructive and persuasive rationale for exempting ASHA from the proposed procurement statute. We tend to agree with you that an acceptable alternative to what we view as a basis for recurring interpretive, managerial, and legal problems under the proposed law, would be to include ASHA as an exempt agency along with the railroad, the legislature, and the court system. If ASHA is not made exempt, then, at a minimum, we would want to see added the terms "policy or other requirement" to the existing terms "federal statute or regulation" in AS 36.30.890.

Thank you for this opportunity to comment.

Sincerely,



Michael P. Kulick
Manager



U.S. Department of Housing and Urban Development
 Anchorage Office, Region X
 701 "C" Street, Box 64
 Anchorage, Alaska 99513

RECEIVED
 ASHA

JAN 31 '86

JAN 31 1986

Barbara Morse-Quinn, Executive Director
 Alaska State Housing Authority
 Post Office Box 100080
 Anchorage, Alaska 99510-0080

Route	EX cc
Route	DFX cc
Route	All Dep! Leads cc
File	EX Sec Board

Dear Ms. Morse-Quinn:

Subject: Senate Bill 8001
 Proposed State Procurement Act

It has just come to our attention that Senate Bill 8001 does provide for an amendment to AS 18.55.100 by adding, "(d) The authority's power to contract, lease, rent, construct, acquire, procure and provide for services under this section is governed by AS 36.30."

We think the only logical application of this subsection with respect to leasing and renting is where Alaska State Housing Authority is procuring a lease for itself, equipment rentals, or similar transactions.

We do not recall any aspect of Senate Bill 8001 which would apply to the leasing of space to tenants. Inasmuch as Alaska State Housing Authority's tenant leasing policies and practices are subject to the U. S. Department of Housing and Urban Development's regulations and other requirements, we would find objectionable any application of Senate Bill 8001 in this regard.

Sincerely,

Michael P. Kulick
 Michael P. Kulick
 Manager

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : CS FOR SB 341
 Title : AN ACT RELATING TO STATE
 PROCUREMENT PRACTICES & PROCEDURES
 Sponsor : RULES
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : COMMERCE & ECONOMIC DEV.
 BRU : ALASKA STATE HOUSING AUTHORITY
 Components : HOUSING MANAGEMENT

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		577.56	595.09	612.94	63.33	650.27
TRAVEL		35.80	36.87	37.98	39.12	40.29
CONTRACTUAL		128.35	132.20	136.17	140.26	141.47
SUPPLIES		16.50	17.00	17.51	18.04	18.58
EQUIPMENT		151.20				
LAND & STRUCTURES		1,980.90				
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		2,890.31	781.16	804.60	828.75	853.61

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		2,890.31	781.16	804.60	828.75	853.61
FEDERAL FUNDS		n/a	n/a	n/a	n/a	n/a
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		13	13	13	13	13
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached page

Prepared by : DIANE FAUDE, ADMINISTRATIVE OFFICER II Phone : 562-2813
 Division : HOUSING MANAGEMENT Date : 3/18/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB341

The Alaska State Housing Authority procures approximately \$1,000,000/month in items in support of 3,125 housing units across the state. Operating currently under its own procurement regulations approved by both the state and federal government, SB341 would replace the present system with one of implementation by and reporting to a dual state and federal system.

To assume full delegation of Procurement Bill SB 341, this agency would have to establish control under a Procurement Director. This Director would require a staff of four people in the positions of Main Warehouseman, Facilities Service Manager, Building Services Manager and Inventory Control Analyst.

The Housing Management Department of the Alaska State Housing Authority has project offices in 16 locations across the State. Under the Procurement Director, a Main Warehouseman would have a staff of three sub/warehousemen who would each have an expeditor under their control. These staff people would be responsible for the actual purchasing, shipping and invoicing. They would also be essential in determining the needs and use of all products procured by the maintenance staff statewide.

In an Administrative Services Division, an Inventory Control Analyst would be responsible for maintaining and controlling inventory records to include the disposal of outdated/scrapped and the addition of new inventory purchases. This person would also assume the role of Surplus Sales Manager in conducting the sale or auction of destroyed/old equipment. A Facilities Service Manager would be responsible for the control and purchase of office products and supplies utilized on a daily basis by the central and statewide projects offices. A Building Services Manager would be responsible for tracking, executing and maintaining all service contracts procuring ongoing services such as elevator service, guard services, emergency call maintenance and the like.

Salaries, including benefits, for each person are as follows: Procurement Director: \$71,500; Main Warehouseman: \$65,000; Sub/warehouseman (3) \$57,200 each; Expeditor (2): \$26,000 each; Inventory Control Analyst: \$45,500; Facilities Service Manager: \$57,200; Building Services Manager: \$57,200; Accounting Clerk III (2): \$28,780 each. Total = \$577,560

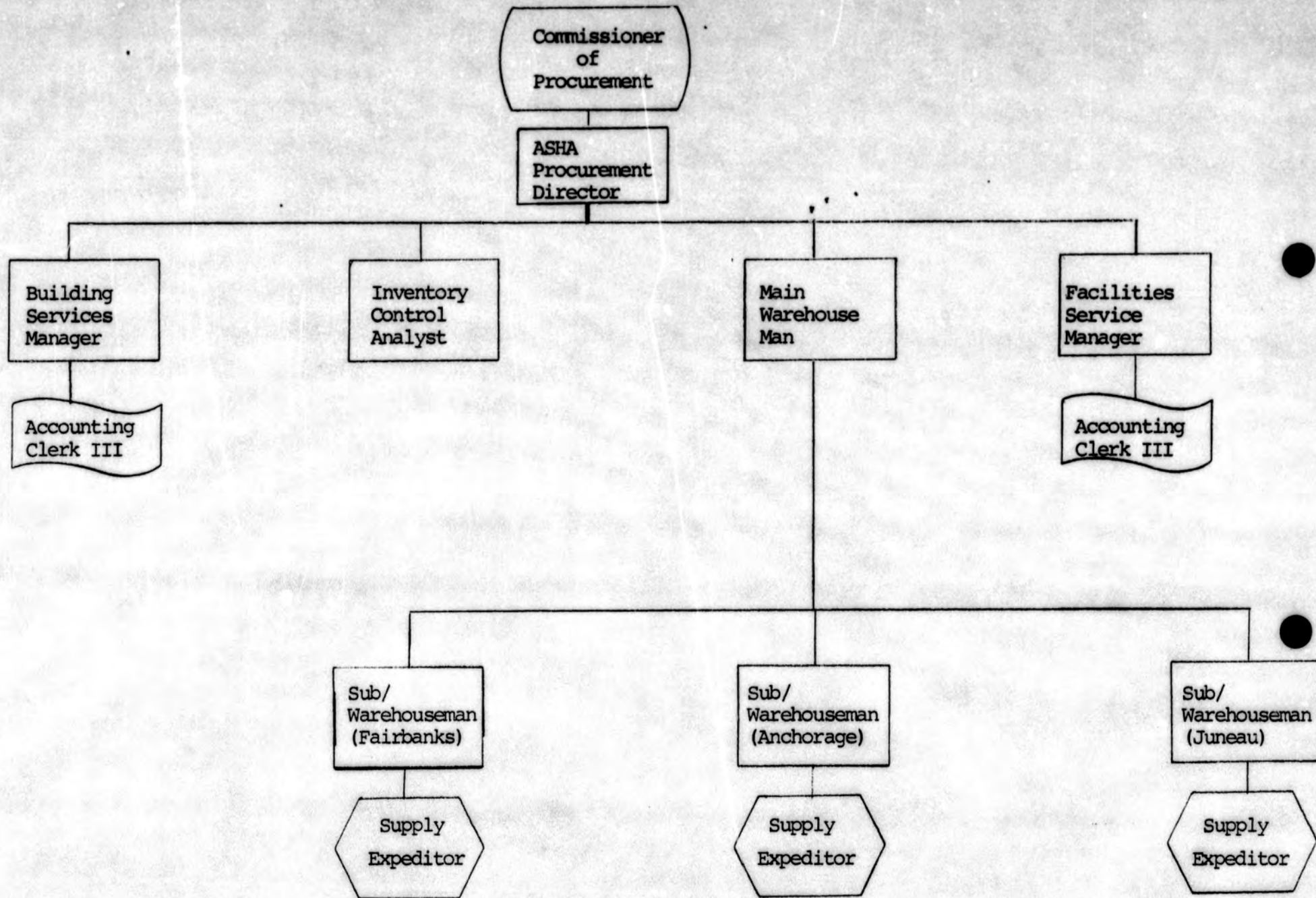
Travel would be required by the Procurement Director, Main Warehouseman, the three sub/warehousemen, the Inventory Control Analyst, Facilities Service Manager, and Building Services Manager. Total travel cost is estimated at \$35,800 for FY87.

Contractual Services focus on the installation of computer lines to each project location. Each person responsible for reporting to the Procurement Director would have a terminal and slave printer on-site. Each of the 24 project offices would also have a computer terminal on-site. The cost for these services would be \$28,350. Computer programming services overall are estimated at \$100,000.

Supplies will be an on-going line item to accommodate the reporting requirements and additional computer output of data to statewide locations on a scheduled basis. It is anticipated that each project and staff centralized in Anchorage would need \$500 per year in FY87 for a total cost of \$16,500.

Equipment will encompass the purchase of hardware (terminal, modem and slave printer), desk, chair, calculator, telephone, typewriter, file cabinets. This is estimated at \$151,200 for Anchorage and statewide project offices.

Land and structures: This initial expense will be extremely high in that existing warehouse space is not available at the project sites. Storage space for equipment and supplies is not available at this time therefore creating the need for a work area and storage area. The estimated cost for warehouse space in the 24 project offices and central Anchorage office is \$1,980,900.



Position Title PROCUREMENT DIRECTOR			No. of Positions 1	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Time Status FT	Staff Months 12	RP Number	Location Anchorage		Election District	Leg.		
Type of Expenditure			Justification					
1		2	The Procurement Director for the Alaska State Housing Authority would be responsible for supervising the activities of those positions directly under him: Building Services Manager, Inventory Control Analyst, Main Warehouseman, and Facilities Service Manager.					
		Amount	This position would be responsible for implementing the procurement regulations into the agency and coordinating with the various departments of ASHA to insure compliance and incorporation. The Procurement Director would also be responsible for total budget control and preparation of future funding request to insure adequate maintenance of all housing units.					
Salary		55,000	SALARY: \$55,000; Benefits: \$16,500 = \$71,500					
Benefits 30%		16,500	TRAVEL: Need to travel to each location on an annual basis to review equipment/material/supply needs for budget requests. Approximate cost \$7200.					
Premium Pay			CONTRACTUAL: Computer access to each project location with a line from the office to main computer. With project terminals in place, cost is estimated at \$70 per month x 12 = \$840; Telephone installation cost: \$70					
Other			SUPPLIES: Paper and office products: \$500					
Total Personal Services		71,500	EQUIPMENT: Terminal-\$500, slave printer-\$1000, modem-\$300, telephone-\$150, exec. desk-\$600, exec chair-\$300, calculator-\$200, file cabinets-\$400 TOTAL: \$3450					
Travel		7,200	LAND/STRUCTURES: Office space necessary, 160 sq. ft. (if land available) @ \$90 p.s.f. = \$14,400					
Contractual		910						
Commodities		500						
Equipment		3,450						
Other (Land/Structures)		14,400						
Total Cost		97,960						
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004 97,960					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
For B&M Use Only								
Key Number								

Request For
New Position

Agency DEPT. OF COMMERCE & ECON. DEV.
 BRU ALASKA STATE HOUSING AUTHORITY
 Component HOUSING MANAGEMENT

FY 87

Page _____ of _____
 Revised Date _____

Position Title MAIN WAREHOUSEMAN			No. of Positions 1	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Time Status FT	Staff Months 12	RP Number	Location Anchorage		Election District	Leg.		
Type of Expenditure			Justification					
			The main warehouseman would be responsible for the statewide implementation of the procurement regs in regard to purchasing for HM, and effectuate the actual purchase. This person would maintain total control over subordinate staff necessary for the daily operations of efficient procurement and would be responsible for reporting procedures and budget compliance. This person would coordinate w/ subordinate staff and be responsible for preparing needs lists and budget requests to the procurement director. This person will provide the inventory control analyst, with surplus/disposal lists. Subordinate staff would consist of one sub/warehouseman in three locations: Anchorage, Fairbanks & Juneau. Each subwarehouseman will have an expeditor under his control. Clerical staff would not be necessary as all accounting and data input would be accomplished at each project site and main distribution point.					
Amount			SALARY: \$50,000; Benefits: \$15,000 = \$65,000					
1	2	3	TRAVEL: Travel to each location on an annual basis. Each trip would consist of 3 days to determine equipment/supply needs in order to prepare cost estimates for next FY. Estimate \$7200.					
Salary	50,000		CONTRACTUAL: Would encompass computer access to 24 project offices and the warehouse. Line access to the main computer is estimated at \$70 per month per terminal (25) = \$21,000; telephone installation - \$70 x 25 = \$1750 (see attached page)					
Benefits	15,000							
Premium Pay								
Other								
Total Personal Services		65,000						
Travel		7,200						
Contractual		122,750						
Commodities		12,500						
Equipment		100,000						
Other (Land/Structures)		1,908,000						
Total Cost		2,215,450						
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004 2,215,450					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
For B&M Use Only								
Key Number _____								

Request For
New Position

Agency DEPT. OF COMMERCE & ECON. DEV.
BRU ALASKA STATE HOUSING AUTHORITY
Component HOUSING MANAGEMENT

FY 87

Page _____ of _____
Revised Date _____

MAIN WAREHOUSEMAN (continued)

CONTRACTUAL: It is also anticipated that computer programming will be necessary to incorporate the new procedure and format. Programming costs are estimated at \$100,000.

SUPPLIES: Office products and paper is estimated at \$500 per office x 25 = \$12,500

EQUIPMENT: Each project office (24) would establish a warehouse area complete with terminal, slave printer and modem; one (1) is needed for the main warehouseman.

Terminal	\$500 x 25	=	\$12,500
Modem	\$300 x 25	=	\$ 7,500
Slave printer	\$1000 x 25	=	\$25,000
Telephone equipment	\$150 x 25	=	\$ 3,750
Desk	\$400 x 25	=	\$10,000
Chair	\$250 x 25	=	\$ 6,250
Calculator	\$200 x 25	=	\$ 5,000
Typewriter	\$800 x 25	=	\$20,000
File Cabinets (\$200 ea)	\$400 x 25	=	\$10,000
		TOTAL:	\$100,000

LAND/STRUCTURES: Warehouse space is needed to establish control of equipment, materials and supplies at each site. Space would be estimated at 400 square feet for 13 projects. Construction cost is estimated at \$90 per square feet (if land is available) for a total cost of \$468,000.

In the Anchorage area, it is estimated that 4,000 square feet of warehouse space is necessary for seven projects. If the land is available, the estimated cost would be 4,000 x \$90 = \$360,000.

As the Central Supply system would be in the Anchorage area, it is estimated that 12,000 square feet of warehouse space are necessary to administer the procurement regulations and to effectuate large purchases of refrigerators, ranges, vehicles and the like. Estimated cost \$90 p.s.f. x 12,000 s.f. = 1,080,000.

TOTAL STRUCTURAL COST: \$1,908,000

Position Title Sub Warehouseman		No. of Positions 3	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Time Status FT	Staff Months 12 each	RP Number	Location Anch/Fbx/Juno	Election District	Leg.		
Type of Expenditure		Amount					
1	2	3					
Salary	44,000 each	132,000					
Benefits	13,200 each	39,600					
Premium Pay							
Other							
Total Personal Services		171,600					
Travel	\$2,000 each	6,000					
Contractual							
Commodities							
Equipment							
Other							
Total Cost		177,600					
Receipt Code	Funding Source						
	Federal Receipts 1002						
	G. F. Match 1003						
	General Funds 1004		177,600				
	I-A Receipts 1005						
	Program Receipts 1028						
	CIP Receipts 1061						
	Other						

Justification
Under the main warehouseman, ASHA would establish three subwarehousemen positions. These three positions would be in contact with the central procurement office via phone and computer terminal. These three positions would be strategically located in the State in order to service the statewide operation of all project offices.

One person would be located in Fairbanks and service the north and west locations. One would be located in Juneau to directly service the southeast locations. The third would be stationed in Anchorage to service the seven projects in Anchorage and the areas of Valdez, Cordova, Seward and Wasilla.

These positions would be responsible for incorporating the procurement procedure and justifying purchases. They would actually perform procurement, authorize purchases by remote locations under their control and report directly to the main warehouseman. They would be responsible for collecting data input and working with the vendors in the project areas.

SALARIES: \$44,000; **Benefits:** \$13,200 = \$57,200
TRAVEL: Travel would be limited to an as-needed basis; estimate \$2,000 per person
CONTRACTUAL: Contractual service would be limited to computer access which is encompassed under the main warehouseman request. No other services foreseen at this time.
EQUIPMENT & STRUCTURES: Also encompassed under the main warehouseman request.

For B&M Use Only
Key Number _____

**Request For
New Position**

Agency DEPT OF COMM. & ECON DEVE.
BRU ALASKA STATE HOUSING AUTHORITY
Component HOUSING MANAGEMENT

Page _____ of _____
Revised Date _____

FY 87

Position Title SUPPLY EXPEDITOR			No. of Positions 2	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Time Status FT	Staff Months 12 each	RP Number	Location Fbx/Juneau		Election District	Leg.		
Type of Expenditure			Justification					
		Amount	<p>This agency would require three expeditors to work directly under each sub/warehouseman. These expeditors would be responsible for directly purchasing the supplies and equipment from the vendors for their immediate location and outlying sites for which their supervisor is responsible.</p> <p>The expeditor would make arrangements for the vendor to ship the materials directly to the project sites or would obtain a bulk order to be broken down and shipped to individual sites.</p> <p>The expeditor would crate, wrap and ship materials directly through the airlines or available land carriers. All receipting and invoices would be directly input into the main computer on-site by this person with daily accounting and tracking by the sub/warehouseman.</p> <p>This agency currently has one expeditor on staff so would request two additional expeditors to be located in Fairbanks and Juneau.</p> <p>SALARY: Entry level \$20,000; Benefits: \$6,000 = \$26,000 ea</p> <p>TRAVEL: None</p> <p>CONTRACTUAL: Telephone installation \$70 ea</p> <p>EQUIPMENT: Desk-\$400, chair-\$250, calculator-\$200, typewriter-\$800, file cabinet-\$200, terminal and printer (utilize existing equipment under sub/warehouseman), telephone-\$150, vehicle (van)-\$12,000</p> <p>Total cost: \$14,000 each</p> <p>LAND/STRUCTURES: None</p> <p>COMMODITIES: Paper/office products \$500 ea</p>					
1	2	3						
Salary	\$20,000 each	40,000						
Benefits	\$ 6,000 each	12,000						
Premium Pay								
Other								
Total Personal Services		52,000						
Travel								
Contractual		140						
Commodities		1,000						
Equipment includes vehicles		28,000						
Other								
Total Cost		81,140						
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
			81,140					
For B&M Use Only								
Key Number								

Request For
New Position

Agency DEPT. OF COMM. & ECON. DEV.
 BRU ALASKA STATE HOUSING AUTHORITY
 Component HOUSING MANAGEMENT

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FY 87

Position Title FACILITIES SERVICES MANAGER			No. of Positions 1	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Time Status FT	Staff Months 12	RP Number	Location Anchorage	Election District	Leg.			
Type of Expenditure			Justification					
1	2	3	<p>The Facilities Service Manager would be responsible for phone installation, upgrading equipment, ordering copiers, typewriters, order and stock office supplies (pens, clips, tablets, computer binders), requisition all printer forms (HUD, tenant form letters, verification requests, denial of housing letters, etc.) and different types of copier equipment supplies.</p> <p>These services would be consolidated for our statewide offices reducing the need for each project office to be versed in purchasing requirements. Consolidation would also be cost effective in obtaining reduced costs for bulk orders and bulk printing. Control and supply of stock at each project location would be enhanced when overseen by one department.</p> <p>The Facilities Service Manager would require the assistance of an Accounting Clerk III to assist with the actual purchasing and pricing information offered by various vendors.</p> <p>SALARY: \$44,000 Benefits: \$13,200 = \$57,200 TRAVEL: One trip to each location (24 sites) one day per diem (\$80) = \$4100 CONTRACTUAL: Would not require direct contract services. Need one line to main computer. Monthly service fee estimated at \$70 x 12 = \$840; telephone installation charge: \$70 SUPPLIES: Paper and office products: \$500 EQUIPMENT: Terminal, printer, modem, telephone, desk, chair, calculator, typewriter and file cabinet: \$3800 LAND/STRUCTURES: Office space required would be 150 s.f. If land is available, cost is estimated at \$90 p.s.f. x 150 = \$13,500 & ECON. DEV.</p>					
Salary	44,000							
Benefits	13,200							
Premium Pay								
Other								
Total Personal Services		57,200						
Travel		4,100						
Contractual		910						
Commodities		500						
Equipment		3,800						
Other (Land/Structures)		13,500						
Total Cost		80,010						
Receipt Code			Funding Source					
			Federal Receipts	1002				
			G. F. Match	1003				
			General Funds	1004	80,010			
			I-A Receipts	1005				
			Program Receipts	1028				
			CIP Receipts	1061				
			Other					
For B&M Use Only								
Key Number								

Request For
New Position

Agency DEPT. OF COMMERCE
 BRU ALASKA STATE HOUSING AUTHORITY
 Component HOUSING MANAGEMENT

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 Revised Date _____

FY 87

Position Title BUILDING SERVICES MANAGER			No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Time Status FT	Staff Months 12	RP Number	Location Anchorage		Election District	Leg.		
Type of Expenditure			Justification The Building Services Manager would be responsible for overseeing the special service needs for each project location and Central Office. These services would include, but not be limited to, elevator service, medical alert/monitor systems, pest control contracts, snow removal, copier maintenance, typewriter repair, security guard service, fire alarm systems and leasing of office space.					
			The manager would be responsible for overseeing that all contracts were in compliance with federal requirements and procurement guidelines. The manager would be responsible for executing all contracts and for bidding all new contracts for such services. The manager would also be responsible for monitoring contracts for expiration and compliance with the terms under the contract. The assistance of an accounting clerk is necessary to process all payments due under the contracts.					
			SALARY: \$44,000 Benefits: \$13,200 = \$57,200					
			TRAVEL: One trip to each location (24 sites) one day per diem(\$80) = \$4100					
			CONTRACTUAL: Terminal line linked to main computer. Monthly service fee \$70 x 12 = \$840; telephone installation fee: \$70					
			SUPPLIES: Paper and office products: \$500					
			EQUIPMENT: Terminal-\$500, slave printer-\$1000, modem-\$300, telephone-\$150, desk-\$400, chair-\$250 calculator-\$200, typewriter-\$800, file cabinet-\$200 = \$3800					
			LAND/STRUCTURES: Office space estimated at 150 s.f. If land available, construction cost is estimated at \$90 p.s.f. x 150 = \$13,500					
Total Personal Services			57,200					
Travel			4,100					
Contractual			910					
Commodities			500					
Equipment			3,800					
Other (Land/Structures)			13,500					
Total Cost			80,010					
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004 80,010					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
For B&M Use Only								
Key Number								

Request For
New Position

Agency DEPT. OF COMM. & ECON DEV.
 BRU ALASKA STATE HOUSING AUTHORITY
 Component HOUSING MANAGEMENT

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Position Title ACCOUNTING CLERK III			No. of Positions 2	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Time Status FT	Staff Months 12 each	RP Number	Location Anchorage		Election District	Leg.		
Type of Expenditure			Justification The Accounting Clerk under the supervision of the Facilities Service Manager would be responsible for conducting the actual pricing information from various vendors statewide and would be responsible for actual orders and purchasing of supplies, products & equipment. Processing and monitoring of purchase orders would be consolidated in this division. This clerk would also audit invoices for accurateness and input all data directly into the computer for payment by Accounts Payable. The clerk would provide supervisor with reports tracking all expenditures and committed funds to substantiate spending within budgeted guidelines.					
		Amount	The Accounting Clerk under the supervision of the Building Services Manager would be responsible for processing all payments due under the terms of the special services contracts. This clerk would also be responsible for direct data input to the main computer for services rendered statewide. Clerk would be responsible for auditing all invoices and track charges to specific tenants and the accounting of such charges to the proper budget. Clerk will provide monthly reports to supervisor for tracking.					
1	2	3	SALARY: \$22,140 Benefits: \$6,640 = \$28,780 ea					
Salary	22,140 ea	44,280	TRAVEL: None					
Benefits	6,640 ea	13,280	CONTRACTUAL: Computer line \$70 per mon x 12 = \$840 ea					
Premium Pay			Telephone installation charge: \$70 ea					
Other			SUPPLIES: Paper and office products: \$500 ea					
Total Personal Services		57,560	EQUIPMENT: Desk-\$400, Chair-\$250, Calculator-\$200, Typewriter-\$800, file cabinets-\$400, telephone-\$150					
Travel								
Contractual		1,820						
Commodities		1,000						
Equipment		8,000						
Other (Land/Structures)		18,000						
Total Cost		86,380						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004		86,380					
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
For B&M Use Only								
Key Number								

(continued)

Request For
New PositionAgency DEPT. OF COMMERCE & ECON. DEV.
BRU ALASKA STATE HOUSING AUTHORITY
Component HOUSING MANAGEMENT

FY 87

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ACCOUNTING CLERK III (continued)

EQUIPMENT: Terminal-\$500, slave printer-\$1000, modem-\$300; TOTAL: \$4,000

LAND/STRUCTURES: Office space per clerk would be limited to 100 square feet. If the land is available, the estimated construction cost would be \$90 per square foot x 100 = \$9,000 each

Position Title INVENTORY CONTROL ANALYST			No. of Positions 1	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Time Status FT	Staff Months 12	RP Number	Location Anchorage		Election District	Leg.		
Type of Expenditure			Justification The Inventory Control Analyst would be responsible for tracking the materials purchased to include all expendable supplies and equipment. They would track materials that come in, go out to the projects, track the reorder schedules, research new stock items as to their effectiveness & use, the turnover rate of old stock and account for surplus material items.					
			Monthly reports would be generated via computer to all locations to check stock and supplies. Periodic check would be made against warehouse lists. The analyst would be responsible for conducting inventory write-offs of equipment as directed by the main warehouseman and adjust records accordingly.					
			SALARY: \$35,000 Benefits: \$10,500 = \$45,500					
			TRAVEL: Need to travel to each location to check the physical records against the written records. Travel to each location for a period of 3 days = \$7200					
			CONTRACTUAL: Line to main computer; monthly service fee \$70 x 12 = \$840; telephone install charge \$70					
			SUPPLIES: Paper and office products: \$500					
			EQUIPMENT: Terminal-\$500, slave printer-\$1000, modem-\$300, telephone-\$150, desk-\$400, chair-\$250, calculator-\$200, typewriter-\$800, file/records cabinets-\$550 TOTAL: \$4150					
			LAND/STRUCTURES: Office space would be approx. 150 sq. ft. If land is available, construction cost is estimated at \$90 p.s.f. x 150 = \$13,500					
Total Personal Services			45,500					
Travel			7,200					
Contractual			910					
Commodities			500					
Equipment			4,150					
Other (Land/Structures)			13,500					
Total Cost			71,760					
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004 71,760					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
For B&M Use Only								
Key Number								

**Request For
New Position**

Agency DEPT. OF COMM. & ECON DEV.
 BRU ALASKA STATE HOUSING AUTHORITY
 Component HOUSING MANAGEMENT

FY 87

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 Revised Date _____

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 03-26-86

REQUEST

FISCAL DETAIL

Bill/Resolution No.: CS for SB 341 (SUD)
 Title: An act relating to the State procurement practices and procedures; and providing for an effective date.
 Sponsor: Senate Rules
 Requestor: Senate Finance
 Date of Request: _____

Agency Affected: Administration
 BRU: General Services & Supply
 Components: Purchasing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES		222.7	445.5	460.5	475.5	490.9
TRAVEL		10.0				
CONTRACTUAL		189.0	38.0	43.0	38.0	43.0
SUPPLIES						
EQUIPMENT		72.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		493.7	483.5	503.5	513.5	533.9
FEDERAL FUNDS						
OTHER						
TOTAL		493.7	483.5	503.5	513.5	533.9

POSITIONS:

FULL-TIME		9	9	9	9	9
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Attached

Prepared By: Robert J. Link
 Division: General Services & Supply

Phone: 465-2250
 Date: 03-26-86

Approved by Commissioner: Eleanor Andrews
 Agency: Department of Administration

Date: 03-26-86

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Senate Bill No. 341

FISCAL NOTE ANALYSIS:

A. REGULATIONS-PROCEDURES DEVELOPMENT AND TRAINING = \$135,000

The bill will create the need for a complete revision of the chapter 15 of the Administrative Code. This revision will be accomplished through a professional legal services contract. to write the regulations and conduct the required public hearings and is estimated to cost \$55,000 (see detail below).

The bill will create the need for a complete revision of the Policy and Procedures Manual for the contracting section of the Division of General Services and Supply. This revision will be accomplished through a professional services contract with an associate attorney. The cost of this contract plus the necessary printing is estimated to be \$25,000 (see detail below) .

Since the bill will completely revise the statute, and subsequently the administrative code and the policy and procedures manual of the division, we estimate that it will be necessary to train approximately 310 state employees in the newly required procedures. This will be accomplished through a professional services contract with an instructor plus printing and travel for an amount estimated to be (see detail below) \$55,000.

Legal services contract for regulations: \$100.00/hr x 83hr/month x 6 months = \$50,000.

Para-legal Contract for Policy and Procedures Manual: \$40.00/hr x 83hr/month x 6 months = \$20,000.

Instructors Contract: Develop training modules at \$60/hr x 525hrs = \$31,500 + train 310 people x \$50/person = \$15,500 for a total of \$47,000

Printing of the Policy and Procedures Manual: 200 manuals x \$25 = \$5000

Printing of the Training Materials: 400 training guides x \$7.50 = \$3000

Travel for public hearings in four locations: 2 people x \$385/airfare + \$240/perdiem x 4 locations = \$5000

Travel for training in four locations: 2 people x

\$385/airfare + \$240/perdiem x 4 locations = \$5000
Total \$135,000

The Department of Transportation has also budgeted for training and procedures development. The amounts which they have budget are to provide for procedures and training in the procurement of construction and its related activities. The amounts budget by General Services are for procurements not related to construction.

B. BIDDERS LIST = \$45,000

Lists of contractors to provide goods and services must be developed and maintained. These lists must be used and made available for use by all branches of state government. Department of Administration, Division of General Services and Supply is responsible for developing, maintaining, and making the lists available for use by all branches of state government. This will be accomplished through a professional services data processing contract. The cost of this contract is estimated to be a \$40,000 one-time contractual expense.

A person who wishes to be on the contractors list must have a valid Alaska business license and pay a biennial fee. The fees will be received and processed by the administrative support staff. We estimate that the cost of receiving and processing the fees will be \$5,000. This is equal to 312 hours of an administrative support technicians time at \$16.01 per hour. This is a biennial contractual expense since the administrative support staff is budgeted for by purchasing, but once the funds are received they are transferred to the Division of Administrative Services. The Division of General Services and Supply then contracts with the Division of Administrative Services for administrative support. This is a biennial contractual expense of \$5,000.

C. Workload Impact = \$313,700

The Division of General Services currently has 13 purchasing agents. It is anticipated that the increased work load (see detail description on the New Position Request Form) will require the addition of 9 new purchasing agents.

9 positions x \$49,503 salary and benefits,
purchasing agent III, range 18A = \$445,527
(because the bill goes into effect in
January) = \$222,763 personal services

increase in FY87. \$445,527 personal services increase in FY88. We estimate that this cost will increase each succeeding fiscal year due to merit increases.

Each of the 9 new purchasing agent positions will be required by the bill will need approximately \$8,000 in equipment (systems furniture and micro-computers). $\$8,000 \times 9 = \$72,000$. This is a one-time equipment expense.

The cost of printing and advertising bids will increase from \$46,100 to \$81,120. An annual increase of \$35,020.

$$\begin{aligned} \$46,100 : 704 &= \$65 \times 1248 = \$81,120 \\ - \$46,100 &= \$35,020 \end{aligned}$$

The cost of mailing bids will increase from \$3,800 to \$6,739. An annual increase of \$2,939.

$$\begin{aligned} \$3,800 : 704 &= \$5.40 \times 1248 = \$6,739 \\ - \$3,800 &= \$2,939 \end{aligned}$$

D. SUMMARY

1. Personal Services \$222,763

9 positions x \$49,503 salary and benefits, purchasing agent III, range 18A = \$445,527 (because the bill goes into effect in January) = \$222,763 personal services increase in FY87.

2. Travel \$10,000

Travel for public hearings in four locations: 2 people x \$385/airfare + \$240/perdiem x 4 locations = \$5000

Travel for training in four locations: 2 people x \$385/airfare + \$240/perdiem x 4 locations = \$5000

3. Contractual Services \$189,000

Legal services contract for regulations: \$100.00/hr x 83hr/month x 6 months = \$50,000.

Para-legal Contract for Policy and Procedures Manual: \$40.00/hr x 83hr/month x 6 months = \$20,000.

Instructors Contract: Develop training modules at \$60/hr x 525hrs = \$31,500 + train 310 people x \$50/person = \$15,500 for a total of \$47,000

Printing of the Policy and Procedures Manual: 200 manuals x \$25 = \$5000

Printing of the Training Materials: 400 training guides x \$7.50 = \$3000

Data processing contract for bidders List = \$40,000

Maintenance secretarial support of bidders list = \$5,000.

The cost of printing and advertising bids will increase from \$46,100 to \$81,120. An annual increase of \$35,020. for an FY 87 (6 months) of \$15,510.

The cost of mailing bids will increase from \$3,800 to \$6,739. An annual increase of \$2,939 for an FY 87 (6 months) amount of \$1470.

4. Equipment \$72,000

Equipment for the 9 new purchasing agent positions will be \$8,000 x 9 = \$72,000

Position Title Purchasing Agent III			No. of Positions 9	Range/Step 18A	Barg. Unit GGU	Gov. Leg.	Approv.	Disapp.
Time Status Full-time	Staff Months 6	RP Number	Location Juneau/Anch		Election District			
Type of Expenditure			Justification					
			Sec. 36.30.300					
			Under the new bill goods and services may be procured without competitive sealed bids only after a written determination has been made by the commissioner that there is only one source for the required goods or services. Current law permits the commissioner to limit bid solicitation or to waive bidding requirements when a finding is made that it is in the best interest of the State to do so.					
			We estimate an average of 680 acquisitions per year are being purchased under the bid waiver provision of the current law. Purchases made under a bid waiver require 20 percent of the work of a purchase made under a competitive sealed bid.					
			For planning purposes, we consider one average competitive sealed bid to be equal to one Work Unit and five bid waivers to be one Work Unit. During the past fiscal year the Division of General Services & Supply processed 704 competitive sealed bids (704 Work Units) and 680 bid waiver requests (680 ÷ 5) = 136 Work Units. The sum of these activities equals 840 Work Units for the division or 60 Work Units per year for each of 14 purchasing agents. [704 ÷ 136 (680 ÷ 5) = 840 ÷ 60 = 14] Since this data base was compiled the staff has been reduced by one (1) position to a total of 13 purchasing agents.					
			Of the bid waivers sampled, only 20 percent meet the sole source or emergency requirement of the new bill. This means that we will have to accomplish the additional 80 percent work necessary to make these purchases as competitive sealed bids. This will create an additional 544 Work Units (680 x .8 = 544). This amount and the remaining 27.2 Work Units (bid waivers, 136 ÷ 5 = 27.2) will be added to the 704 competitive sealed bids we are currently doing. The sum of this equals 1,275 Work Units for the division. At a production rate of 60 Work Units per year for					
Amount								
1			2					
3								
Salary			168,106					
Benefits			54,657					
Premium Pay								
Other								
Total Personal Services			222,763					
Travel								
Contractual								
Commodities								
Equipment			72,000					
Other								
Total Cost			294,763					
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
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Key Number								

1/101/0210-03/1

**Request For
New Position**

Agency Department of Administration
 DRU General Services & Supply
 Component Purchasing

FY 87

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each purchasing agent it will require 21.25 purchasing agents to accomplish The 1,275 Work Units.

However, the pre-bid opening and post-bid opening protest/appeal procedures described in Sec. 36.30.560 through 36.30.605 are not required under existing law. For the period December 1, 1984, through December 1, 1985, 61 protests were received under the current law. We estimate that we will receive approximately 130 protests and appeals per year under the new bill. We estimate that the time required to respond to each of these protest/appeals will be equivalent to three (3) Work Units per year. Thus, each purchasing agent's annual Work Unit production will be reduced from 60 Work Units to 57 Work Units because of the time diverted to responding to protests/appeals. This means that it will require 22.36 purchasing agents to accomplish the 1,275 Work Units.

$$[704 + 544 (680 \times .8) + 27.2 (136 + 5) = 1,275 + 57 = 22.36]$$

22.36 purchasing agents required under the new bill

13 current purchasing agents

9.36 additional purchasing agent positions required

Nine (9) positions x \$49,503 salary and benefits, Purchasing Agent III, range 18A = \$445,527 + 2 (because the bill goes into effect in January) = \$222,763 personal services increases in FY 87. \$445,527 personal services increase in FY 88.

Five (5) of these positions will be located in Juneau and four (4) in Anchorage.

1/1102/0210-03/3



ADDITIONAL
EXPLANATION
FORM

AGENCY Department of Administration

BRU General Services & Supply

COMPONENT Purchasing

FY 87

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Revised Date _____

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST Bill/Resolution No.: <u>Senate Bill 341</u> Title: <u>"An act relating to state procurement practices and procedures and providing for an effective date."</u> Sponsor: <u>Rules by request for Senate</u> Requestor: <u>Select committee</u> Date of Request: _____	FISCAL DETAIL Agency Affected: _____ BRU: <u>Department of Administration</u> <u>Division of Administrative Services</u> Components: <u>Administrative Services</u> _____ _____
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	0	80.7	161.3	166.1	171.1	176.2
TRAVEL	0	8.9	17.8	18.3	18.8	19.4
CONTRACTUAL	0	38.2	76.4	78.7	81.1	83.5
SUPPLIES	0	1.0	1.9	2.0	2.1	2.2
EQUIPMENT	0	8.0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	136.8	257.4	265.1	273.1	281.3
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	136.8	257.4	265.1	273.1	281.3
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	137.3	257.4	265.1	273.1	281.3

POSITIONS:

FULL-TIME	0	3	3	3	3	3
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Attached.

Prepared By: Gary Bader *Gary M. Bader* Phone: 465-2277
 Division: Administrative Services Date: 2/6/86
 Approved by Commissioner: Eleanor Andrews *Eleanor Andrews* Date: 2/7/86
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Senate Bill No. 341

SUBJECT OF PROPOSED BILL:

State procurement practices and procedures.

SUMMARY/EXPLANATION OF INTENT:

"To simplify, clarify, and modernize the law governing Procurements by the State."

ESTIMATED FISCAL IMPACT:

Capital: 0
Operating: \$136,800 FY 87
 \$257,400 FY 88

ANALYSIS:

A. Assumptions

1. Enactment of Senate Bill #341 will significantly impact the Department of Administration and the present method of bid solicitation and the subsequent protest and appeal process.

Because of the changes in Article 2 and Article 3 which will be addressed by General Services and Supply, an increased number of protests and appeals is anticipated by General Services and Supply. The changes proposed by Senate Bill #341 to the protest and appeals procedures and possible subsequent hearings are listed below:

Section 36.30.590 creates a two-step protest/appeal process for goods and services contract awards where previously there was only one step. Prior to SB341, a decision was made by the Commissioner of Administration to deny a protest, to rule on a protest or hear the protest. This decision can be based on timeliness and/or merit. This Bill creates a first step whereby a protest can be filed with the procurement officer. If the protestor is not satisfied with the decision of the procurement officer, a written appeal is to be filed within five days with the Commissioner. Unless the appeal is determined to be untimely or that no facts are in dispute, the appeal will go into the hearing process. This is based on the assumption that the Commissioner of Administration will not decide to delegate appeals and hearings to the department involved. This assumption is based on the need for efficiency and standardizing which can only be obtained by centralization. It is estimated that approximately 122 appeals will be heard by a hearing officer.

Section 36.30.595(b) requires the Commissioner to furnish a copy of filed appeals to "all interested parties." This newly required clerical function will require a mailing of an estimated ten notifications per each appeals and other related functions.

Section 36.30.630 grants the Commissioner 15 days after receipt of a written appeal to adopt the procurement officer's decision regarding contract controversies or determine if there should be a hearing. It is assumed that in order to make the decision, the Commissioner will conduct a complete investigation of the facts surrounding the contract controversy. This investigation should be exhaustive.

Section 36.30.650 and Section 36.30.660 are newly created to place into law procedures regarding debarment, suspension and reinstatement. Hearings may be held following receipt of a written appeal requesting a reconsideration or reinstatement. Based upon evidence showing that the cause no longer exists or has been mitigated, a Hearing Officer may make recommendations to the Commissioner.

2. Of the Goods and Services contracts, during the December 1, 1984, to December 1, 1985 period, 390 bid solicitations were conducted and 548 bid waivers were allowed by the commissioner as being in the best interest of the State. Of these 548 waivers, only 20% would meet the criteria of sole source or emergency requirements of the new bill. Therefore, under the new law, an additional 438 bid solicitations would be required. Of the 390 bids, there were 61 protests or 15.6%. Using this percentage, of the total solicitations required by the new law, 130 protests could be anticipated.

$$(390 + 438) * 15.6\% = 130 \text{ appeals}$$

Of these 130 expected protests, it is anticipated that approximately 52 will be resolved prior to requiring a hearing.

130	anticipated protests
-52	40% will be resolved by a purchasing officer decision
-11	8.5% will be deemed untimely
<u>67</u>	anticipated hearings or rulings based on submitted briefs

67	anticipated hearings based on Goods and Services contracts.
+50	anticipated appeals regarding contract controversies
+ 3	anticipated appeals regarding debarment and suspension
+ 2	anticipated appeals regarding reinstatement
<u>122</u>	anticipated total hearings

3. Inflation is estimated at three percent per year.

B. Staff Requirement

1. 122 hearings are anticipated per year.
2. Each Hearing Officer can hear and file on one appeal per week, based on estimates provided by Department of Labor.

3. General Government Unit (GGU)

Hours per year	= 1,950 hrs/yr
Annual Leave	= (127.5)
Five days Sick Leave	= (37.5)
Holidays (ten days)	= <u>(75.0)</u>
Employee Annual Hours Worked	1,710 hrs/yr
Employee Weeks worked/yr	45.6 wk/yr

4. 122 anticipated hearings/yr + 46 hearings/H.O. = 2.6 H.O./yr.
There is presently one hearing officer in the Department of Administration; thus 2 additional Hearing Officers are required.

C. Costs:

1. Personal Services: \$80,657* (January 1, 1987 - June 20, 1987)
\$161,314 (FY 88)

(2) Hearing Officers	R/21A	2 X \$ 59,934 = \$119,868
Administrative Asst.	R14B	\$ 41,446 = \$ 41,446
	TOTAL	<u>\$161,314</u>

* FY 87 (.5 x 161,314) = 80,657

2. Travel: \$8,884 (January 1, 1987 - June 30, 1987)
Full year cost is \$17,768 for FY 88.

(a) Assumes 25% of hearings in Anchorage requiring two days per diem per trip at \$80/day

(1) Airfare	\$ 352
(2) Perdiem 2 X 80 -	160
(3) 30 trips X 512 X	<u>\$15,360</u>

(b) Assumes 3% of hearing in Fairbanks requiring two days per diem per trip at \$90/day.

(1) Airfare	\$ 422
(2) Perdiem 2 X 90 -	180
(3) 4 trips X 602 =	<u>\$2,408</u>

3. Contractual: \$38,216 (January 1, 1987 - June 30, 1987)
Full year cost is \$76,432 for FY 88.

(a) Centrex (3 X \$512) - \$1,536

(b) Photocopies and transcripts 1,200

(c) Telephone-toll (\$10/call X 2 calls X 20/day x 12) 4,800

Data Processing Chargeback 500

(d) Professional Services \$59,400

Because a large percentage of contracts are put to bid at the same time, many appeals will occur at the same time. Because unheard appeals will delay contract awards, the appeals must be heard in a timely manner. It is therefore assumed that 15% of

the appeals will be heard by a contracted hearing officer. The average cost of a contracted hearing has been \$3,000 - \$4,000 in the past.

$$18 \times \$3,300 = \$59,400$$

(e) Space Rental: \$8,996
Hr Off Range 21 = 85 X 2 = 170 sq. ft.
Admin Asst. Range 14 = 85 85 sq. ft.
25% Circulation = 64 sq. ft.
Total 319 sq. ft.

$$319 \text{ Sq. Ft.} \times \$2.35^* \text{ mo} \times 12 = \$8,996$$

* average per sq. ft./mo in Juneau

4. Supplies: \$900 (January 1, 1987 - June 30, 1987)
Full year cost is \$1,854 (FY 88)
FY 87: 3 emp X \$50/mo X 6 mo - \$900
FY 88: 3 emp X \$50/mo X 12 mo X 1.03 Inflation = \$1,854
5. Equipment (one-time) : \$7,954
- (a) Furniture
- | | |
|-------------------------|---------|
| Chairs (3@ \$150) | \$ 450 |
| Desks (3@ \$500) | \$1,500 |
| File Cabinet (4@ \$366) | \$1,464 |
- (b) Office Equipment
- | | |
|--|--------|
| Calculators (2 @ \$270) | \$ 540 |
| Computer Terminal
w/word-processing hook-up | 4,000 |

Position Title Administrative Assistant			No. of Positions 1	Range/Step 14B	Barg. Unit G	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 12	RP Number	Location Juneau		Election District	Leg.		
Justification								
The duties of the Administrative Assistant will include, but not be limited to; organizing the files of each protest that is not satisfied at the procurement officer level, determination of time schedules and the sending of various types of required notification, performing research for the Hearing Officers, and performing the various accounting functions required by the unit.								
Type of Expenditure			Amount					
1			2			3		
Salary			29,196					
Benefits			10,565					
Premium Pay			1,685					
Other								
Total Personal Services						41,446		
Travel								
Contractual						3,511		
Commodities						432		
Equipment						650		
Other								
Total Cost						46,039		
Receipt Code			Funding Source					
			Federal Receipts			1002		
			G. F. Match			1003		
			General Funds			1004		
			I-A Receipts			1005		
			Program Receipts			1028		
			CIP Receipts			1061		
			Other					
						46,039		
For B&M Use Only Key Number _____								

**Request For
New Position**

Agency Department of Administration
 BRU Administrative Services
 Component Administrative Services

FY 87

Page 6 of 7
 Revised Date

Position Title Hearing Officers (2)			No. of Positions 2	Range/Step 21A	Barg. Unit G	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 24	RP Number	Location Juneau		Election District	Leg.		
Type of Expenditure			Justification					
			<p>Three hearing officers will be required in FY 87 to hear appeals that have not been satisfied at the procurement officer or preliminary hearing officer level. Presently, one hearing officer position exists in the Department of Administration, therefore, two additional officers are required. The duties include, but are not limited to; review of decisions of procurement officers, review of all pertinent documentation and materials, notification to all interested parties of filed appeals, and conducting hearings according to AS 36.670.</p> <p><u>SINGLE POSITION COST PER YEAR</u></p> <p>\$3,812 X 12 = \$45,744.00 Benefits = 14,190.39 Total = 59,934.39</p>					
1	2	3						
Salary	91,488							
Benefits	28,381							
Premium Pay	0							
Other	0							
Total Personal Services		119,869						
Travel 13 trips Anch, 4 trips Fbks		17,768						
Contractual		13,521						
Commodities		865						
Equipment		2,764						
Other								
Total Cost		154,787						
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
			154,787					
For B&M Use Only Key Number _____								

**Request For
New Position**

Agency Department of Administration
BRU Administrative Services
Component Administrative Services

FY 87

Page 7 of 7
Revised Date _____

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: 3/27/86

REQUEST

Bill/Resolution No. : CSSB 341 (Sub 4)
 Title : An Act Relating to State Procurement Practices
 Sponsor : Rules Committee
 Requestor : Senate Finance
 Date of Request : 3/27/86

FISCAL DETAIL

Agency Affected : Dept. of Natural Resources
 BRU : Management & Administration
 Components : Administrative Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		31.0	32.5	34.1	35.8	37.6
TRAVEL		2.5	1.5	1.5	1.5	1.5
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		33.5	34.0	35.6	37.3	39.1

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		33.5	34.0	35.6	37.3	39.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See Attached Sheet

Prepared by : Christopher Rutz/Contracts Officer Phone : 465-2424
 Division : Management Date : 3/27/86

Approved by Commissioner : Ned Faryher or ROBERT D. ARNOLD Date : 3/28/86
 Agency : Natural Resources

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Attachment to Department of Natural Resources Fiscal Note for SB341

Personel Service

Cost are computed for a range 10 supply technician, based in Juneau, with a 5% COLA increase per year. This position would support the contracting and supply staff and enable the Department to fulfill as outlined in the bill as well as provide procurement training for department employees.

Travel

These cost are estimated at four trips to Anchorage/Fairbanks to provide training the year the bill is to be implemented and three trips the following years in order to maintain a active procurement training program and provide for participation in contract protests, writing, and bid openings, when necessary.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : Senate Bill No. 341
 Title : Procurement Practices and Procedures

 Sponsor : Rules Committee
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : DOT&PF
 BRU : _____

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		50.0	55.0	60.0	65.0	70.0
TRAVEL		10.0				
CONTRACTUAL		100.0	55.0	60.0	65.0	70.0
SUPPLIES		40.0	20.0	25.0	27.0	30.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		200.0	130.0	145.0	157.0	170.0

CAPITAL		0	0	0	0	0
---------	--	---	---	---	---	---

REVENUE		0	0	0	0	0
---------	--	---	---	---	---	---

FUNDING : (Thousands of Dollars)

GENERAL FUND		200.0	130.0	145.0	157.0	170.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Based on the following figures: 1) delegations to other agencies - \$30.0 for the start up year; 2) procedures updates - \$30.0 for start up year; 3) development of standards and forms - \$10.0 for start up year; 4) one officer plus expenses to administer hearings and claims - \$100.0; 5) list maintenance and mailing - \$10.0; and 6) subcontractor list checking and bid opening administration - \$10.0; 7) travel

Prepared by : Daniel F. Malick, Director Phone : 465-3911
 Division : Management and Finance Date : 1-30-86

Approved by Commissioner : R. J. Knapp by Wm S. Spangler Date : 1-30-86
 Agency : DOT&PF

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Fiscal Note
Procurement Practices and Procedures
Page 2

to the hearings for the Regulations.



Dept. of Transportation & Public Facilities

Position Paper

BILL NO: Senate Bill 341
TITLE: Procurement Practices

APPROVED: *W. S. Spink*
R. J. Knapp
Commissioner
DATE: January 30, 1986

The Department of Transportation and Public Facilities has worked closely with the Legislative interim committees in the drafting of Senate Bill 341. Many of the department's concerns of both a technical and policy nature have been addressed in the initial drafting of the bill.

However, while the department supports the Legislature and the administration's effort to revise and update procurement codes, there are a few areas within Senate Bill 341 that the department feels needs further consideration:

1. SB 341 requires the maintenance and use of bidders lists for the request for proposal and bid notification process. This is time consuming, expensive and has proven from department experience to be of limited value. We feel this requirement for DOT&PF construction should be removed from the bill.
2. SB 341 requires the listing of all sub-contractors at time of bid opening. This further complicates the bid opening process and might jeopardize bidder responsiveness ~~the~~ potentially large cost consequences to the state. The department feels that a subcontractor list would be appropriate to require seven days after the bid opening to limit the extent of bid shopping.
3. SB 341 lacks definitive statements on Alaska preference. An Alaska preference clause for all construction even those over \$5,000 should be considered.
4. SB 341 has no provisions for expanding sole-source and small procurement eligibility. There are numerous purchasing needs of the department which fall outside of the strict definitions provided in the bill. Some sort of extension process is highly advisable.
5. SB 341 requires "teeth" for handling of false claims. False claims without penalty would jeopardize the efficiency and credibility of the claims process.

For further information call Susan Fleischhauer at 465-3900.

6. SB 341's small procurement procedures limit consultants to a total of \$25,000 in small contracts within a twelve (12) month period. The department feels this is an unreasonable restriction and would seriously jeopardize the ability of many firms to continue providing critical services to the department.
7. There are numerous areas within the SB 341, particularly in Articles 5 and 6, where the statute is overly specific and those items might be best addressed in regulations.

The Department of Transportation and Public Facilities supports the current effort underway to update procurement procedure along the lines of the model procurement code with modifications to minimize the adverse impact on the state and private sector contracting community. The department is presently assisting in the development of Regulation to implement the bill.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 341
 Title : State Procurement Practices

Sponsor : Rules Committee
 Requestor : Interim Comm. on Procurement
 Date of Request : 1/16/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : Administration

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Sid LaMonica, Administrative Officer
 Division : Public Safety

Phone : 465-4328
 Date : 1/16/86

Approved by Commissioner : [Signature]
 Agency : Public Safety

Date : 1-22-86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

March 10, 1986

*I need to see
Bill Miles + show
him this memo*

MEMORANDUM

*on Bill's word - I will
vote to attempt.*

TO: Jan
FROM: Cheryl CF
SUBJECT: ASHA and Procurement Bill

I talked with Liz regarding how the Procurement Bill addresses ASHA. Previous language said that if state law conflicts with federal law, then federal law prevails. There is now language in the Judiciary bill which expands of this by stating that if state law conflicts with federal law and jeopardizes federal funds, then the federal law prevails.

ASHA, however, wants to be exempt from the entire thing. According to Rodey's staff, he is leaning toward total exemption. Your friend, Barbara Morse-Quinn even called up Senator Stevens' office to get them to intervene on ASHA's behalf but Stevens' office, after talking with Liz, decided to not get involved.

Baldwin says there is case law stating that ASHA is a state agency and therefore it should not be exempt. Liz is uncertain if it is the principal or the fact that ~~ASHA~~ ASHA drives Baldwin up the wall ~~again~~.



U.S. Department of Housing and Urban Development
 Anchorage Office, Region X
 701 "C" Street, Box 64
 Anchorage, Alaska 99513

RECEIVED
 ASHA

JAN 24 1986

JAN 24 '86

Barbara Morse-Quinn, Executive Director
 Alaska State Housing Authority
 Post Office Box 100080
 Anchorage, Alaska 99510-0080

EX cc
DEX cc
Eq. Dept
EX Sec
Board

Dear Ms. Morse-Quinn:

Subject: Relationship of Alaska State Housing Authority
 and the U. S. Department of Housing and Urban Development

This is in response to your letter dated January 17, 1986, requesting our comments on the relationship of Alaska State Housing Authority (ASHA) and U. S. Department of Housing and Urban Development (HUD).

The relationship is a contractual one which is defined by the terms of the Annual Contributions Contract. Under that document a public housing authority (PHA) is provided federal funds for the specific purpose of providing and operating housing for families of lower income. The funding is designated for specific projects and may only be used in accordance with the HUD-approved development program, contract terms, and HUD regulations and policies. Should the funding approved by HUD for a particular project not be made available to the PHA, it would be necessary for the federal government to provide additional funding in order for HUD to meet its contractual responsibilities to the PHA. For this reason, HUD cannot approve any arrangement whereby the PHA does not have total access to and control of the funds supplied by HUD. As a small example of this, HUD requires the PHA to invest the funds provided in order to earn interest. The amount of funding provided has been calculated on the basis that a certain amount of interest will have been received by the PHA. Any attempt to make HUD funds provided to ASHA restricted as to access or control or subject to legislative approval would be strongly opposed by HUD. In this regard, I have been advised by our Headquarters' office that the Department has already taken such a position with another state when it recently advised the governor of that state that remedial legislation must be enacted to eliminate legislative control over HUD funds.

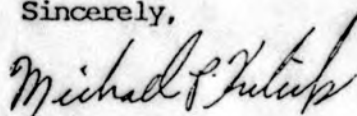
I am not in a position to discuss how HUD's legislation compares with that of other federal agencies. It is my impression, however, that HUD may have more authority, than other agencies, to become directly responsible

for the activities usually undertaken by a state agency using federal funds. ✓
For example, the default provisions of the statute and Annual Contributions Contract provide that title and/or possession be given to the Secretary, at the Secretary's discretion, should the PHA fail to observe the terms of the contract. In any case, HUD funds are specifically designated for an identifiable project to be developed or managed by a named PHA and are not considered generalized housing funds earmarked particular to be used in a state.

For additional comments, I refer you to the Regional Counsel's letter dated October 17, 1985, which speaks to the relationship between ASHA and HUD. Finally, we do believe the Attorney General's Opinion of June 9, 1983, interpreting AS 18.55.110 may have direct relevance to the issues you raised.

I hope this is of some assistance to you. Please keep us fully informed of your discussions on this matter and feel free to contact Susan Olsen, Chief Counsel, at 271-4683 for additional comments.

Sincerely,



Michael P. Kulick
Manager



U.S. Department of Housing and Urban Development
 Anchorage Office, Region X
 701 "C" Street, Box 64
 Anchorage, Alaska 99513

F.M.G.

JAN 24 1986

RECEIVED
 ASHA

JAN 24 '86

Barbara Morse-Quinn, Executive Director
 Alaska State Housing Authority
 Post Office Box 100080
 Anchorage, Alaska 99510-0080

Route	EX Sec
Route	DEX cc
Route	All Depts
File	EX Sec
	HM-3 extra

Dear Ms. Morse-Quinn:

Subject: Senate Bill 8001 : Now SB 54
 Proposed State Procurement Act

In response to your inquiry of December 13, 1985, we have reviewed the above-referenced bill from the perspective of its impact on Alaska State Housing Authority (ASHA) and U. S. Department of Housing and Urban Development (HUD) programs and operations. We find that, overall, as written, it may be viewed as burdensome and restrictive from a practical standpoint, and as undesirable to HUD in terms of foreseeable increased costs, time delays, and lack of adequate protections for federally-funded housing projects. We do not find the proposed act to be of particular value to either ASHA or HUD, inasmuch as we firmly believe that there are adequate and appropriate safeguards currently in place to meet any concerns the state may have with regard to fairness, economy, and control. This is accomplished by way of ASHA regulations and HUD's regulations and policies, and the requirements of the Annual Contributions Contract between HUD and ASHA.

While it is difficult to analyze the full impact, on an agency or federally-funded program, of a law for which regulations have not yet been written, we offer the following comments on the bill, along with responses to your comments to Senator Faiks.

As to the delegability of professional services authority, as well as the authority to procure supplies and other services (as referenced in your first two pages of comments), we think that the only logical interpretation of AS 36.30.015(b) is that such authority is delegable. However, there is no requirement that the authority be delegated, and, clearly, the adoption of regulations is not delegable, nor is there any requirement that the individual departments or agencies participate in the formulation of the regulations. While ASHA presently has the power under AS 18.55.100 to adopt its own regulations, the proposed legislation would apparently remove this power,

and we see this as a significant deficiency of the law from a practical and policy standpoint. We think that any applicable regulations should be written in accordance with HUD requirements. Additionally, as you are aware, HUD is particularly concerned with contracting for construction and has developed extensive "boiler-plate" provisions which are required to be utilized in any such contracts. We see great possibilities for conflict should the authority not be delegated to ASHA and should the regulations not comport with HUD's requirements. ✓

We agree that most matters covered in your numbered paragraphs (2) and (3) are covered by HUD regulations, procedures, or other requirements which variously are less, or more, restrictive than that proposed by the state bill. This is true, of course, about most of the sections of the legislation. In HUD's view, a few of the areas which would raise immediate and strong conflict are: Section 36.30.080, which could involve the administration of federal funds for lease purposes through the state treasury; Section 36.30.170, which provides for an Alaska bidder preference; Section 36.30.270, which requires the approval of the Department of Law to alter any contract terms, rather than HUD's counsel; and Section 36.30.015, which requires the attorney general's approval of any contract for legal services. As an additional note, it appears that use of the consolidated supply program would be seriously curtailed or delayed in that already selected competitive bid suppliers would have to resubmit to the state's competitive bid process. ✓

The extensive bid documentation required in Section 36.30.110, as discussed in your paragraph (5), does appear to be cumbersome and bound to cause delays. Further, we think the requirements for Alaska business licenses, as applied to subcontractors in supply contracts, is unduly restrictive and burdensome. HUD policy expects procurement procedures to be as broad and competitive as possible. As mentioned earlier, the provision for Alaska bidder preference is totally unacceptable for federally-funded ASHA projects. This raises questions also about the acceptability of Section 36.30.050, which requires every agency's use of a centrally maintained list of contractors. ✓

Regarding your paragraph (6), HUD requires acceptable bid security of five percent. We would undoubtedly find that the ten percent requirement would be unacceptably excessive and would not be willing to approve these extra costs to a project.

Section 36.30.200(b), as referenced in your paragraph (8), appears to be unduly burdensome in that written determinations must be obtained from the chief procurement officer or the commissioner of transportation and public facilities prior to ASHA's ability to enter a contract by other means than a competitive bid (except where emergency or small procurement standards are met). Under the proposed legislation, authority for these determinations is not delegable.

We agree that ASHA's current regulations regarding emergency conditions are more narrowly defined than the proposed language, and, therefore, less apt to present grounds for disputes, either before or after a procurement action is taken [reference your paragraph (9)].

As to your paragraphs (10) and (11), we do not believe that either Section 36.30.370 or Section 36.30.380 conflicts with HUD regulations. However, to require an agency to review and analyze the capability of a proposed contractor's accounting system is, we think, excessively burdensome.

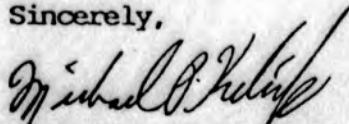
As you point out in your paragraph (12), HUD's policies, procedures and contract provisions, as well as its regulations, do govern the distribution and administration of federal monies designated for public housing projects. Section 36.30.890 of the proposed bill, therefore, provides only a limited exemption to ASHA. Limited exemption could jeopardize ASHA's receipt of HUD funds in an instance of conflict with the state procurement statute. We note the relevance of the Alaska Attorney General's opinion of June 9, 1983, on the applicability of Title 36 to ASHA, wherein he discusses AS 18.55.110 as follows:

. . . We believe the more probable legislative intent was to provide an explicit statutory exemption in instances where the application of state law would jeopardize the receipt of federal assistance. . . . By the statute's own terms, the focus of the exemption is 'to secure [federal] financial aid for housing projects.' . . . Consequently, we interpret AS 18.55.110 as exempting the application of state or local law when a federal funding entity, properly exercising its discretion, notifies ASHA in writing that the receipt of federal funds would be jeopardized were State or local law deemed applicable.

It seems to us that this opinion may be an instructive and persuasive rationale for exempting ASHA from the proposed procurement statute. We tend to agree with you that an acceptable alternative to what we view as a basis for recurring interpretive, managerial, and legal problems under the proposed law, would be to include ASHA as an exempt agency along with the railroad, the legislature, and the court system. If ASHA is not made exempt, then, at a minimum, we would want to see added the terms "policy or other requirement" to the existing terms "federal statute or regulation" in AS 36.30.890.

Thank you for this opportunity to comment.

Sincerely,


Michael P. Kulick
Manager

SECTION ANALYSIS

I. Amendments

(1) Section 36.30.015 should be amended to read as follows:

- (e) The boards [board] of the directors of the Alaska Railroad Corporation and the Alaska State Housing Authority shall adopt procedures to govern the procurement of supplies, services, professional services and construction by the corporation. The procedures must be substantially equivalent to the procedures prescribed in this chapter and in regulations adopted under this chapter.

Rationale: See following narrative re: need to exempt ASHA.

(2) Section 36.30.050 is amended to read:

- (c) The lists may be used by the chief procurement officer of an agency when issuing invitations to bid or requests for proposals under this chapter. The lists may be used by the Legislative Council, the court system, the Alaska State Housing Authority and the Alaska Railroad.

Rationale: See following reasons for exemption of ASHA from legislation.

(3) Section 36.30.735 is amended to read:

- (b) In this section, "state agency" means a state department or agency, whether the legislative, judicial or executive branch [including such entities as the Alaska State Housing Authority] but not including the University of Alaska, a municipality, or an agency of a municipality, or the Alaska State Housing Authority.

Rationale: See following reasons for exclusion of ASHA from legislation.

(4) Section 36.30.850 is amended to read:

- (d) Nothing in this chapter or in regulations adopted under this chapter prevents an agency or political subdivision from complying with the terms and conditions of a grant, gift, bequest, [or] cooperative agreement or federal assistance agreement.

Rationale: New language is needed to protect ability of agencies to participate in federal programs.

- (5) Section 36.30.890 should be amended to read: Federal assistance. If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or regulation adopted under a provision of this chapter and a federal statute, [or] regulation, policy or requirement, the federal statute [or] regulation, policy or requirement shall prevail.

Rationale: See below regarding HUD control of ASHA's use of federal funds.

- (6) Section 36.30.990 should be amended to read:

- (1) "Agency" means a department, institution, board, commission, division, authority, public corporation, the Alaska Pioneers' Home, or other administrative unit of the executive branch of state government, except for the University of Alaska, the Alaska State Housing Authority, and the Alaska Railroad Corporation; it does not include a regional Native housing authority created under AS 18.55.996, or a regional electrical authority created under AS 18.57.020;

- (7) Section 36.30.990 should be amended to read:

- (6) "Construction" means the process of building, altering, repairing, maintaining, improving, or demolishing a public highway, structure, building, or other public improvement of any kind to real property other than privately owned real property leased for the use of agencies; it includes services and professional services relating to planning and design required for the construction; it does not include the routine operation of a public improvement to real property; nor does it include the construction of public housing.

Rationale: Clarifies fact that ASHA's procurement practices regarding public housing are exempted.

- (8) Section 10 should be deleted in its entirety:

【Section 1. AS 18.55.100 is amended by adding a new subsection to read:

- (d) The authority's power to contract, lease, rent, construct, acquire, procure, and provide for services under this section is governed by AS 36.30.】

Rationale: ASHA should be excluded for all above stated reasons. In addition, it would be absurd to monitor ASHA's many thousands of residential leases through the Department of Administration or branch of state government other than ASHA.

II. Conflicts between SB 341 and federal funding requirements

- (1) Sections 36.30.005(b) and 36.30.040 will inevitably lead to serious conflict with ASHA and HUD regulations because there is no requirement that the adopted regulations be consistent with federal regulations or policy. These sections provide the most fertile ground for future conflicts.
- (2) Section 36.30.015(a) presents a potential conflict because it vests the Commissioner of DOT/PF with authority over construction while failing to recognize ASHA's expertise in the field of multifamily or senior citizen residential construction
- (3) Section 36.30.015(d) creates a conflict between HUD's right to select legal counsel where HUD funds are involved and the Department of Law.
- (4) Section 36.30.040(b)(8) through (13) is in conflict with HUD's current activities of directly monitoring and regulating the details of ASHA's procurement policies.
- (5) Section 36.30.050 is in conflict with federal policy promoting competition.
- (6) Section 36.30.115 is in conflict with the federal policy promoting competition because it fails to provide for the issuance of some types of contracts where the contractor need not be physically present in Alaska to perform its obligations.
- (7) Section 36.30.120(b)(1) and (2) conflict with HUD policy and good procurement practice by requiring an excessive bid bond.
- (8) Section 36.30.160(b) conflicts with HUD policy because it allows for the post bid opening withdrawal of a bid.
- (9) Section 36.30.170(b) conflicts with federal policy promoting competition and violates the U.S. Constitution because of its local preference.

- (10) Section 36.30.200(b) conflicts with HUD policy because it does not allow the delegation of the authority to determine that a contract should be let by non-competitive sealed bids. There is no HUD preference for sealed bids, per se. The section also conflicts with HUD policy and good construction contract procurement because it practically eliminates the "design-build"-option.
- (11) Section 36.30.250(b) conflicts with HUD policy and the U.S. constitution because of the local preference provision.
- (12) Section 36.30.340 conflicts with HUD policy because it provides for State Department of Law approval of contract provisions rather than approval of HUD counsel.
- (13) Section 36.30.370 is in conflict because it only recognizes the state's best interests -- not ASHA's or HUD's.
- (14) Section 36.30.380(1) and (2) conflict with HUD policies because the review contemplated is excessively burdensome.
- (15) Section 36.30.460(1) and (2) provide for conflict because they do not necessarily require certain HUD mandated contract terms such as Federal Davis-Bacon wage rates or Affirmative Action provisions.
- (16) Section 36.30.870 promotes conflict because it does not include ASHA as an authority to make regulations in respect to multifamily residential construction.
- (17) Section 36.30.890 does not resolve the federal/state conflicts as it purports to do.

In the first place, HUD requirements are not always in the form of statutes or regulations. They are more frequently in the form of contract provisions or handbooks. More importantly, perhaps, is the fact that any person aggrieved by ASHA procurement decisions would have standing to sue in court to litigate the issue of the presence of a supposed "conflict" between state and federal law. Far from accomplishing its stated purpose of "simplifying and clarifying" procurement, (Section 1(1) of the Act) the bill mandates the untenable task of sorting out the conflicting state and federal regulations from the harmonious ones.

III. Narrative

ASHA is as unique to the State of Alaska as Alaska is to the rest of the union. ASHA predates statehood by about 15 years. ASHA was incorporated by the Territorial Legislature in 1944 to act as a conduit to bring federal housing assistance funds to Alaska. From a procurement point of view, ASHA is much more a federal agency than it is a state agency because of the tight regulations and supervision provided by the Department of Housing and Urban Development. Other state agencies have not had the same relationship to the federal government as ASHA in Territorial days or now.

The imposition of a state procurement code on top of ASHA's established and comprehensive set of HUD and state approved procurement regulations will have a disruptive and adverse effect on ASHA as a practical, fiscal and legal matter. There would be no commensurate benefit to the state since ASHA's procurement practices are already tightly controlled by HUD, from which virtually all of ASHA's operating funds come. Instead, regulating ASHA in the manner contemplated by SB 341 would create an expensive headache for the State of Alaska, not to mention ASHA.

It has been represented to ASHA that upon passage of SB 341, ASHA will be given a delegation of authority under 36.30.015 to continue to administer its procurement programs. Unfortunately, those promising the delegation have no authority under the bill to make it. Even if the delegation of authority became a reality, there would still be conflicts between federal and state regulations to contend with, as well as increases in the funding necessary to administer ASHA's housing programs for low income and senior citizens. The costs would come at a time when the state and the beneficiaries of ASHA programs can least afford it. Only an exemption of the type granted to the Alaska Railroad or the University of Alaska can save ASHA and the state from the consequences of trying to apply state regulations to an agency which, for procurement purposes is governed at the federal level by the Department of Housing and Urban Development.

Since ASHA's procurement is already comprehensively regulated, every regulation promulgated under SB 341 will, necessarily, be either redundant or in conflict with an existing ASHA or HUD regulation or published policy. It does not remedy the situation to provide, as is attempted in 36.30.890, that state regulations or statutes are pre-empted by federal regulations to the extent that they are inconsistent. This attempt at resolving such conflicts creates a scenario that only a lawyer could love. Disappointed bidders in every type of contract will have standing to challenge State and ASHA procurement decisions on the ground that there is an inconsistency between federal requirements and Alaska statutes or regulations. The conflicts cannot be resolved by "federal pre-emption" clauses -- only an exemption for ASHA

will work. These inconsistencies will occur in even greater numbers with regard to the regulations to be adopted to implement the procurement code. There is no mechanism to insure that the adopted regulations address HUD requirements.

In addition, ASHA must follow more than just federal statutes and regulations -- ASHA must follow federal policy not contained in statutes or regulations to be eligible for federal funds. This policy is often promulgated as the result of HUD's practical experience and is most often contained in handbooks or contract provisions that do not amount to a statute or regulation. ASHA receipt of HUD funds could be seriously jeopardized. The only practical way to avoid that risk is to exempt ASHA in the same manner as the Railroad or University.

If an ASHA procurement practice results in a lawsuit, under the current arrangement ASHA's management of the litigation is handled under a detailed set of HUD regulations and all major decisions regarding the conduct of litigation are made by HUD. If a case involving HUD funds is decided adversely to ASHA, it is federal (HUD) money that pays the judgment or settlement. Under the provisions of SB 341, the state's role would be much more pervasive and successful litigants would look to the state for satisfaction. The bill does not describe how the people of Alaska would pay such a judgment. Presumably, the money would come from the Alaska legislature rather than the federal government.

At stake here is ASHA's ability to continue to serve the State of Alaska by bringing in federal funds at a time when they are desperately needed. HUD views SB 341 with alarm because it takes away ASHA's access to and control of federal funds. ASHA is under contract with HUD to manage its procurement in a manner precisely and comprehensively governed by HUD. HUD has unequivocally stated that it cannot approve of any arrangement where ASHA does not have total access to and control of funds supplied by HUD for procurement. The funds in question amount to approximately \$1,000,000 per month. While SB 341 is no doubt necessary for ordinary state agencies, the risk of losing those federal funds far exceeds any supposed benefits of the application of SB 341 to ASHA.

We, therefore, urge the committee to adopt the changes which will exempt ASHA from SB 341.

HOUSE CS FOR CS FOR SENATE BILL NO. 341 (Finance)

An Act relating to state procurement practices and procedures and providing for an effective date.

History of the Bill

Senate Resolution 6 established the Senate Select Interim Committee on Procurement Practices and Procedures.

Procurement Committee:

8 Statewide Public hearings

Mailing list over 250

Task force of State Procurement Personnel held numerous work sessions

SB 341

Based on the Model Procurement Code which has been adopted by 13 other states

The Model Procurement Code was modified to address Alaska's needs

Senate Judiciary Committee held 7 hearings

Senate Finance Committee held 2 hearings

House State Affairs Committee held 4 hearings

House Judiciary Committee held 3 hearings

House Finance Committee held 1 hearing

25 TOTAL PUBLIC HEARINGS HELD SINCE SEPTEMBER

BENEFITS UNDER THE BILL

Comprehensive, concise law

Exceptional guidelines for the development of solicitations and evaluation of bids and proposals

A clear, comprehensive and uniform appeals procedure which will benefit vendors

Noncompetitive procurement methods such as sole source contracts will be limited and must be supported by written justification

Bill creates a procurement system that addresses the deficiencies of the existing system.

ORGANIZATION OF THE BILL

Non-construction procurements under Department of Administration/Chief Procurement Officer

Construction procurements under the Department of Transportation and Public Facilities

Regulations will be adopted by the Department of Administration

University of Alaska is subject to the code, but will adopt its own regulations that must be substantially similar to those adopted by Department of Administration.

Alaska Railroad and Alaska State Housing Authority are not subject to the code, but must adopt procedures that are substantially equivalent to the procedures under the code.

Legislature and Court System are not subject to the code, but must adopt and publish procedures that are based on the competitive principles consistent with the code.

HOUSE CS FOR CS FOR SENATE BILL NO. 341 (Finance)

Changes made in the House other than technical/housekeeping:

The Legislature and the Court System shall adopt procedures which are based on the competitive principles consistent with this chapter. This is OK.

Subcontractors - Within 24 hours after opening of bids, the two apparent low bidders shall submit a list of subcontractors. This is OK with AGC and AFL-CIO.

Architectural, Engineering, and Land Surveying Contracts - made consistent with SB 204 Conference Committee Bill.

New provision for Alaska product preference.

New effective date. Bill become effective on July 1, 1987.
No fiscal notes. Gives Administration time to organize properly and let Legislature know what fiscal impact the code will have.

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HOUSE CS FOR CS FOR SENATE BILL NO. 341 (Finance)
SECTIONAL ANALYSIS

(Unless otherwise indicated, "commissioner" means commissioner of administration)

SECTION 1. The purposes of the act are outlined to include: simplification, clarification, modernization of the laws; consistency among the branches of government; increased public confidence; fair and equitable treatment of all vendors; increased economy in state procurement; broad-based competition; safeguards for the maintenance of a procurement system of quality and integrity; and elimination and prevention of discrimination in state contracting.

SECTION 2. A new chapter is added to AS 36 entitled "State Procurement Code."

Article 1. Organization of State Procurement.

Sec. 36.30.005. Centralization of procurement of supplies and services for state agencies is under the authority of the commissioner of administration and the chief procurement officer. Procurement of construction and procurements to or disposals from the state equipment fleet and the control over construction and the state equipment fleet is under the commissioner of transportation and public facilities.

The University of Alaska is subject to the requirements of SB 341, but has independent administrative authority and the ability to issue its own regulations implementing the chapter in conformance with state APA requirements.

Sec. 36.30.010. The chief procurement officer is selected by the commissioner; is responsible for procurement of supplies and services for agencies in the executive branch; is a partially exempt employee; must have a minimum of 5 years in public procurement; and may be removed by the commissioner only for cause. The term of office of the Chief Procurement Officer is 4 years. Duties of the Chief Procurement Officer are enumerated.

Sec. 36.30.015. The commissioner of transportation and public facilities may delegate to another agency the authority to contract for construction, after written determination has been made that the agency is capable of implementing the delegated authority. The commissioner of administration may delegate to an agency the authority to contract for its own supplies and services after a written

determination has been made that the agency is capable of implementing the delegated authority.

The authority to adopt regulations or dispose of surplus supplies may not be delegated. Agency contracts for the services of legal counsel must be approved by the department of law.

The Board of Directors of the Alaska Railroad Corporation and the Alaska State Housing Authority must adopt procedures substantially equivalent to the procurement code and regulations adopted by the commissioner.

Sec. 36.30.020. Legislative Council must adopt procedures which are based on the competitive principles consistent with this chapter.

Sec. 36.30.030. The administrative director of the court system must adopt procedures which are based on the competitive principles consistent with this chapter.

Sec. 36.30.040. Procurement regulations must be adopted by the commissioner.

Sec. 36.30.050. A list of persons who desire to provide supplies, services or construction items to the state will be established and maintained by the commissioner. Evidence of a valid Alaska business license and a statement of the contractor's qualifications must be submitted to be included on the list. Construction contractors must also submit a valid certificate of registration. A biennial fee will be charged to offset the cost of administering the list. The list may be used by the state agencies in providing notice of intent to make small purchases.

Sec. 36.30.060. Specification regulations must be adopted by the commissioner. Specifications must promote overall economy for the purposes intended, encourage competition in satisfying the state's needs, and may not be unduly restrictive.

Sec. 36.30.070. Supply management is under the authority of the commissioner and regulations must be adopted which govern management of supplies, surplus supplies and transfer of excess supplies.

Sec. 36.30.080. The department shall lease necessary space, and contract for the lease of space for the use of the state or an agency. A lease or contract for a lease may not be for a period of occupancy greater than 40 years. The department may enter into lease-financing agreements, which are subject to annual appropriation. If the department intends to enter into a lease or lease financing agreement with an annual rent anticipated to

exceed \$1,000,000, notice must be provided the legislature for approval.

Article 2. Competitive Sealed Bidding.

Sec. 36.30.100. Competitive sealed bidding is the preferred method of contracting. Competitive sealed bidding is not required for certain purchases, including professional services, which are itemized.

Sec. 36.30.110. When competitive sealed bidding is used, an invitation to bid is issued which must include the date by which the bid must be received, purchase description, and all contractual terms and conditions. Subcontractors must be listed. Evidence of a valid Alaska business license for all bidders and subcontractors must be submitted when responding to the ITB. A bidder for construction contracts must also submit evidence of the bidder's registration under AS 08.18 and evidence of registration for each listed subcontractor.

Sec. 36.30.115. Within 24 hours after the opening of bids, the two apparent low bidders shall submit a list of the subcontractors the bidder proposes to use in the performance of the contract. Conditions under which a bidder may substitute a subcontractor are listed. A bidder who violates this section may either have the contract cancelled, or after notice and a hearing, be assessed a penalty in an amount not exceeding 10% of the value of the subcontract at issue.

Sec. 36.30.120. Bid security shall be required for all competitive sealed bidding for construction contracts which exceed an amount established by regulation. Bid security may be required for other types of supplies and services.

Sec. 36.30.130. Public notice of the ITB must be provided 21 days before the date for the opening of the bid, unless otherwise determined in writing by the chief procurement officer, or the commissioner of transportation and public facilities for construction or state equipment bids. Notice of solicitations must be published in the Alaska Administrative Journal. The state is liable for failing to substantially comply with the notice requirements of this section.

Sec. 36.30.140. Bid opening must be public, in the presence of witnesses, and relevant information must be recorded, which is open to public inspection. The bids are not open for public inspection until after a notice of intent to award a contract has been issued.

Sec. 36.30.150. The procurement officer must evaluate bids based on the requirements set out in the ITB. The criteria used for the evaluation of an award must be objectively measurable. Criteria may not be used in bid evaluation if they are not set out in the ITB.

A contract based on total or life cycle costs may be awarded only when the chief procurement officer or the commissioner of transportation and public facilities determines in writing that the contract promotes overall economy for the purposes intended, encourages competition, is not unduly restrictive, and is in the best interest of the state.

Sec. 36.30.160. Bids received after the bid due date indicated on the ITB may not be accepted unless the delay was due to an error of the contracting agency.

Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on bid mistakes shall be permitted in accordance with regulations and supported by written justification.

Sec. 36.30.170. Awards to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the ITB shall be promptly made. The Alaska bidder preference is expanded to apply to all construction contracts. The lowest responsible and responsive Alaskan bidder with a bid not more than 5% higher than the lowest bid of a nonresident shall be awarded the contract. An Alaskan bidder who qualifies as an "employment program" shall be given a 10% preference.

Sec. 36.30.190. Multi-step sealed bidding is allowed when it is considered impractical to initially prepare a definitive purchase description to support an award based on price. Unpriced technical offers are submitted, followed by an ITB limited to the bidders whose offers are determined to be technically qualified under the criteria established.

Article 3. Competitive Sealed Proposals.

Sec. 36.30.200. Contracts may be awarded by competitive sealed proposals when the chief procurement officer, or the commissioner of transportation and public facilities for construction and state equipment fleet contracts, determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state.

Sec. 36.30.210. Request for proposals must contain the same information required for ITBs. The same notice provisions for ITBs apply for RFPs. An offeror must list the subcontractors within 48 hours after the date by which the proposals must be received. The same duties of bidders under ITBs apply to competitive sealed proposals.

Sec. 36.30.220. Standard overhead rate established by agencies and applicable to contracts for supplies and services, must be included in a RFP.

Sec. 36.30.230. Proposals are to be opened in a manner which avoids disclosure of contents to competing offerors during the process of negotiation. A register of proposals containing the name and address of each offeror shall be prepared and open for public inspection after the the notice of intent to award a contract is issued.

Sec. 36.30.240. Discussions with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, may be conducted for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submissions and before the award for the purpose of obtaining best and final offers. These discussions are exempted from the Alaska Open Meetings law.

Sec. 36.30.250. A contract under competitive sealed proposals shall be awarded to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price, the evaluation factors set out in the RFP, and whether the offeror qualifies as an Alaskan Bidder or is offering the services of an employment program.

Sec. 36.30.260. A contract awarded under competitive sealed proposals must contain: the amount of the contract; the date for supplies to be delivered or the term for services to be performed; a description of the services or supplies contracted for; and a certification that sufficient funds are available for the amount of the contract.

Sec. 36.30.270. Special procedures apply to contracts awarded to architects, engineers, and land surveyors.

Article 4. Other Procurement Methods.

Sec. 36.30.300. Sole source procurements may only be awarded if it is determined in writing that there is only one source for the required supply, service or construction. A sole source procurement may not be approved if a reasonable alternative source exists.

Sec. 36.30.310. Emergency procurements may be authorized under emergency conditions when there exists a threat to public health, welfare, or safety, and procurement through competitive sealed bids or competitive sealed proposals is impracticable, or contrary to the public interest, or to protect public or private property. A written determination of the basis for the emergency and for the selection of the particular contractor must be provided.

Sec. 36.30.320. Small procurements which do not exceed an aggregate amount of \$5,000 shall be made with competition that is practicable under the circumstances. A contract for professional services that does not exceed \$25,000 may be made in accordance with regulations adopted by the commissioner. Notice of small procurements shall be provided to Alaskan bidders designated by the commissioner under section 36.30.050(d).

Article 5. Preference for Alaska Products.

Sec. 36.30.322. Only timber, lumber, and manufactured lumber products originating in this state from local forests may be procured by an agency or used in construction projects unless manufacturers/suppliers are unable to supply the products at a cost that is within seven percent of the price offered by a manufacturer/supplier of non-Alaska forest products.

Sec. 36.30.324. Alaska products shall be used whenever practicable in procurements for an agency.

Sec. 36.30.326. Contract specifications must include a provision that a bidder or offeror that designates in a bid or proposal the use of Alaska products identified in the specifications will receive the preference granted under AS 36.15.328 in the evaluation of the bid or proposal if the products meet the contract specifications.

Sec. 36.30.328. In evaluation of a bid or proposal that designates the use of Alaska products is decreased by the percentage of the value of the designated Alaska products under AS 36.30.332.

Sec. 36.30.330. Failure to use the designated Alaska product for a reason within the control of the successful bidder or offeror will result in a penalty according to the schedule under this section.

Sec. 36.30.332. A classification system for Alaska products which is based on the manufacturer's quoted price, is contained in this section. A preference schedule is outlined.

Sec. 36.30.334. An agency may identify specific Alaska Products for use in making a procurement.

Sec. 36.30.336. Notwithstanding other provisions of this chapter, AS 36.30.322-36.30.338 apply to all procurements subject to this chapter, except as provided in AS 36.30.170(b) and 36.30.322(b).

Sec. 36.30.338. Definitions for this article.

Article 6. Contract Formation and Modification.

Sec. 36.30.340. If a contract contains a term that is in conflict with a state standard form contract term or if a standard term is deleted or modified by a term that is not standard, the contract must be approved by the Attorney General.

Sec. 36.30.350. Solicitations may be cancelled or any bids or proposals may be rejected, in whole or in part, or the date for opening bids or proposals may be delayed as may be specified in the solicitation, when it is in the best interest of the state. The reasons for cancellation, rejection, or delay in opening bids or proposals shall be made part of the contract file.

Sec. 36.30.360. A written determination of responsibility of a bidder or offeror shall be made by the procurement officer.

Sec. 36.30.362. The procurement officer must issue a written statement explaining the reasons a contract was awarded to a person who does not reside or maintain a place of business in Alaska, if the supplies, services, professional services or construction could have been obtained from in-state sources.

Sec. 36.30.365. At least 10 days before the formal award of a contract the procurement officer shall provide to each bidder or offeror notice of intent to award a contract.

Sec. 36.30.370. Any type of contract that will promote the best interests of the state may be used, except that the use of a cost-plus-a-percentage-of cost contract is prohibited.

Sec. 36.30.380. Except with respect to contracts awarded through competitive sealed bidding or firm fixed-price

contracts, a contract type may not be used unless it has been approved in writing by the procurement officer.

Sec. 36.30.390. Unless otherwise provided by law, multi-term contracts are permitted, but subject to availability and appropriation of funds. Written determination must support multi-term contracts.

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal periods, the contract shall be cancelled. The contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred, but not amortized in the price of the supplies or services delivered under the contract that are not otherwise recoverable.

Sec. 36.30.400. Cost or pricing data must be submitted and certified by contractors. This does not apply when: the contract price is based on adequate price competition; the contract price is set by law or regulation; or it is determined in writing that the requirements of this section are waived and the reasons for waiver are stated in writing.

Sec. 36.30.410. The state has the right to inspect the plant or place of business of a contractor or subcontractor that is related to the performance of a contract awarded or to be awarded by the state.

Sec. 36.30.420. The state may audit books and records of a person who has submitted cost or pricing data or receives a contract.

Sec. 36.30.430. The commissioner shall adopt regulations permitting the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions, and appropriate remedies.

Sec. 36.30.460. Standard clauses in state contract may be modified if supported by a written determination that states the circumstances justifying the variation.

Sec. 36.30.470. If the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget or the total contract budget, the procurement officer may not execute the contract modification, change order, or adjustment in contract price unless sufficient funds are available, or the scope of the project or contract is adjusted to permit the degree of completion that is feasible within the total project budget or total contract budget as it existed before the contract modification, change order, or adjustment in contract price.

Sec. 36.30.480. Cost principle regulations shall be adopted.

Article 7. Procurement Records and Reports.

Sec. 36.30.500. Procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the state archivist.

Sec. 36.30.510. A contract file open for public inspection must be kept by the commissioner and the contracting agency for each contract awarded under competitive sealed proposals. The file kept by the commissioner shall contain a summary of the information in the file of the contracting agency.

Sec. 36.30.520. The commissioner shall maintain for at least 5 years a record listing all sole source and emergency procurement contracts. An agency which has delegated procurement authority shall by October 1, of each year, submit records of all sole source and emergency procurement contracts to the commissioner.

Sec. 35.30.530. Procurement information is public except as otherwise provided by law.

Sec. 36.30.540. The commissioner shall biennially report to the legislature concerning procurements by agencies.

Article 8. Legal and Contractual Remedies.

Sec. 36.30.560. An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for goods, services or construction. The protest shall be filed with the procurement officer of the contracting agency in writing and must contain specified items.

Sec. 36.30.565. Time deadlines for filing protests are specified.

Sec. 36.30.570. Notice of a protest shall immediately be given to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

Sec. 36.30.575. If a protest is filed before a contract is awarded, the award may be made unless the procurement officer of the contracting agency determines in writing that: a reasonable probability exists that the protest will be sustained; or stay of the award is not contrary to the best interests of the state.

Sec. 36.30.580. A written decision by the procurement officer of the contracting agency shall be issued within 14 days after a protest has been filed, unless the time is extended up to 26 days for good cause. Notice shall be sent to the protester. If a decision is not made by the due date, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.

Sec. 36.30.585. If the procurement officer sustains a protest the procurement officer shall implement an appropriate remedy.

Sec. 36.30.590. An appeal from a decision of a procurement officer on a protest must be filed with the appropriate commissioner within 5 days after the decision is received by the protester.

Sec. 36.30.595. The procurement officer shall immediately give notice of an appeal to the contractor if a contract has been awarded, or, if no award has been made, to all interested parties.

Sec. 36.30.600. If a protest appeal is filed before a contract is awarded and the award was stayed, the filing of the appeal automatically continues the stay until the commissioner of administration or transportation and public facilities makes a written determination that the award of the contract is necessary to protect substantial interests of the state.

Sec. 36.30.605. The procurement officer of the contracting agency shall file a complete report on the protest and decision with the commissioner of administration or transportation and public facilities within 7 days after a protest appeal is filed. The protester and all interested parties that have requested a copy of the appeal shall be furnished one. The protester may file comments on the protest report within 7 days after the report is received. Extensions may be granted.

Sec. 36.30.610. The commissioner of administration or transportation and public facilities shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely. The appropriate commissioner may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact.

Sec. 36.30.615. A hearing on a protest appeal shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.620. If a controversy, asserted by a contractor, concerning a contract awarded under this

chapter cannot be resolved by agreement, the procurement officer shall, after receiving a written request by the contractor, issue a written decision no more than 90 days after receipt of all necessary information from the contractor, unless the due date is extended for good cause.

The decision shall be sent to the contractor. If a decision is not made by the due date, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor. If a controversy asserted by the state concerning a contract awarded cannot be resolved by agreement, the matter shall be immediately referred to the commissioner of administration or transportation and public facilities.

Sec. 36.30.625. An appeal from a decision of the procurement officer on a contract controversy may be filed by the contractor with the commissioner of administration or transportation and public facilities. The appeal shall be filed within 14 days after the decision is received by the contractor.

Sec. 36.30.630. A hearing on a contract controversy appealed to the commissioner or referred to the commissioner shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.632. The commissioners of administration and transportation and public facilities may delegate responsibilities under Sec. 36.30.590 and Sec. 36.30.630 to the head of the contracting agency.

Sec. 36.30.635. The commissioners of administration and transportation and public facilities may debar or suspend a person from consideration for award of contracts. Notice and opportunity for a hearing are specified.

Sec. 36.30.640. Causes for debarment or suspension are enumerated.

Sec. 36.30.645. The commissioners of administration and transportation and public facilities shall issue a written decision to debar or suspend.

Sec. 36.30.650. A person suspended is entitled to a hearing if the person files a written request for a hearing within 7 days after receipt of the notice of suspension.

Sec. 36.30.655. The commissioner shall maintain a list of all persons debarred or suspended from consideration for award of contracts.

Sec. 36.30.660. The commissioner of administration or the commissioner of transportation and public facilities may, at any time after a final decision to debar a person, reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

A debarred person may request reinstatement. A hearing may be held on a reinstatement petition. A decision on reinstatement shall be made in writing within 7 days after a reinstatement petition is submitted. A decision under this section is not subject to judicial appeal.

Sec. 36.30.665. The commissioner of administration or transportation and public facilities may permit a debarred person to participate in a contract on a limited basis during the debarment period.

Sec. 36.30.670. The commissioner of administration or transportation and public facilities shall act as a hearing officer or appoint a hearing officer for a hearing conducted under this chapter. The provisions of the Administrative Procedure Act do not apply to a hearing conducted under this chapter. The authority of a hearing officer is outlined.

Sec. 36.30.675. If the commissioner of administration or transportation and public facilities is not acting as hearing officer, the hearing officer shall recommend a decision to the appropriate commissioner based on the evidence presented. The recommendation shall include findings of fact and conclusions of law. The appropriate commissioner may affirm, modify or reject the hearing officer's recommendation or take any other appropriate action.

Sec. 36.30.680. A decision by the commissioner of administration is final, and shall be sent within 20 days after a hearing to all parties. A decision by the commissioner of transportation and public facilities involving procurement of construction shall be sent within 90 days after the hearing.

Sec. 36.30.685. A final decision of the commissioner of administration or transportation and public facilities may be appealed to the superior court in accordance with the Alaska Rules of Appellate Procedure.

Sec. 36.30.687. Civil and criminal sanctions are outlined for misrepresentations and fraudulent claims.

Sec. 36.30.690. This chapter and the regulations adopted under it are the exclusive procedures for asserting a claim against the state or an agency arising in relation to a procurement conducted under this chapter.

Sec. 36.30.695. The commissioner of administration may adopt by regulation additional rules of procedure.

Sec. 36.30.699. The definition of interested party is given.

Article 9. Intergovernmental Relations.

Sec. 36.30.700. Cooperative purchasing is authorized between public procurement units or external procurement activities in accordance with an agreement entered into between the participants.

Sec. 36.30.710. Sale, acquisition, or use of supplies among public procurement units or with external procurement activity may be done independent of certain requirements of this chapter.

Sec. 36.30.720. Joint use of facilities is allowable.

Sec. 36.30.730. A public procurement unit may provide personnel, information and technical services to a requesting public procurement unit or external procurement activity.

Sec. 36.30.735. Current Alaska law on restrictions of contracting with or employing experts on radiation hazards is retained.

Sec. 36.30.740. The commissioner may collect information concerning supplies, services or construction being procured or used by state public procurement units.

Sec. 36.30.750. Under a cooperative purchasing agreement, controversies arising between an administering public procurement unit and its bidders, offerors, or contractors shall be resolved in accordance with this chapter.

Sec. 36.30.790. Definitions for this article are provided.

Article 10. General Provisions.

Sec. 36.30.850. This chapter applies to contracts solicited or entered into after January 1, 1987, unless the parties agree to its application to a contract solicited or entered into before that date. This chapter applies to the disposal of state supplies and every expenditure of public funds irrespective of their sources, except as specified in AS 36.30.915.

This chapter does not apply to: grants; contracts for professional witnesses; contracts of the University of Alaska where the work is to be performed substantially by enrolled students; contracts for medical doctors and dentists; contracts for the purchase of residential child care services under AS 47.40; disposals of land or interest in land; disposals under AS 38.05; contracts for the preparation of ballots under AS 15.15.030; acquisitions or disposals of property and other contracts relating to airports; acquisitions of real property or disposals of obsolete property under AS 19.05.060, 19.05.100, 19.05.110 or 19.05.120; disposals of obsolete material or equipment under AS 35.20.060; leases of ferry terminal facilities under AS 19.60.010; contracts of the department of fish and game for non-point-to-point flights requiring specialized flying and piloting skills; or purchases of income-producing assets for the state treasury or a public corporation of the state.

Except for AS 36.30.700-36.30.895, this chapter does not apply to contracts between two or more agencies, the state and its political subdivisions, or the state and other governments.

Sec. 36.30.860. Unless displaced by the particular provision of this chapter, all other principles of law and equity shall supplement the provisions of this chapter.

Sec. 36.30.870. Regulations under this chapter shall be adopted in accordance with the Administrative Procedure Act. Regulations applicable to procurements of construction or procurements for or disposal of property of the state equipment fleet shall be adopted by the commissioner of administration only after consultation with the commissioner of transportation and public facilities.

Sec. 36.30.880. This chapter requires all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

Sec. 36.30.890. If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or a regulation adopted under a provision, the federal statute or regulation shall prevail.

Sec. 36.30.900. This chapter does not modify, amend, or alter laws regarding preference for Alaska forest products or preference to producers or dealers in Alaska, except as provided in AS 36.30.170(b) and (c).

Sec. 36.30.910. This chapter does not prevent purchasing through the general services administration as provided by law.

Sec. 36.30.920. Suspected anticompetitive practices are to be reported to the attorney general.

Sec. 36.30.930. In addition to penalties prescribed for unethical conduct, civil and criminal penalties are provided for violations of this chapter.

Sec. 36.30.940. The attorney general on behalf of the state shall enforce the provisions of this chapter.

Sec. 36.30.950. Severability clause is included.

Sec. 36.30.990. Definitions.

Sec. 36.30.995. This chapter may be cited as the State Procurement Code.

SECTION 3 through SECTION 64 amend other Alaska statutes to reflect the provisions of this chapter.

SECTION 65. The commissioner must report to the legislature by December 1, 1988, concerning procurements by state agencies during the fiscal year 1987.

SECTION 66. The commissioner of administration shall adopt the regulations required under this chapter by July 1, 1987.

SECTION 67. This is the repealer section.

SECTION 68. Section 66 of this Act takes effect immediately.

SECTION 69. Except as provided in sec. 68, this Act takes effect July 1, 1987.

COMMITTEE REPORT
SENATE

FURTHER: FINANCE

1/14/86

Date 3/18/86

Mr. President

The Committee on JUDICIARY considered SB 341
relating to state procurement practices and procedures; efd.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 341 (Jud)
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

John Luki
Tim Kelly
High - DO PASS, but
only if ASHA is excluded
from bill

MEMBERS HAVING
OTHER RECOMMENDATIONS

Rich Hatford NO REC

Patrick Brady
Chairman
Do Pass
Chairman recommendation

COMMITTEE REPORT
SENATE

FURTHER:

3/19/86

Date 4/1/86

Mr. President

The Committee on FINANCE considered SB 341
relating to state procurement and practices and procedures; efd.

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

- do pass
- ~~do pass~~ with attached amendment(s)
- replace with/or adopt CS for SB 341 (Jud.)
 new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Yuttsch No Rec
Rick Halford No REC
Paul Fink No Rec
John Fink - " "

John Fink
 Co-Chairman
do pass
 Chairman recommendation

Rule



U.S. Department of Housing and Urban Development
COMMUNITY PLANNING AND DEVELOPMENT

Special Attention of:

CPD Staff
CDBG Grantees

Transmittal Handbook No.: 1300.17

Issued: March 1, 1982

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1. This Transmits : Handbook 1300.17, Uniform Requirements for Assistance to State and Local Governments, OMB Circular A-102

 2. Purpose: The Office of Management and Budget (OMB) has promulgated Uniform administrative requirements for grants-in-aid to State and local governments in its Circular A-102 (Revised), January 1981. This Handbook is a reprint of that Circular.

 3. Filing Instructions: Insert Handbook 1300.17, dated March 1, 1982



**Program Participants
and Departmental
Staff**

March 1982

**Uniform Requirements
for Assistance to State
and Local Governments
(A reprint of Office of
Management and Budget
Circular A-102 (Revised))**

FOREWORD

This Handbook, reprinted from the Office of Management and Budget (OMB) Circular A-102, sets forth the uniform administrative requirements for grants-in-aid to state and local governments. Compliance with those requirements in the Circular which apply to the Community Development Block Grant (CDBG) Program are mandatory and may not be deviated therefrom without prior Headquarters approval, concurred in by the Office of Management and Budget.

Attachment P, Audit Requirements, of this Handbook should be used in conjunction with Guidelines for Financial Compliance Audits of Federally Assisted Programs published by the U.S. General Accounting Office, and Standards for Audit of Governmental Organizations, Programs, Activities and Functions issued by the Comptroller General of the United States. Both publications are available by purchase from the Superintendent of Documents, United States Government Printing Office (USGPO), Washington, D.C., 20420. USGPO Stock Number for the former is 020-000-00181-0; for the latter, the Stock Number is 2000-00110.

Additional copies of this Handbook may be obtained in limited quantities from the appropriate HUD Area Office upon request.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

CIRCULAR NO. A-102
Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Uniform administrative requirements for grants-in-aid
to State and local governments

1. Purpose. This Circular promulgates standards for establishing consistency and uniformity among Federal agencies in the administration of grants to State, local, and federally recognized Indian tribal governments. Also included in the Circular are standards to insure the consistent implementation of sections 202, 203, and 204 of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1101).

2. Supersession. The President by Executive Order 11717 transferred the functions covered by OMB Circular No. A-102 dated October 19, 1971, from the Office of Management and Budget to the General Services Administration. OMB Circular No. A-102 was revised and issued as Federal Management Circular 74-7 dated September 13, 1974. On December 31, 1975, the President superseded this order by Executive Order 11893 and transferred the functions covered by this Circular back to the Office of Management and Budget. FMC 74-7 is revised and reissued under its original designation of OMB Circular No. A-102.

3. Summary of significant changes. The revised Circular contains changes that bring it into general agreement with the more recent Circular A-110 which covers grants to universities, hospitals, and nonprofit organizations.

The more significant changes include:

a. An amendment to the basic Circular to make it clear that the provisions of the attachments shall be applied to subgrantees except where they are specifically excluded.

b. A provision that Federal agencies may accept the bonding policies and requirements of the grantee for construction contracts over \$100,000 provided that the Government's interest is adequately protected.

c. A revision to the criterion for the valuation of donated real and personal property to provide that the value of such property shall be based on fair market value. The original Circular provided that property should be based on the cost of the property less depreciation or fair market value, whichever was less.

d. A provision that grantee audits should be made in accordance with generally accepted auditing standards, including Standards for Audit of Governmental Organizations, Programs, Activities & Functions, published by the General Accounting Office.

e. A provision to require Federal agencies to pay within 30 days after the receipt of billing when the reimbursement method is used.

f. A revision to the criterion for issuance of a letter of credit from \$250,000 to \$120,000.

g. Deletion of the requirements for grantees to obtain prior approvals for budget revisions to grants under \$100,000.

h. Provision that title to real property funded partly or wholly by the Federal Government shall vest in the recipient.

i. A revision to the criteria governing when a grantee may keep nonexpendable property without reimbursement to the Federal Government when it is no longer needed for any Federal program.

4. Background. The standards included in the attachments to this Circular replace the multitude of varying and oftentimes conflicting requirements in the same subject matter which have been burdensome to the State and local governments. Inherent in this standardization process is the concept of placing greater reliance on State and local governments. In addition, the Intergovernmental Cooperation Act of 1968 was passed, in part, for the purposes of: (a) achieving the fullest cooperation and coordination of activities among levels of government; (b) improving the administration of grants-in-aid to the States; and (c) establishing coordinated intergovernmental policy and administration of Federal assistance programs. This Act provided

certain basic policies pertaining to administrative requirements to be imposed upon the States as a condition to receiving Federal grants. The implementing instructions of these policies were initially issued in Circular A-96. These instructions are modified herein in the interest of achieving further consistency in implementing that Act.

5. Applicable provisions of the Intergovernmental Cooperation Act of 1968. Federal agencies shall continue to follow the provisions of the Act, quoted below:

"DEPOSIT OF GRANTS-IN-AID

"Sec. 202. No grant-in-aid to a State shall be required by Federal law or administrative regulation to be deposited in a separate bank account apart from other funds administered by the State. All Federal grant-in-aid funds made available to the States shall be properly accounted for as Federal funds in the accounts of the State. In each case the State agency concerned shall render regular authenticated reports to the appropriate Federal agency covering the status and the application of the funds, the liabilities and obligations on hand, and such other facts as may be required by said Federal agency. The head of the Federal agency and the Comptroller General of the United States or any of their duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to the grant-in-aid received by the States."

"SCHEDULING OF FEDERAL TRANSFERS TO THE STATES

"Sec. 203. Heads of Federal departments and agencies responsible for administering grant-in-aid programs shall schedule the transfer of grant-in-aid funds consistent with program purposes and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by a State, whether such disbursement occurs prior to or subsequent to such transfer of funds, or subsequent to such transfer of funds. [Sic] States shall not be held accountable for interest earned on grant-in-aid funds, pending their disbursement for program purposes."

"ELIGIBLE STATE AGENCY

"Sec. 204. Notwithstanding any other Federal law which provides that a single State agency or multimember board or commission must be established or designated to administer or supervise the administration of any grant-in-aid program, the head of any Federal department or agency administering such program may, upon request of the Governor or other appropriate executive or legislative authority of the State responsible for determining or revising the organizational structure of State government, waive the single State agency or multimember board or commission provision upon adequate showing that such provision prevents the establishment of the most effective and efficient organizational arrangements within the State government and approve other State administrative structure or arrangements: Provided, That the head of the Federal department or agency determines that the objectives of the Federal statute authorizing the grant-in-aid program will not be endangered by the use of such other State structure or arrangements."

Some of the above provisions require implementing instructions and they are provided in several of the attachments to this Circular which deal with the specific subject matter.

6. Applicability and scope. The standards promulgated by this Circular apply to all Federal agencies responsible for administering programs that involve grants to State and local governments and federally recognized Indian tribal governments. However, agencies are encouraged to apply the standards to loan and loan guarantee programs to the extent practicable. If the enabling legislation for a specific grant program prescribes policies or requirements that differ from the standards provided herein, the provisions of the enabling legislation shall govern. Except where they are specifically excluded, the provisions of the attachments of this Circular shall be applied to subgrantees performing substantive work under grants that are passed through or awarded by the primary grantee if such subgrantees are States, local governments or federally recognized Indian tribal governments as defined in paragraph 7.

7. Definitions. For the purposes of this Circular:

a. The term "grant" or "grant-in-aid" means money, or property in lieu of money, paid or furnished by the Federal

Government to a State, local, or federally recognized Indian tribal government under programs that provide financial assistance through grant or contractual arrangements. The term does not include technical assistance programs which provide services instead of money or other assistance in the form of general revenue sharing, loans, loan guarantees, insurance, or contracts which are entered into and administered under procurement laws and regulations.

b. The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of State institutions of higher education and hospitals.

c. The term "local government" means a local unit of government including specifically a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments, sponsor group representative organization (as defined in 7 CFR 620.2, 40 F.R. 12472, March 19, 1975) and other regional or interstate government entity, or any agency or instrumentality of a local government exclusive of institutions of higher education and hospitals.

d. The term "federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

8. Attachments. The standards promulgated by this Circular are set forth in the attachments, which are:

- Attachment A - Cash depositories
- Attachment B - Bonding and insurance
- Attachment C - Retention and custodial requirements for records
- Attachment D - Waiver of "single" State agency requirements
- Attachment E - Program income

-
- Attachment F - Matching share
 - Attachment G - Standards for grantee financial management systems
 - Attachment H - Financial reporting requirements
 - Attachment I - Monitoring and reporting program performance
 - Attachment J - Grant payment requirements
 - Attachment K - Budget revision procedures
 - Attachment L - Grant closeout procedures
 - Attachment M - Standard forms for applying for Federal assistance
 - Attachment N - Property management standards
 - Attachment O - Procurement standards
 - Attachment P - Audit Requirements

9. Requests for exceptions. The Office of Management and Budget may grant exceptions from the requirements of this Circular when permissible under existing laws. However, in the interest of keeping uniformity to the maximum extent, deviations from the requirements of this Circular will be permitted only in exceptional cases.

10. Exceptions for certain recipients. Notwithstanding the provisions of paragraph 9 if an applicant/recipient has a history of poor performance, is not financially stable, or its management system does not meet the standards prescribed in the Circular, Federal agencies may impose additional requirements as needed provided that such applicant/recipient is notified in writing as to:

- a. Why the additional standards are being imposed;
- b. what corrective action is needed.

Copies of such notifications shall be sent to the Office of Management and Budget and other agencies funding that recipient at the same time the recipient is notified.

11. Responsibilities. Agencies responsible for administering programs that involve grants to State and local governments shall issue the appropriate regulations necessary to implement the provisions of this Circular. All portions of such regulations that involve recordkeeping and/or reporting requirements subject to the provisions of the Federal Reports Act and OMB Circular A-40 must be submitted to OMB for clearance before being used. Upon request all regulations and instructions implementing this Circular shall be furnished to the Office of Management and Budget. Agencies shall also designate an official to serve as the agency representative on matters relating to the implementation of this Circular. If the name and title were previously transmitted, notification to the Office of Management and Budget is required only when there is a change in the designated representative.

12. Inquiries. Further information concerning this Circular may be obtained by contacting the Financial Management Branch, Budget Review Division, Office of Management and Budget, Washington, D.C. 20503, telephone 395-4773.

Bert Lance
Director

Attachments

ATTACHMENT A
Circular No. A-102

CASH DEPOSITORIES

1. This attachment sets forth standards governing the use of banks and other institutions as depositories of funds advanced under grants.
2. Except for situations described in paragraphs 3, 4, and 5, no grantor agency shall:
 - a. Require physical segregation of cash depositories for funds which are provided to a grantee.
 - b. Establish any eligibility requirements for cash depositories for funds which are provided to a grantee.
3. A separate bank account shall be required when applicable letter-of-credit agreements provide that drawdowns will be made when the grantee's checks are presented to the bank for payment.
4. Any moneys advanced to a grantee which are subject to the control or regulation of the United States or any of its officers, agents or employees (public moneys as defined in Treasury Circular No. 176, as amended) must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage and the balance exceeding the FDIC coverage must be collaterally secured.
5. Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees shall be encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D. C. 20230.

Attachment B
Circular No. A-102

BONDING AND INSURANCE

1. This Attachment sets forth bonding and insurance requirements for grants. No other bonding and insurance requirements shall be imposed other than those normally required by the grantee.

2. Except as otherwise required by law, a grant that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the grantee to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the Federal agency may accept the bonding policy and requirements of the grantee provided the Federal agency has made a determination that the Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

3. Where the Federal Government guarantees or insures the repayment of money borrowed by the grantee, the Federal agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the grantee are not deemed adequate to protect the interest of the Federal Government.

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Attachment B

4. Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR 223).

ATTACHMENT C
Circular No. A-102

RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS

1. This attachment sets forth record retention requirements for grants. Federal grantor agencies shall not impose any record retention requirements upon grantees other than those described below.

2. Financial records, supporting documents, statistical records, and all other records pertinent to a grant shall be retained for a period of three years, with the following qualifications:

a. If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

b. Records for nonexpendable property acquired with Federal funds shall be retained for 3 years after its final disposition.

c. When records are transferred to or maintained by the Federal sponsoring agency, the 3-year retention requirement is not applicable to the grantee.

3. The retention period starts from the date of the submission of the final expenditure report or, for grants that are renewed annually, from the date of the submission of the annual financial status report.

4. Grantees should be authorized by the Federal grantor agency, if they so desire, to substitute microfilm copies in lieu of original records.

5. The Federal grantor agency shall request transfer of certain records to its custody from grantees when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, a Federal grantor agency may make arrangements with grantees to retain any records that are continuously needed for joint use.

6. The head of the Federal grantor agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of grantees and subgrantees to make audits, examinations, excerpts and transcripts.

7. Unless otherwise required by law, no Federal grantor agency shall place restrictions on grantees that will limit public access to the records of grantees that are pertinent to a grant except when the agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the grantor agency.

ATTACHMENT D
Circular No. A-102

WAIVER OF "SINGLE" STATE AGENCY REQUIREMENTS

1. Requests to Federal grantor agencies from the Governors, or other duly constituted State authorities, for waiver of the "single" State agency requirements in accordance with section 204 of the Intergovernmental Cooperation Act of 1968 should be given expeditious handling and, whenever possible, an affirmative response should be made to such requests.
2. When it is necessary to refuse a request for waiver of the "single" State agency requirements under section 204, the Federal grantor agency handling such request will so advise the Office of Management and Budget prior to informing the State that the request cannot be granted. Such advice should indicate the reasons for the denial of the request.
3. Future legislative proposals embracing grant-in-aid programs should avoid inclusion of proposals for "single" State agencies in the absence of compelling reasons to do otherwise. In addition, existing "single" State agency requirements in present grant-in-aid programs should be reviewed and legislative proposals should be developed for the removal of these restrictive provisions.

ATTACHMENT E
Circular No. A-102

PROGRAM INCOME

1. Federal grantor agencies shall apply the standards set forth in this Attachment in requiring grantees to account for program income related to projects financed in whole or in part with Federal grant funds. Program income means gross income earned by the grantee from grant-supported activities. Such earnings exclude interest earned on advances and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.
2. Interest earned on advances of Federal funds shall be remitted to the Federal agency except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Public Law 90-577) and advances made to tribal organizations pursuant to section 102, 103, or 104 of the Indian Self Determination Act (Public Law 93-638).
3. Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with Attachment N to this Circular pertaining to Property Management.
4. Unless the grant agreement provides otherwise, grantees shall have no obligation to the Federal Government with respect to royalties received as a result of copyrights or patents produced under the grant or other agreement. (See paragraph 7, Attachment N.)
5. All other program income earned during the grant period shall be retained by the grantee and, in accordance with the grant agreement, shall be:
 - a. Added to funds committed to the project^o by the grantor and grantee and be used to further eligible program objectives.
 - b. Used to finance the non-Federal share of the project when approved by the Federal Sponsoring agency; or

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Attachment E

c. Deducted from the total project costs for the purpose of determining the net costs on which the Federal share of costs will be based.

6. Federal grantor agencies shall require the grantees to record the receipt and expenditure of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant project transactions when such revenues are specifically earmarked for a grant project in accordance with grant agreements.

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES, 1985 8672
1453 SCOMM 54: SEN. SELECT INTERIM COMM. ON PROCUREMENT PRACTICES

ATTACHMENT F
Circular No. A-102**MATCHING SHARE**

This Attachment sets forth criteria and procedures for the allowability of cash and in-kind contributions made by grantees, subgrantees or third parties in satisfying cost sharing and matching requirements of Federal grantor agencies.

2. The following definitions apply for the purpose of this Attachment:

a. Project costs. Project costs are all allowable costs as set forth in Office of Management and Budget (OMB) Circular A-87 incurred by a grantee or third parties in accomplishing the objectives of the grant during the project or program period.

b. Cost sharing and matching. In general, cost sharing and matching represents that portion of project costs not borne by the Federal Government. Usually, a minimum percentage for matching share is prescribed by program legislation, and matching share requirements are included in the grant agreements.

c. Cash contributions. Cash contributions represent the grantee's cash outlay, including the outlay of money contributed to the grantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other grants may be considered as grantees' cash contributions.

d. In-kind contributions. In-kind contributions represent the value of noncash contributions provided by the grantee, and non-Federal parties. Only when authorized by Federal legislation may property purchased with Federal funds be considered as the grantee's in-kind contributions. In-kind contributions may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefiting and specifically identifiable to the project or program.

3. General guidelines for computing cost sharing or matching are as follows:

a. Cost sharing or matching share may consist of:

Attachment F

(1) Charges incurred by the grantee as project costs. (Not all charges require cash outlays during the grant period by the grantee; examples are depreciation and use charges for buildings and equipment.)

(2) Project costs financed with cash contributed or donated to the grantee by other non-Federal public agencies and institutions, and private organizations and individuals.

(3) Project costs represented by services and real or personal property, or use thereof, donated by other public agencies and institutions, and private organizations and individuals.

b. All contributions, both cash and in-kind, shall be accepted as part of the grantee's matching share when such contributions meet all of the following criteria:

(1) Are verifiable from the grantee's records;

(2) Are not included as contributions for any other federally-assisted program;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives;

(4) Are types of charges that would be allowable under OMB Circular A-87.

(5) Are not paid by the Federal Government under another assistance agreement unless authorized under the other agreement and the laws and regulations it is subject to.

(6) Are provided for in the approved budget when required by the Federal agency; and

(7) Conform to other provisions of this Attachment.

4. Values for grantee in-kind contributions will be established at the grantee's actual cost in accordance with OMB Circular A-87.

5. Specific procedures for the grantees in establishing the value of in-kind contributions from non-Federal third parties are set forth below:

a. Valuation of volunteer services. Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteered

service may be counted as cost sharing or matching if the service is an integral and necessary part of an approved program.

(1) Rates for volunteer services. Rates for volunteers should be consistent with those paid for similar work in other activities of the State or local government. In those instances in which the required skills are not found in the grantee organization, rates should be consistent with those paid for similar work in the labor market in which the grantee competes for the kind of services involved.

(2) Volunteers employed by other organizations. When an employer other than the grantee furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead cost) provided these services are in the same skill for which the employee is normally paid.

b. Valuation of donated expendable personal property. Donated expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Values assessed to expendable personal property included in the cost or matching share should be reasonable and should not exceed the fair market value of the property at the time of the donation.

c. Valuation of donated nonexpendable personal property, buildings and land or use thereof.

(1) The method used for charging matching share for donated nonexpendable personal property, buildings, and land may differ depending upon the purpose of the grant as follows:

(a) If the purpose of the grant is to furnish equipment, buildings, or land to the grantee or otherwise provide a facility, the total value of the donated property may be claimed as a matching share.

(b) If the purpose of the grant is to support activities that require the use of equipment, buildings, or land on a temporary or part-time basis, depreciation or use charges for equipment and buildings may be made. The full value of equipment or other capital assets and fair rental charges for land may be made provided that the grantor agency has approved the charges.

(2) The value of donated property will be determined in accordance with the usual accounting policies of the grantee with the following qualifications:

(a) Land and buildings. The value of donated land and buildings may not exceed its fair market value, at the time of donation to the grantee as established by an independent appraiser (e.g., certified real property appraiser or GSA representatives) and certified by a responsible official of the grantee.

(b) Nonexpendable personal property. The value of donated nonexpendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.

(c) Use of space. The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(d) Loaned equipment. The value of loaned equipment shall not exceed its fair rental value.

6. The following requirements pertain to the grantee's supporting records for in-kind contributions from non-Federal third parties.

a. Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the grantee for its employees.

b. The basis for determining the valuation for personal services, material, equipment, buildings, and land must be documented.

ATTACHMENT G
Circular No. A-102

STANDARDS FOR GRANTEE FINANCIAL MANAGEMENT SYSTEMS

1. This Attachment prescribes standards for financial management systems of grant-supported activities of State, local, and federally recognized Indian tribal governments. Federal grantor agencies shall not impose additional standards on grantees unless specifically provided for in other Attachments to this Circular. However, grantor agencies are encouraged to make suggestions and assist the grantees in establishing or improving financial management systems when such assistance is needed or requested.
2. Grantee financial management systems shall provide for:
 - a. Accurate, current, and complete disclosure of the financial results of each grant program in accordance with reporting requirements set forth in Attachment H to this Circular. When a Federal grantor agency requires reporting on an accrual basis, the grantee shall not be required to establish an accrual accounting system but shall develop such accrual data on its reports on the basis of an analysis of the documentation on hand.
 - b. Records that identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to Federal awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
 - c. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
 - d. Comparison of actual outlays with budgeted amounts for each grant. Also, relation of financial information with performance or productivity data, including the production of unit cost information whenever appropriate and required by the grantor agency.
 - e. Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by

Attachment G

the Federal Government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns from the U.S. Treasury as close as possible to the time of making the disbursements. Advances made by primary recipient organizations (those which receive payments directly from the Federal Government) to secondary recipients shall conform substantially to the same standards of timing and amount as apply to advances by Federal agencies to primary recipient organizations.

f. Procedures for determining reasonableness, allowability and allocability of costs in accordance with the provisions of Office of Management and Budget (OMB) Circular A-87.

g. Accounting records that are supported by source documentation.

h. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

3. Primary grantees shall require subgrantees to adopt the standards in paragraph 2, above, except for the requirement in subparagraph 2a, regarding reporting forms and frequencies prescribed in Attachment H to this Circular.

FINANCIAL REPORTING REQUIREMENTS

1. This Attachment prescribes uniform reporting procedures for grantees to: summarize expenditures made and Federal funds unexpended for each award, report the status of Federal cash advanced, request advances and reimbursement when the letter-of-credit method is not used; and promulgates standard forms incident thereto. Grantees when obtaining financial information required by Federal agencies from subgrantees are not required to use the forms contained in this Attachment.

2. The following definitions apply for purposes of this Attachment:

a. Accrued expenditures. Accrued expenditures are the charges incurred by the grantee during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required such as annuities, insurance claims, and other benefit payments.

b. Accrued income. Accrued income is the sum of (1) earnings during a given period from (i) services performed by the grantee; and (ii) goods and other tangible property delivered to purchasers; and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

c. Federal funds authorized. Federal funds authorized are the total amount of Federal funds obligated by the Federal Government for use by the grantee. This amount may include any authorized carryover of unobligated funds from prior fiscal years when permitted by law or agency regulation.

d. In-kind contributions. In-kind contributions are defined in Attachment F to this Circular.

e. Obligations. Obligations are the amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

f. Outlays. Outlays or expenditures represent charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subgrantees. For reports prepared on an accrual basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees and other payees and other amounts becoming owed under programs for which no current services or performance are required such as annuities, insurance claims, and other benefit payments.

g. Program income. Program income is defined in Attachment E of this Circular. It may be reported on a cash or accrual basis, whichever is used for reporting outlays.

h. Unobligated balance. The unobligated balance is the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

i. Unliquidated obligations. For reports prepared on a cash basis, unliquidated obligations represent the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

3. Only the following forms will be authorized for obtaining financial information from grantees.

a. Financial Status Report (Exhibit 1).

(1) Each Federal agency shall require grantees to use the standardized Financial Status Report to report the status of funds for all nonconstruction projects or programs. The Federal agencies may, however, have the option of not requiring the Financial Status Report when the Request for Advance or Reimbursement (paragraph 4a) or Report of Federal Cash Transactions (paragraph 3b) is determined to provide adequate information to meet their needs, except that a final Financial Status Report shall be required at the completion of the project

when the Request for Advance or Reimbursement form is used only for advances.

(2) The Federal agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system, but shall develop such accrual information through an analysis of the documentation on hand.

(3) The Federal agency shall determine the frequency of the Financial Status Report for each project or program considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually except as provided in subparagraph 3a(1) above. A final report shall be required at the completion of the grant.

(4) Federal agencies shall require grantees to submit the Financial Status Report (original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 days for annual and final reports. Extensions to reporting due dates may be granted upon request of the recipient.

b. Report of Federal Cash Transactions (Exhibit 2).

(1) When funds are advanced to grantees through letters of credit or with direct Treasury checks, the Federal agencies shall require each grantee to submit a Report of Federal Cash Transactions. The Federal agency shall use this report to assist them in monitoring advances to grantees and to obtain disbursement information for each agreement from the grantee. Grantees under the Regional Disbursing Office (RDO) system shall not be required to submit a Report of Federal Cash Transactions. For these grantees Federal agencies shall use information contained in the Request for Payment to monitor grantee cash balances and to get disbursement information.

(2) Federal agencies may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(3) When practical and deemed necessary, the Federal agencies may require grantees to report in the "Remarks" section the amount of excess cash advances in the hands of subgrantees

and to provide short narrative explanations of actions taken by the grantees to reduce the excess balances.

(4) Grantees shall be required to submit not more than the original and two copies of the Report of Federal Cash Transactions 15 working days following the end of each quarter. The Federal agencies may require a monthly report from those grantees receiving advances totaling \$1 million or more per year.

(5) Federal agencies may waive the requirement for submission of the Report of Federal Cash Transactions when monthly advances do not exceed \$10,000 per grantee, provided that such advances are monitored through other forms contained in this Attachment, or if, in the Federal agency's opinion, the grantee's accounting controls are adequate to minimize excessive Federal advances.

4. Except as noted below, only the following forms will be authorized for grantees in requesting advances and reimbursements.

a. Request for Advance or Reimbursement (Exhibit 3).

(1) Each Federal agency shall adopt the Request for Advance or Reimbursement as a standardized form for all nonconstruction programs when letters-of-credit or predetermined advance methods are not used. Federal agencies, however, have the option of using this form for construction programs in lieu of the Outlay Report and Request for Reimbursement for Construction Programs (subparagraph 4b).

(2) Grantees shall be authorized to submit requests for advances and reimbursements at least monthly when letters-of-credit are not used. Federal agencies shall not require the submission of more than the original and two copies of the Request for Advance or Reimbursement.

b. Outlay report and request for reimbursement for construction programs (Exhibit 4).

(1) Each Federal agency shall adopt the Outlay Report and Request for Reimbursement for Construction Programs as the standardized format to be used for requesting reimbursement for construction programs. The Federal agencies may, however, have the option of substituting the Request for Advance or Reimbursement Form (subparagraph 4a) when the Federal agencies

determine that it provides adequate information to meet their needs.

(2) Grantees shall be authorized to submit requests for reimbursement at least monthly when letters-of-credit are not used. Federal agencies shall not require more than the original and two copies of the Outlay Report and Request for Reimbursement for Construction Programs.

5. When the Federal agencies need additional information in using these forms or more frequent reports, the following shall be observed:

a. When additional information is needed to comply with legislative requirements, Federal agencies shall issue instructions to require grantees to submit such information under the "Remarks" section of the reports.

b. When a Federal agency has determined that a grantee's accounting system does not meet the standards for financial management contained in Attachment G to this Circular, additional pertinent information to further monitor grants and other agreements may be obtained upon written notice to the grantee until such time as the system is brought up to standard.

c. The Federal agency, in obtaining information as in paragraphs a and b above, must comply with reports clearance requirements of the Office of Management and Budget Circular No. A-40, as revised.

6. Federal agencies have the option of shading out any line item on any report that is unnecessary for decision-making purposes.

7. Federal agencies should accept the identical information from the grantees in machine usable format or computer printouts in lieu of prescribed formats.

8. Federal agencies may provide computer outputs to grantees when it will expedite or contribute to the accuracy of reporting.

9. The standard forms can be obtained from the General Services Administration.

FINANCIAL STATUS REPORT
 (Please instructions on the back)

1. REPORT ORGANIZATION (Name and complete address, including ZIP code)

2. REPORT IDENTIFICATION NUMBER

3. REPORT SUBJECT NUMBER OR IDENTIFICATION NUMBER

4. REPORT APPROVAL NUMBER OR IDENTIFICATION NUMBER

5. FROM (Month, day, year)

6. TO (Month, day, year)

7. FROM (Month, day, year)

8. TO (Month, day, year)

9. FROM (Month, day, year)

10. TO (Month, day, year)

11. FROM (Month, day, year)

12. TO (Month, day, year)

13. FROM (Month, day, year)

14. TO (Month, day, year)

15. FROM (Month, day, year)

16. TO (Month, day, year)

17. FROM (Month, day, year)

18. TO (Month, day, year)

19. FROM (Month, day, year)

20. TO (Month, day, year)

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71. FROM (Month, day, year)

72. TO (Month, day, year)

73. FROM (Month, day, year)

74. TO (Month, day, year)

10. PROGRAMS/FUNCTIONS/ACTIVITIES ->		STATUS OF FUNDS	
(a)	(b)	(c)	(d)
Net outlays previously reported	\$	\$	\$
Total outlays this report period			
Less: Program income credits			
Net outlays this report period			
(Line h minus line c)			
Net outlays to date			
(Line a plus line d)			
Less: Non-Federal share of outlays			
Total Federal share of outlays			
(Line a minus line f)			
Total unfunded obligations			
Less: Non-Federal share of unfunded obligations shown on line h			
Federal share of unfunded obligations			
Total Federal share of outlays and unfunded obligations			
Total cumulative amount of Federal funds authorized			
Unobligated balance of Federal funds			

11. TYPE OF RATE
 PROVISIONAL PREDETERMINED FINAL FIXED

12. CERTIFICATION
 I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unfunded obligations are for the purposes set forth in the award documents.

13. SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

14. TYPED OR PRINTED NAME AND TITLE

15. TELEPHONE (Area code, number and extension)

16. DATE REPORT SUBMITTED

STANDARD FORM 288 (7-78)
 Prescribed by Office of Management and Budget
 CIRCULARS NO. A-102 AND A-110

EXHIBIT 1

INSTRUCTIONS

Press type or print legibly. Items 1, 2, 3, 6, 7, 9, 10d, 10e, 10g, 10i, 10j, 11a, and 12 are self-explanatory. Specific instructions for other items are as follows:

- | Item | Entry |
|------|--|
| 4 | Enter the employing identification number assigned by the U.S. Internal Revenue Service or FICG (Postoffice) code, if required by the Federal sponsoring agency. |
| 5 | This space is reserved for an account number or other identifying numbers that may be assigned by the recipient. |
| 6 | Enter the month, day, and year of the beginning and ending of this project period. For formula grants that are not awarded on a project basis, show the grant period. |
| 10 | The purpose of vertical columns (a) through (j) is to provide financial data for each program, function, and activity in the budget as approved by the Federal sponsoring agency. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the totals of all programs, functions or activities should be shown in column (j) of the first page. For agreements pertaining to several Catalog of Federal Domestic Assistance programs that do not require a further functional or activity classification breakdown, enter under column (a) through (j) the title of the program. For grants or other assistance agreements containing multiple programs where one or more programs require a further breakdown by function or activity, use a separate form for each program showing the applicable functions or activities in the separate columns. For grants or other assistance agreements containing several functions or activities which are funded from several programs, prepare a separate form for each activity or function when requested by the Federal sponsoring agency. |
| 10a | Enter the net outlay. This amount should be the same as the amount reported in Line 10e of the last report. If there has been an adjustment to the amount shown previously, please attach explanation. Show zero if this is the initial report. |
| 10b | Enter the total gross program outlays (less rebates, refunds, and other discounts) for this report period, including disbursements of cash realized as program income. For reports that are prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expenses incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contractors, subgrantees, and other payees. |
| 10c | Enter the amount of all program income realized in the period that is required by the terms and conditions of the Federal award to be deducted from total project costs. For reports prepared on a cash basis, enter the amount of cash income received during the reporting period. For reports prepared on an accrued basis, enter the amount of income earned since the beginning of the reporting period. When the terms or conditions allow program income to be added to the total project, explain in remarks, the source, amount and disposition of the income. |
| 10d | Enter amount pertaining to the non-Federal share of program outlays included in the amount on line 6. |
| 10e | Enter total amount of unliquidated obligations for this project or program, including unliquidated obligations to expenditures and contractors. Unliquidated obligations are:
Cash basis—obligations incurred but not paid;
Accrued expenditure basis—obligations incurred but for which an outlay has not been recorded.
Do not include any amounts that have been included on lines a through g. On the final report, line h should have a zero balance. |
| 10f | Enter the Federal share of unliquidated obligations shown on line h. The amount shown on this line should be the difference between the amounts on lines h and i. |
| 10g | Enter the sum of the amounts shown on lines g and j. If the report is final the report should not contain any unliquidated obligations. |
| 10h | Enter the unliquidated balance of Federal funds. This amount should be the difference between 738 k and l. |
| 11a | Enter rate in effect during the reporting period. |
| 11c | Enter amount of the base to which the rate was applied. |
| 11d | Enter total amount of indirect cost charged during the report period. |
| 11e | Enter amount of the Federal share charged during the report period.
If more than one rate was applied during the project period, include a separate schedule showing bases against which the indirect cost rates were applied; the respective indirect cost rates for the month, day, and year; the indirect rates were in effect; amounts of indirect expense charged to the project; and the Federal share of indirect expense charged to the project to date. |

1300.17

Attachment H

FEDERAL CASH TRANSACTIONS REPORT

(See instructions on the back. If report is for more than one grant or assistance agreement, attach completed Standard Form 272-A.)

Approved by Office of Management and Budget, No. 60-86182

1. Federal assisting agency and organizational element to which this report is submitted

2. RECIPIENT ORGANIZATION

Name :

Number and Street :

City, State and ZIP Code:

4. Federal grant or other identification number

5. Recipient's account number or identifying number

6. Letter of credit number

7. Last payment voucher number

Give total number for this period

8. Payment vouchers credited to your account

9. Treasury checks received (whether or not deposited)

3. FEDERAL EMPLOYER IDENTIFICATION NO.

10. PERIOD COVERED BY THIS REPORT

FROM (month, day, year)

TO (month, day year)

11. STATUS OF

FEDERAL

CASH

(See specific instructions on the back)

a. Cash on hand beginning of reporting period

\$

b. Letter of credit withdrawals

c. Treasury check payments

d. Total receipts (Sum of lines b and c)

e. Total cash available (Sum of lines a and d)

f. Gross disbursements

g. Federal share of program income

h. Net disbursements (Line f minus line g)

i. Adjustments of prior periods

j. Cash on hand end of period

\$

12. THE AMOUNT SHOWN ON LINE 11J, ABOVE, REPRESENTS CASH REQUIREMENTS FOR THE ENSUING

Days

13. OTHER INFORMATION

a. Interest income

\$

b. Advances to subgrantees or subcontractors

\$

14. REMARKS (Attach additional sheets of plain paper, if more space is required)

15. CERTIFICATION

I certify to the best of my knowledge and belief that this report is true in all respects and that all disbursements have been made for the purpose and conditions of the grant or agreement

AUTHORIZED CERTIFYING OFFICIAL

SIGNATURE

DATE REPORT SUBMITTED

TYPED OR PRINTED NAME AND TITLE

TELEPHONE

(Area Code)

(Number)

(Extension)

THIS SPACE FOR AGENCY USE

INSTRUCTIONS

Please type or print legibly. Items 1, 2, 8, 9, 10, 11d, 11e, 11h, and 15 are self explanatory, specific instructions for other items are as follows:

<u>Item</u>	<u>Entry</u>	<u>Entry</u>	<u>Item</u>
3	Enter employer identification number assigned by the U.S. Internal Revenue Service or the FICE (institution) code. If this report covers more than one grant or other agreement, leave items 4 and 5 blank and provide the information on Standard Form 272-A, Report of Federal Cash Transactions—Continued; otherwise;		employee's share of benefits if treated as a direct cost, interdepartmental charges for supplies and services, and the amount to which the recipient is entitled for indirect costs.
4	Enter Federal grant number, agreement number, or other identifying numbers if requested by sponsoring agency.	11g	Enter the Federal share of program income that was required to be used on the project or program by the terms of the grant or agreement.
5	This space reserved for an account number or other identifying number that may be assigned by the recipient.	11i	Enter the amount of all adjustments pertaining to prior periods affecting the ending balance that have not been included in any lines above. Identify each grant or agreement for which adjustment was made, and enter an explanation for each adjustment under "Remarks." Use plain sheets of paper if additional space is required.
6	Enter the letter of credit number that applies to this report. If all advances were made by Treasury check, enter "NA" for not applicable and leave items 7 and 8 blank.	11j	Enter the total amount of Federal cash on hand at the end of the reporting period. This amount should include all funds on deposit, imprest funds, and undeposited funds (line e, less line h, plus or minus line i).
7	Enter the voucher number of the last letter-of-credit payment voucher (Form TUS 5401) that was credited to your account.	12	Enter the estimated number of days until the cash on hand, shown on line 11j, will be expended. If more than three days cash requirements are on hand, provide an explanation under "Remarks" as to why the drawdown was made prematurely, or other reasons for the excess cash. The requirement for the explanation does not apply to prescheduled or automatic advances.
11a	Enter the total amount of Federal cash on hand at the beginning of the reporting period including all of the Federal funds on deposit, imprest funds, and undeposited Treasury checks.	13a	Enter the amount of interest earned on advances of Federal funds but not remitted to the Federal agency. If this includes any amount earned and not remitted to the Federal sponsoring agency for over 60 days, explain under "Remarks." Do not report interest earned on advances to States.
11b	Enter total amount of Federal funds received through payment vouchers (Form TUS 5401) that were credited to your account during the reporting period.	13b	Enter amount of advance to secondary recipients included in item 11h.
11c	Enter the total amount of all Federal funds received during the reporting period through Treasury checks, whether or not deposited.	14	In addition to providing explanations as required above, give additional explanation deemed necessary by the recipient and for information required by the Federal sponsoring agency in compliance with governing legislation. Use plain sheets of paper if additional space is required.
11f	Enter the total Federal cash disbursements, made during the reporting period, including cash received as program income. Disbursements as used here also include the amount of advances and payments less refunds to subgrantees or contractors, the gross amount of direct salaries and wages, including the		

STANDARD FORM 273-A (7-79)
Prescribed by Office of Management and Budget
CIRCULARS NO. A-102 AND A-118

273-201

B. TOTALS (Should correspond with amounts shown on SF 273 as follows: column (c) the same as line 11h; column (d) the sum of lines 11h and 11i; of this SF 273 and cumulative disbursements shown on last report. Attach explanation of any difference.)

FEDERAL GRANT OR OTHER IDENTIFI- CATION (Show a subdivision by other identifi- cation numbers if required by the Federal sponsoring Agency)	RECIPIENT ACCOUNT NUMBER OR OTHER IDENTIFIERS NUMBER	NET DISBURSEMENTS (Gross disbursements less credits for items received) FOR REPORTING PERIOD	CUMULATIVE NET DISBURSEMENTS
(a)	(b)	(c)	(d)

4. List information below for each grant or other agreement covered by this report. Use additional forms if more space is required.

**FEDERAL GRANT OR OTHER IDENTIFI-
 CATION**

**RECIPIENT ACCOUNT NUMBER
 OR OTHER
 IDENTIFIERS NUMBER**

**NET DISBURSEMENTS (Gross
 disbursements less credits for
 items received) FOR REPORTING PERIOD**

**CUMULATIVE
 NET DISBURSEMENTS**

1. FEDERAL SPONSORING AGENCY AND ORGANIZATION (This form is completed and attached to Standard Form 273 only when reporting more than one grant or agreement.)

2. PERIOD COVERED BY THIS REPORT (As shown on SF 273)

3. PERIOD COVERED BY THIS REPORT (As shown on SF 273)

4. FEDERAL GRANT OR OTHER IDENTIFICATION NUMBER (Show a subdivision by other identification numbers if required by the Federal sponsoring Agency)

5. RECIPIENT ACCOUNT NUMBER OR OTHER IDENTIFIERS NUMBER

6. NET DISBURSEMENTS (Gross disbursements less credits for items received) FOR REPORTING PERIOD

7. CUMULATIVE NET DISBURSEMENTS

Approved by Office of Management and Budget, No. 50-1012

REQUEST FOR ADVANCE OR REIMBURSEMENT

(See instructions on back)

Approved by Office of Management and Budget, No. 01-55433		DATE OF REQUEST TYPE OF REQUEST <input type="checkbox"/> Cash <input type="checkbox"/> Other
1. TYPE OF PAYMENT REQUESTED <input type="checkbox"/> Advance <input type="checkbox"/> Reimbursement	2. TYPE OF REQUEST <input type="checkbox"/> Regular <input type="checkbox"/> Special	3. PERIOD COVERED BY THIS REQUEST FROM (month, day, year) TO (month, day, year)
4. AGENCY IDENTIFICATION NUMBER		5. FUNDING OFFICE OF THIS REQUEST FROM (month, day, year) TO (month, day, year)
6. REQUESTOR DESIGNATION Name : Number and Street : City, State and ZIP Code :		7. TITLE (Please check to be to and to approved from date) Name : Number and Street : City, State and ZIP Code :

11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED				
PROGRAMS/FUNCTIONS/ACTIVITIES -	(a)	(b)	(c)	TOTAL
a. Total program outlays to date <i>(As of date)</i>	\$	\$	\$	\$
b. Less: Cumulative program income				
c. Net program outlays (Line a minus line b)				
d. Estimated net cash outlays for advance period				
e. Total (Sum of lines c & d)				
f. Non-Federal share of amount on line e				
g. Federal share of amount on line e				
h. Federal payments previously requested				
i. Federal share now requested (Line g minus line h)				
j. Advances required by month, when requested by Federal grantor agency for use in making pre-authorized advances				
1st month				
2nd month				
3rd month				

12. ALTERNATE COMPUTATION FOR ADVANCES ONLY	
a. Estimated Federal cash outlays that will be made during period covered by the advance	\$
b. Less: Estimated balance of Federal cash on hand as of beginning of advance period	
c. Amount requested (Line a minus line b)	\$

13. CERTIFICATION		
I certify that to the best of my knowledge and belief the data above are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.	SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE REQUEST SUBMITTED
	TYPED OR PRINTED NAME AND TITLE	
	TELEPHONE	Area Code

This space for agency use

INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11c, 11e, 11f, 11g, 11i, 12 and 13 are self-explanatory. Specific instructions for other items are as follows:

- | Item | Entry | Item | Entry |
|------|---|------|--|
| 2 | Indicate whether request is prepared on cash or accrued expenditures basis. All requests for advances shall be prepared on a cash basis. | 11a | Use as many additional forms as needed and indicate page number in space provided in upper right corner. The summary totals of all programs, functions, or activities should be shown in the "Total" column on the first page. |
| 4 | Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement. | 11b | Enter in "as of date", the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays to date (net of rebates, rebates, and discounts), in the appropriate column. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expense incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contractors, subcontractors and other payees. |
| 6 | Enter the employer identification number assigned by the U.S. Internal Revenue Service, or the FICE (institution) code if requested by the Federal agency. | 11c | Enter the cumulative cash income received to date. If requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement. |
| 7 | This space is reserved for an account number or other identifying number that may be assigned by the recipient. | 11d | Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance. |
| 8 | Enter the month, day, and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested. | 13 | Complete the certification before submitting this request. |
| 11 | Note: The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in Item 11 can be obtained in a timely manner from other reports.

The purpose of the vertical columns (a), (b), and (c), is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional columns are needed, | | |

OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS
(See instructions on back)

Approved by Office of Management and Budget of Budget, No. 50-10181 PAGE 2

1. TYPE OF REQUEST
 FINAL PARTIAL

2. BASIS OF REQUEST
 CASH DEFERRED

3. FEDERAL SPONSORING AGENCY AND ORGANISATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED

4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY

5. PARTIAL PAYMENT REQUEST NO.

6. EMPLOYER IDENTIFICATION NUMBER

7. RECIPIENT ACCOUNT OR OTHER IDENTIFYING NUMBER

PERIOD COVERED BY THIS REPORT
FROM (Month, day, year) TO (Month, day, year)

8. RECIPIENT ORGANIZATION

9. PAYEE (Where check should be sent if different than item 8)

Name :
No. and Street :
City, State and ZIP Code :

Name :
No. and Street :
City, State and ZIP Code :

CLASSIFICATION	STATUS OF FUNDS			TOTAL
	(a)	(b)	(c)	
a. Administrative expense	\$	\$	\$	\$
b. Preliminary expense				
c. Land, structures, right-of-way				
d. Architectural engineering basic fees				
e. Other architectural engineering fees				
f. Project inspection fees				
g. Land development				
h. Relocation expense				
i. Relocation payments to individuals and businesses				
j. Demolition and removal				
k. Construction and project improvement cost				
l. Equipment				
m. Miscellaneous cost				
n. Total cumulative to date (sum of lines a thru m)				
o. Deductions for program income				
p. Net cumulative to date (Line n minus line o)				
q. Federal share to date				
r. Rehabilitation grants (100% reimbursement)				
s. Total Federal share (sum of lines q and r)				
t. Federal payments previously requested				
u. Amount requested for reimbursement	\$	\$	\$	\$
v. Percentage of physical completion of project	%	%	%	%

12. CERTIFICATION

I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.

a. RECIPIENT	SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE REPORT SUBMITTED
	TYPED OR PRINTED NAME AND TITLE	TELEPHONE (Area code, number and extension)
b. Representative certifying to line 11v.	SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE SHOWN
	TYPED OR PRINTED NAME AND TITLE	TELEPHONE (Area code, number and extension)

571-101 EXHIBIT 4

STANDARD FORM 571 (7-75)
Prescribed by Office of Management and Budget
CIRCULARS NO. A-102 AND A-110

INSTRUCTIONS

Please type or print legibly. Items 3, 4, 5, 6, 9, 10, 11a, and 11v are self-explanatory; specific instructions for other items are as follows:

Item	Entry	Item	Entry
1	Mark the appropriate box. If the request is final, the amounts billed should represent the final cost of the project.	1j	Enter gross salaries and wages of employees of the recipient and payments to third party contractors directly engaged in performing demolition or removal of structures from developed land. All proceeds from the sale of salvaged or the removal of structures should be credited to this account; thereby reflecting net amounts if required by the Federal agency.
2	Show whether amounts are computed on an accrued expenditure or cash disbursement basis.	11k	Enter those amounts associated with the actual construction of, addition to, or restoration of a facility. Also, include in this category, the amounts for project improvements such as sewers, streets, landscaping, and lighting.
6	Enter the employer identification number assigned by the U.S. Internal Revenue Service (or FICE (institution) code if requested by the Federal agency).	11l	Enter amounts for all equipment, both fixed and movable, exclusive of equipment used for construction. For example, permanently attached laboratory tables, built-in audio visual systems, movable desks, chairs, and laboratory equipment.
7	This space is reserved for an account number or other identifying number that may be assigned by the recipient.	11m	Enter the amounts for all items not specifically mentioned above.
11	The purpose of vertical columns (a) through (c) is to provide space for separate cost breakdowns when a large project has been planned and budgeted by program, function or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page. All amounts are reported on a cumulative basis.	11n	Enter the total cumulative amount to date which should be the sum of lines a through m.
11a	Enter amounts expended for such items as travel, legal fees, rental, of vehicles and any other administrative expenses. Include the amount of interest expense when authorized by program legislation. Also show the amount of interest expense on a separate sheet.	11o	Enter the total amount of program income applied to the grant or contract agreement except income included on line j. Identify on a separate sheet of paper the sources and types of the income.
11b	Enter amounts pertaining to the work of locating and designing, making surveys and maps, sinking test holes, and all other work required prior to actual construction.	11p	Enter the net cumulative amount to date which should be the amount shown on line n minus the amount on line o.
11c	Enter all amounts directly associated with the acquisition of land, existing structures and related right-of-way.	11q	Enter the Federal share of the amount shown on line p.
11d	Enter basic fees for services of architectural engineers.	11r	Enter the amount of rehabilitation grant payments made to individuals when program legislation provides 100 percent payment by the Federal agency.
11e	Enter other architectural engineering services. Do not include any amounts shown on line d.	11t	Enter the total amount of Federal payments previously requested, if this form is used for requesting reimbursement.
11f	Enter inspection and audit fees of construction and related programs.	11u	Enter the amount now being requested for reimbursement. This amount should be the difference between the amounts shown on lines s and t. If different, explain on a separate sheet.
11g	Enter all amounts associated with the development of land where the primary purpose of the grant is land improvement. The amount pertaining to land development normally associated with major construction should be excluded from this category and entered on line k.	12a	To be completed by the recipient official who is responsible for the operation of the program. The date should be the actual date the form is submitted to the Federal agency.
11h	Enter the dollar amounts used to provide relocation advisory assistance and net costs of replacement housing (last resort). Do not include amounts needed for relocation administrative expenses; these amounts should be included in amounts shown on line s.	12b	To be completed by the official representative who is certifying to the percent of project completion as provided for in the terms of the grant or agreement.
11i	Enter the amount of relocation payments made by the recipient to displaced persons, farms, business concerns, and nonprofit organizations.		

ATTACHMENT I
Circular No. A-102

MONITORING AND REPORTING OF PROGRAM PERFORMANCE

1. This Attachment sets forth the procedures for monitoring and reporting program performance under Federal grants. These procedures are designed to place greater reliance on grantees to manage the day-to-day operations of the grant-supported activities.

2. Grantees shall constantly monitor the performance under grant-supported activities to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity of each grant as set forth in the approved grant application or award document.

3. Grantees shall submit a performance report for each grant which briefly presents the following for each program, function, or activity involved as prescribed by the Federal agency:

a. A comparison of actual accomplishments to the goals established for the period. Where the output of grant programs can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

b. Reasons why established goals were not met.

c. Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

4. Except as provided in a and b below, and in subparagraph 3a(1), of Attachment H, grantees shall submit the performance or technical reports to Federal agencies and the Financial Status Reports covering the same period in the frequency established by Attachment H of this Circular and, where appropriate, a final technical or performance report after completion of the project on a date specified by the Federal agency. The Federal agency shall prescribe the frequency with which the performance reports will be submitted with the request for advance or reimbursement when that form is used in lieu of the Financial Status Report. Except as provided for in paragraph 5 below, performance reports shall not be required more frequently than quarterly or less frequently than annually. Federal agencies may waive the

requirement for grantees to submit performance reports with the financial reports under the following circumstances:

a. When the grantee is required to submit a performance report with a continuation or renewal application.

b. When the Federal agency determines that on-site technical inspections and certified completion data will be sufficient to evaluate construction projects.

c. When the Federal agency requests annual financial reports on a fiscal year basis but it is necessary to get annual progress reports on a calendar year basis.

5. Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the grantee shall inform the grantor agency as soon as the following types of conditions become known:

a. Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

b. Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

6. If any performance review conducted by the grantee discloses the need for change in the budget estimates in accordance with the criteria established in Attachment K to this Circular, the grantee shall submit a request for budget revision.

7. The grantor agency shall make site visits as frequently as practicable to:

a. Review program accomplishments and management control systems.

b. Provide such technical assistance as may be required.

8. Federal agencies shall submit proposed technical and performance reports to the Office of Management and Budget for



1300.17

Attachment I

approval in accordance with the report clearance requirements of OMB Circular No. A-40 as revised.

GRANT PAYMENT REQUIREMENTS

1. This Attachment establishes required methods of making payments to grantees. These methods will minimize the time elapsing between the disbursement by a grantee and the transfer of funds from the United States Treasury to the grantee, whether such disbursement occurs prior to or subsequent to the transfer of funds.

2. Grant payments are made to grantees through a letter of credit, an advance by Treasury check, or a reimbursement by Treasury check. The following definitions apply for the purpose of this Attachment:

a. Letter of credit. A letter of credit is an instrument certified by an authorized official of a grantor agency which authorizes a grantee to draw funds needed for immediate disbursement in accordance with the provisions of Treasury Circular No. 1075.

b. Advance by Treasury check. An advance by Treasury check is a payment made by a Treasury check to a grantee upon its request before cash outlays are made by the recipient or through the use of predetermined payment schedules before payments are made by the grantee.

c. Reimbursement by Treasury check. A reimbursement by Treasury check is a payment made to a grantee with a Treasury check upon request for reimbursement from the grantee.

3. Except for construction grants for which optional payment methods are authorized, the letter-of-credit funding method shall be used by grantor agencies where all of the following conditions exist:

a. When there is or will be a continuing relationship between a grantee and a Federal grantor agency for at least a 12-month period and the total amount of advances to be received within that period from the grantor agency is \$120,000 or more.

b. When the grantee has established or demonstrated to the grantor the willingness and ability to establish procedures that

Attachment J

will minimize the time elapsing between the transfer of funds and their disbursement by the grantee.

c. When the grantee's financial management system meets the standards for fund control and accountability prescribed in Attachment G to this Circular, "Standards for Grantee Financial Management Systems."

4. The method of advancing funds by Treasury check shall be used, in accordance with the provisions of Treasury Circular No. 1075, when the grantee meets all of the requirements specified in paragraph 3 above except those in 3.a.

5. The reimbursement by Treasury check method shall be the preferred method when the grantee does not meet the requirements specified in either or both of paragraphs 3.b. and 3.c. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and when the Federal grant assistance constitutes a minor portion of the program. When the reimbursement method is used the Federal agencies shall make payment within thirty days after receipt of the billing unless the billing is improper. With respect to payments to contractors, recipients shall not be reimbursed for amounts that are to be withheld to assure satisfactory completion of the work. These amounts will be paid when recipients make final payment including amounts withheld.

6. When the letter-of-credit procedure is used, the grantee shall be issued one consolidated letter-of-credit whenever possible to cover anticipated cash needs for all grants awarded by the Federal agency. Likewise, to the extent possible, when the advance by Treasury check method is used, advances should be consolidated (pooled) for all grants made by the Federal agency to the grantee.

7. Unless otherwise required by law, grantor agencies shall not withhold payments for proper charges made by State and local governments at any time during the grant period unless (a) a grantee has failed to comply with the program objectives, grant award conditions, or Federal reporting requirements, or (b) the grantee is indebted to the United States and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the United States. Under such conditions, the grantor may, upon reasonable notice, inform the grantee that payments will not be made for obligations incurred

after a specified date until the conditions are corrected or the indebtedness to the Federal government is liquidated.

8. Attachment H of this Circular, "Financial Reporting," provides for the procedures and forms for requesting advances or reimbursements.

ATTACHMENT K
Circular No. A-102

BUDGET REVISION PROCEDURES

1. This Attachment sets forth criteria and procedures to be followed by Federal grantor agencies in requiring grantees to report deviations from grant budgets and to request approvals for budget revisions.
2. The grant budget as used in this Attachment means the approved financial plan for both the Federal and non-Federal shares to carry out the purpose of the grant. This plan is the financial expression of the project or program as approved during the grant application and award process. It should be related to performance for program evaluation purposes whenever appropriate and required by the grantor agency.
3. For nonconstruction grants, grantees shall request prior approvals promptly from grantor agencies when there is reason to believe that a revision will be necessary for the following reasons:
 - a. Changes in the scope or the objective of the grant-supported project or program.
 - b. The need for additional Federal funding.
 - c. The revisions involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs if approval is required by the Federal agency.
 - d. The revisions pertain to the addition of items requiring approval in accordance with the provisions of OMB Circular A-87.
 - e. Recipients plan to transfer funds allotted for training allowances (direct payments to trainees) to other categories of expense.
4. For nonconstruction grants the Federal agency may also, at its option, restrict transfers of funds among direct cost categories for awards in which the Federal share exceeds \$100,000 when the cumulative amount of such transfers exceeds or is expected to exceed five percent of the total budget. The same criteria shall apply to the cumulative amount of transfers among programs, functions, and activities when budgeted separately for an award, except that the Federal agency shall permit no transfer

that would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

5. All other changes to nonconstruction grant budgets, except for the changes described in paragraph 7, do not require approval. These changes include (a) the use of grantee funds in furtherance of program objectives over and above the grantee minimum share included in the approved grant budget, and (b) the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

6. For construction grants, grantees shall request prior approvals promptly from grantor agencies for budget revisions whenever:

a. The revision results from changes in the scope or the objective of the project or program.

b. The revision increases the budgeted amounts of Federal funds needed to complete the project.

7. When a grantor agency awards a grant which provides support for both construction and nonconstruction work, the grantor agency may require the grantee to request prior approval from the grantor agency before making any fund or budget transfers between the two types of work supported.

8. For both construction and nonconstruction grants, grantor agencies shall require State and local governments to notify the grantor agency promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the grantee by more than \$5,000 or 5 percent of the Federal grant, whichever is greater. This notification will not be required when applications for additional funding are submitted for continuing grants.

9. When requesting approval for budget revisions, grantees shall use the budget forms which were used in the grant application. However, grantees may request by letter the approvals required by the provisions of OMB Circular A-87.

10. Within 30 days from the date of receipt of the request for budget revisions, grantor agencies shall review the request and notify the grantee whether or not the budget revisions have been approved. If the revision is still under consideration at the end of 30 days, the grantor shall inform the grantee in writing as to when the grantee may expect the decision.

ATTACHMENT L
Circular No. A-102

GRANT CLOSEOUT PROCEDURES

1. This Attachment prescribes uniform closeout procedures for grantees.

2. The following definitions shall apply for the purpose of this Attachment:

a. Grant closeout. The closeout of a grant is the process by which a Federal grantor agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the grantor.

b. Date of completion. The date when all work under a grant is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends.

c. Termination. The termination of a grant means the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the date of completion.

d. Suspension. The suspension of a grant is an action by a Federal grantor agency which temporarily suspends Federal assistance under the grant pending corrective action by the grantee or pending a decision to terminate the grant by the grantor agency.

e. Disallowed costs. Disallowed costs are those charges to a grant which the grantor agency or its representative determines to be unallowable. (See Federal Management Circular No. 74-4.)

3. All Federal grantor agencies shall establish grant closeout procedures which include the following requirements:

a. Upon request, the Federal grantor agency shall make prompt payments to a grantee for allowable reimbursable costs under the grant being closed out.

b. The grantee shall immediately refund to the grantor agency any balance of unobligated (unencumbered) cash

advanced to the grantee that is not authorized to be retained by the grantee for use on other grants.

c. The grantor agency shall obtain from the grantee within 90 days after the date of completion of the grant all financial, performance, and other reports required as a condition of the grant. The agency may grant extensions when requested by the grantee.

d. When authorized by the grant the grantor agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.

e. The grantee shall account for any property acquired with grant funds, or received from the Government in accordance with the provisions of Attachment N to this Circular.

f. In the event a final audit has not been performed prior to the closeout of the grant, the grantor agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

4. All Federal grantor agencies shall provide procedures to be followed when a grantee has failed to comply with the grant award stipulations, standards, or conditions. When that occurs, the grantor agency may, on reasonable notice to the grantee, suspend the grant, and withhold further payments, or prohibit the grantee from incurring additional obligations of grant funds, pending corrective action by the grantee or a decision to terminate in accordance with paragraph 5.a. The grantor agency shall allow all necessary and proper costs which the grantee could not reasonably avoid during the period of suspension provided that they meet the provisions of Federal Management Circular No. 74-4.

5. Subject to the provisions of paragraph 5 of the basic Circular, of which this Attachment is a part, all Federal grantor agencies shall provide for the systematic settlement of terminated grants including the following:

a. Termination for cause. The grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the

grant. The grantor agency shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date. Payments made to grantees or recoveries by the grantor agencies under grants terminated for cause shall be in accord with the legal rights and liabilities of the parties.

b. Termination for convenience. The grantor agency or grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Federal agency shall allow full credit to the grantee for the Federal share of the noncancellable obligations, properly incurred by the grantee prior to termination.

ATTACHMENT M
Circular No. A-102

STANDARD FORMS FOR APPLYING FOR FEDERAL ASSISTANCE

1. This Attachment promulgates standard forms to be used by State, local, and federally recognized Indian tribal governments in applying for all Federal grants except those Federal formula grant programs which do not require grantees to apply for Federal funds on a project basis. When applying for joint funded projects see OMB Circular No. A-111. The use of the standard forms by grantees in obtaining necessary information from subgrantees is optional.

2. The standard forms and their purposes are briefly described in the following paragraphs:

a. Preapplication for Federal Assistance (Exhibit 1). Preapplication for Federal Assistance is used to: (1) establish communication between the Federal grantor agency and the applicant; (2) determine the applicant's eligibility; (3) determine how well the project can compete with similar applications from others; and (4) eliminate any proposals which have little or no chance for Federal funding before applicants incur significant expenditures for preparing an application. Preapplication forms shall be required for all construction, land acquisition and land development projects or programs for which the need for Federal funding exceeds \$100,000. The Federal grantor agency may require the use of the preapplication form for other types of grant programs or for those for which the Federal fund request is for \$100,000 or less. In addition, Federal agencies shall establish procedures allowing State and local government applicants to submit, if they so desire, the preapplication form when mandatory requirements for preapplication do not exist.

b. Notice of Review Action (Exhibit 2). The purpose of the Notice of Review Action is to inform the applicant of the results of the review of the preapplication forms which were submitted to Federal grantor agencies. The Federal grantor agency shall send a notice to the applicant within 45 days of the receipt of the preapplication form. When the review cannot be made within 45 days, the applicant shall be informed by letter as to when the review will be completed.

c. Federal Assistance Application for Nonconstruction Programs (Exhibit 3). The Federal Assistance Application for

Nonconstruction Programs form is designed to accommodate several programs and shall be used by the applicant for all actions covered by this Attachment except where the major purpose of the grant involves construction, land acquisition, or development or single-purpose and one-time grant applications for less than \$10,000 which do not require clearinghouse approval, an environmental impact statement, or the relocation of persons, businesses, or farms.

d. Federal Assistance Application for Construction Programs (Exhibit 4). The Federal Assistance Application for Construction Programs form shall be used for all grants where the major purpose of the program involves construction, land acquisition, and land development, except when the Application for Federal Assistance-Short Form (paragraph 2e) is used.

e. Application for Federal Assistance--Short Form (Exhibit 5). The Application for Federal Assistance-Short Form shall be used for all grants for single-purpose and one-time grant applications for less than \$10,000 not requiring clearinghouse approval, an environmental impact statement, or the relocation of persons, businesses, or farms. Federal grantor agencies may, at their discretion, authorize the use of this form for applications for larger amounts.

3. For all forms described herein all requests by grantees for changes, continuations, and supplementals to approved grants shall be submitted on the same form as the original application. For these purposes, only the required pages of the forms should be submitted.

4. Federal agencies may specify and describe the programs, functions, or activities which will be used to plan, budget, and evaluate the work under the grant programs.

5. When additional information is needed to comply with legislative requirements or to meet specific program needs Federal agencies must comply with the reports clearance requirements of Office and Management Budget Circular No. A-40 as revised.

6. Additional assurances shall not be added to the standard assurances contained in the Circular unless specifically required by law.

7. Federal agencies have the option of shading out any line item on any form that is unnecessary for decisionmaking purposes or for meeting the requirements of other circulars or laws except for the Standard Form 424. This form should not be altered. If an item is not applicable, write or overprint "NA" in the space provided for each item.

8. Grantees shall submit the original and two copies of the application.

9. Federal grantor agencies are authorized to reproduce these forms. The forms for reproduction purposes can be obtained from the Office of Management and Budget. The Standard Form 424 can be obtained from the General Services Administration.

1300.17

Attachment M

OMB Approval No. 05-48109

FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION		3. STATE APPLICATION IDENTIFIER	
1. TYPE OF ACTION (Mark appropriate box) <input type="checkbox"/> PREAPPLICATION <input type="checkbox"/> APPLICATION <input type="checkbox"/> NOTIFICATION OF INTENT (Opt.) <input type="checkbox"/> REPORT OF FEDERAL ACTION		a. NUMBER		a. NUMBER	
		b. DATE Year month day 19		b. DATE ASSIGNED Year month day 19	
4. LEGAL APPLICANT/RESPONDENT		c. County		5. FEDERAL EMPLOYER IDENTIFICATION NO.	
a. Applicant Name		d. ZIP Code		6. PROGRAM (From Federal Catalog)	
b. Organization Unit				a. NUMBER	
c. Street/P.O. Box				b. TITLE	
d. City					
e. State					
f. Contact Person (Name & telephone No.)					
7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT				8. TYPE OF APPLICANT/RESPONDENT	
				A - State B - Interstate C - Substate D - State E - County F - City G - School State H - Special Purpose State I - Community Action Agency J - Higher Educational Institution K - Indian Tribe L - Other (Specify):	
				Enter appropriate letter <input type="checkbox"/>	
9. TYPE OF ASSISTANCE					
A - Basic Grant B - Supplemental Grant C - Loan D - Insurance E - Other (Specify)				Enter appropriate letter(s) <input type="checkbox"/>	
10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)		11. ESTIMATED NUMBER OF PERSONS BENEFITING		12. TYPE OF APPLICATION	
				A - New B - Renewal C - Revision D - Continuation E - Augmentation	
				Enter appropriate letter <input type="checkbox"/>	
13. PROPOSED FUNDING		14. CONGRESSIONAL DISTRICTS OF:		15. TYPE OF CHANGE (For 12 c or 12 d)	
a. FEDERAL \$.00	a. APPLICANT	b. PROJECT	A - Increase Dollars B - Decrease Dollars C - Increase Duration D - Decrease Duration E - Cancellation F - Other (Specify):	
b. APPLICANT	.00	16. PROJECT START DATE Year month day 19		Enter appropriate letter(s) <input type="checkbox"/>	
c. STATE	.00	17. PROJECT DURATION Months			
d. LOCAL	.00	18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY Year month day 19			
e. OTHER	.00				
f. TOTAL \$.00			19. EXISTING FEDERAL IDENTIFICATION NUMBER	
20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)				21. REMARKS ADDED	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
22. THE APPLICANT CERTIFIES THAT		a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.		b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached.	
		(1)		No response <input type="checkbox"/>	
		(2)		Response attached <input type="checkbox"/>	
		(3)		<input type="checkbox"/>	
23. CERTIFYING REPRESENTATIVE		a. TYPED NAME AND TITLE		b. SIGNATURE	
				c. DATE SIGNED Year month day 19	
24. AGENCY NAME				25. APPLICATION RECEIVED 19	
26. ORGANIZATIONAL UNIT		27. ADMINISTRATIVE OFFICE		28. FEDERAL APPLICATION IDENTIFICATION	
29. ADDRESS				30. FEDERAL GRANT IDENTIFICATION	
31. ACTION TAKEN		32. FUNDING		33. ACTION DATE Year month day 19	
<input type="checkbox"/> a. AWARDED		a. FEDERAL \$.00	34. STARTING DATE 19	
<input type="checkbox"/> b. REJECTED		b. APPLICANT	.00	35. ENDING DATE 19	
<input type="checkbox"/> c. RETURNED FOR AMENDMENT		c. STATE	.00	36. REMARKS ADDED	
<input type="checkbox"/> d. DEFERRED		d. LOCAL	.00	<input type="checkbox"/> Yes <input type="checkbox"/> No	
<input type="checkbox"/> e. WITHDRAWN		e. OTHER	.00		
		f. TOTAL \$.00		
38. FEDERAL AGENCY A-95 ACTION		a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made.		b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)	



1300.17

Attachment M

Attachment M

ACTION IV—REMARKS (Please reference the proper item number from Sections I, II or III, if applicable)

GENERAL INSTRUCTIONS

This is a multi-purpose standard form. First, it will be used by applicants as a required facesheet for pre-applications and applications submitted in accordance with OMB Circular A-102. Second, it will be used by Federal agencies to report to clearinghouses on major actions taken on applications reviewed by clearinghouses in accordance with OMB Circular A-95. Third, it will be used by Federal agencies to notify States of grants-in-aid awarded in accordance with Treasury Circular 1082. Fourth, it may be used, on an optional basis, as a notification of intent from applicants to clearinghouses, as an early initial notice that Federal assistance is to be applied for (clearinghouse procedures will govern).

APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk "*" and use the remarks section on the back of the form. An explanation follows for each item:

- | Item | Item |
|---|--|
| 1. Mark appropriate box. Pre-application and application guidance is in OMB Circular A-102 and Federal agency program instructions. Notification of intent guidance is in Circular A-95 and procedures from clearinghouse. Applicant will not use "Report of Federal Action" box. | 10. Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit affected, list it rather than subunits. |
| 2a. Applicant's own control number, if desired. | 11. Estimated number of persons directly benefiting from project. |
| 2b. Date Section I is prepared. | 12. Use appropriate code letter. Definitions are: |
| 3a. Number assigned by State clearinghouse, or if delegated by State, by areawide clearinghouse. All requests to Federal agencies <i>must</i> contain this identifier if the program is covered by Circular A-95 and required by applicable State/areawide clearinghouse procedures. If in doubt, consult your clearinghouse. | A. New. A submittal for the first time for a new project. |
| 3b. Date applicant notified of clearinghouse identifier. | B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year. |
| 4a-4h. Legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request. | C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease). |
| 5. Employer identification number of applicant as assigned by Internal Revenue Service. | D. Continuation. An extension for an additional funding/budget period for a project the agency initially agreed to fund for a definite number of years. |
| 6a. Use Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint-funding) write "multiple" and explain in remarks. If unknown, cite Public Law or U.S. Code. | E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged. |
| 6b. Program title from Federal Catalog. Abbreviate if necessary. | 13. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of the change. For decreases enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 13a, amount requested from Federal Government; 13b, amount applicant will contribute; 13c, amount from State, if applicant is not a State; 13d, amount from local government, if applicant is not a local government; 13e, amount from any other sources, explain in remarks. |
| 7. Brief title and appropriate description of project. For notification of intent, continue in remarks section if necessary to convey proper description. | 14a. Self explanatory. |
| 8. Mostly self-explanatory. "City" includes town, township or other municipality. | 14b. The district(s) where most of actual work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide." |
| 9. Check the type(s) of assistance requested. The definitions of the terms are: | 15. Complete only for revisions (item 12c), or augmentations (item 12e). |
| A. Basic Grant. An original request for Federal funds. This would not include any contribution provided under a supplemental grant. | 16. Approximate date project expected to begin (usually associated with estimated date of availability of funding). |
| B. Supplemental Grant. A request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share). | 17. Estimated number of months to complete project after Federal funds are available. |
| C. Loan. Self explanatory. | 18. Estimated date pre-application/application will be submitted to Federal agency if this project requires clearinghouse review. If review not required, this date would usually be same as date in item 2b. |
| D. Insurance. Self explanatory. | |
| E. Other. Explain on remarks page. | |

- | Item | Item |
|--|---|
| 19. Existing Federal identification number if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA". | 20. Indicate Federal agency to which this request is addressed. Street address not required, but do use ZIP. |
| | 21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached. |

APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete items 23a, 23b, and 23c. If clearinghouse review is required, item 22b must be fully completed. An explanation follows for each item:

- | Item | Item |
|--|---|
| 22b. List clearinghouses to which submitted and show in appropriate blocks the status of their responses. For more than three clearinghouses, continue in remarks section. All written comments submitted by or through clearinghouses must be attached. | 23b. Self explanatory. |
| 23a. Name and title of authorized representative of legal applicant. | 23c. Self explanatory. |
| | Note: Applicant completes only Sections I and II. Section III is completed by Federal agencies. |

FEDERAL AGENCY PROCEDURES FOR SECTION III

If applicant-supplied information in Sections I and II needs no updating or adjustment to fit the final Federal action, the Federal agency will complete Section III only. An explanation for each item follows:

- | Item | Item |
|---|---|
| 24. Executive department or independent agency having program administration responsibility. | 35. Name and telephone no. of agency person who can provide more information regarding this assistance. |
| 25. Self explanatory. | 36. Date after which funds will no longer be available. |
| 26. Primary organizational unit below department level having direct program management responsibility. | 37. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks. |
| 27. Office directly monitoring the program. | 38. For use with A-95 action notices only. Name and telephone of person who can assure that appropriate A-95 action has been taken—if same as person shown in item 35, write "same". If not applicable, write "NA". |
| 28. Use to identify non-award actions where Federal grant identifier in item 30 is not applicable or will not suffice. | |
| 29. Complete address of administering office shown in item 26. | |
| 30. Use to identify award actions where different from Federal application identifier in item 28. | |
| 31. Self explanatory. Use remarks section to amplify where appropriate. | |
| 32. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 32a, amount awarded by Federal Government; 32b, amount applicant will contribute; 32c, amount from State, if applicant is not a State; 32d, amount from local government if applicant is not a local government; 32e, amount from any other sources, explain in remarks. | |
| 33. Date action was taken on this request. | |
| 34. Date funds will become available. | |

Federal Agency Procedures—special considerations

- A. *Treasury Circular 1082 compliance.* Federal agency will assure proper completion of Sections I and III. If Section I is being completed by Federal agency, all applicable items must be filled in. Addresses of State Information Reception Agencies (SCIRA's) are provided by Treasury Department to each agency. This form replaces SF 240, which will no longer be used.
- B. *OMB Circular A-95 compliance.* Federal agency will assure proper completion of Sections I, II, and III. This form is required for notifying all reviewing clearinghouses of major actions on all programs reviewed under A-95. Addresses of State and area-wide clearinghouses are provided by OMB to each agency. Substantive differences between applicant's request and/or clearinghouse recommendations, and the project as finally awarded will be explained in A-95 notifications to clearinghouses.
- C. *Special note.* In most, but not all States, the A-95 State clearinghouse and the (TC 1082) SCIRA are the same office. In such cases, the A-95 award notice to the State clearinghouse will fulfill the TC 1082 award notice requirement to the State SCIRA. Duplicate notification should be avoided.

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Attachment M

OMB Approval No. 00-20107

PREAPPLICATION FOR FEDERAL ASSISTANCE

PART II

1. Does this assistance request require State, local, regional or other priority rating? _____ Yes _____ No
2. Does this assistance require State or local advisory, educational or health clearance? _____ Yes _____ No
3. Does this assistance request require Clearinghouse review? _____ Yes _____ No
4. Does this assistance request require State, local, regional or other planning approval? _____ Yes _____ No
5. Is the proposed project covered by an approved comprehensive plan? _____ Yes _____ No
6. Will the assistance requested serve a Federal installation? _____ Yes _____ No
7. Will the assistance requested be on Federal land or installation? _____ Yes _____ No
8. Will the assistance requested have an effect on the environment? _____ Yes _____ No
9. Will the assistance requested cause the displacement of individuals, families, businesses, or farms? _____ Yes _____ No
10. Is there other related assistance for this project previous, pending, or anticipated? _____ Yes _____ No

PART III - PROJECT BUDGET

FEDERAL CATALOG NUMBER (a)	TYPE OF ASSISTANCE LOAN, GRANT, ETC. (b)	FIRST BUDGET PERIOD (c)	BALANCE OF PROJECT (d)	TOTAL (e)
1.				
2.				
3.				
4.				
5.				
6. Total Federal Contribution		\$	\$	\$
7. State Contribution				
8. Applicant Contribution				
9. Other Contributions				
10. Totals		\$	\$	\$

PART IV - PROGRAM NARRATIVE STATEMENT

(Attach per instruction)

INSTRUCTIONS

PART II

Negative answers will not require an explanation unless the Federal agency requests more information at a later date. All "Yes" answers must be explained on a separate page in accordance with the instructions.

Item 1 - Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that it will be obtained.

Item 2 - Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the date it will be obtained.

Item 3 - Attach the clearinghouse comments for the pre-application in accordance with the instructions contained in Office of Management and Budget Circular No. A-95.

Item 4 - Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained.

Item 5 - Show whether the approved comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plan is not available, explain why.

Item 6 - Show the population residing or working on the Federal installation who will benefit from this project.

Item 7 - Show the percentage of the project work that will be conducted on federally-owned or leased land. Give the name of the Federal installation and its location.

Item 8 - Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it. Federal agencies will provide separate instructions, if additional data is needed.

Item 9 - State the number of individuals, families, businesses, or farms this project will displace. Federal agencies

will provide separate instructions, if additional data is needed.

Item 10 - Show the Federal Domestic Assistance Catalog number, the program name, the type of assistance, the status, and amount of each project where there is related previous, pending, or anticipated assistance.

PART III

Complete: Lines 1-5 - Columns (a)-(e). Enter the catalog numbers shown in the Catalog of Federal Domestic Assistance in Column (a) and the type of assistance in Column (b). For each line entry in Columns (a) and (b), enter in Columns (c), (d), and (e), the estimated amounts of Federal funds needed to support the project. Columns (c) and (d) may be left blank, if not applicable.

Line 6 - Show the totals for Lines 1-5 for Columns (c), (d), and (e).

Line 7 - Enter the estimated amounts of State assistance, if any, including the value of in-kind contributions, in Columns (c), (d), and (e). Applicants which are States or State agencies should leave Line 7 blank.

Line 8 - Enter the estimated amounts of funds and value of in-kind contributions the applicant will provide to the program or project in Columns (c), (d), and (e).

Line 9 - Enter the amount of assistance including the value of in-kind contributions, expected from all other contributors in Columns (c), (d), and (e).

Line 10 - Enter the totals of Columns (c), (d), and (e).

PART IV

The program narrative statement should be brief and describe the need, objectives, method of accomplishment, the geographical location of the project, and the benefits expected to be obtained from the assistance. The statement should be typed on a separate sheet of paper and submitted with the preapplication. Also attach any data that may be needed by the grantor agency to establish the applicant's eligibility for receiving assistance under the Federal program(s).

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Attachment M

NOTICE OF PREAPPLICATION REVIEW ACTION

From: _____
(Department, bureau, or establishment)

Agency Number

To:

Reference Your Preapplication
Number _____
Dated: _____

1. We have reviewed your preapplication for Federal assistance under _____ and have determined that your proposal is:

- _____ eligible for funding by this agency and can compete with similar applications from other grantees.
- _____ eligible but does not have the priority necessary for further consideration at this time.
- _____ not eligible for funding by this agency.

2. Therefore, we suggest that you:

- _____ file a formal application with us by (date) _____.
- _____ file an application with _____ (Suggested Federal agency).
- _____ find other means of funding this project.

3. Based upon the funds available for this program over the last two fiscal years and the number of applications reviewed, or pending, we anticipate that funds for which you are competing will be available after (month, year) _____.

4. You requested \$ _____ Federal funding in your preapplication form, and we:
_____ are agreeable to consideration of approximately this amount in the formal application.
_____ will need to analyze the amount requested in more detail.

5. A preapplication conference will be _____ necessary _____ not necessary. We are recommending that it be held at _____, on _____, at _____ a.m./p.m. Please contact the undersigned for confirmation.

6. Enclosures: _____ Forms _____ Instructions _____ Other (Specify) _____

7. Other Remarks:

Signature	Title	Date
Organisational Unit	Administrative Office	Telephone Number

Address

NOTE: This form will be used by Federal agencies to inform applicants of the results of a review of their preapplication request for Federal assistance. When the review cannot be performed within 45 days, the applicant shall be informed by letter as to when the review will be completed. When Federal agencies determine that the proposal is not eligible for Federal assistance, specific reasons should be provided in Item 7 Other Remarks.



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Attachment M

OAS Approval No. 88-00109

FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION	3. STATE APPLICATION IDENTIFIER
1. TYPE OF ACTION (Mark appropriate box) <input type="checkbox"/> PREAPPLICATION <input type="checkbox"/> APPLICATION <input type="checkbox"/> NOTIFICATION OF INTENT (NPL) <input type="checkbox"/> REPORT OF FEDERAL ACTION		a. NUMBER b. DATE Year month day 19	a. NUMBER b. DATE ASSIGNED Year month day 19
4. LEGAL APPLICANT/RECIPIENT a. Applicant Name b. Organization Unit c. Street/P.O. Box d. City e. State f. Contact Person (Name & telephone No.)		a. County b. ZIP Code	5. FEDERAL EMPLOYER IDENTIFICATION NO. a. NUMBER b. TITLE (From Federal Catalog)
7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT		8. TYPE OF APPLICANT/RECIPIENT A- State B- Interstate C- Subarea D- State E- County F- City G- School District H- Special Purpose District I- Community Action Agency J- Higher Educational Institution K- Indian Tribe L- Other (Specify):	
10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)		9. TYPE OF ASSISTANCE A- Basic Grant B- Supplemental Grant C- Loan D- Insurance E- Other (Enter appropriate letter(s))	
13. PROPOSED FUNDING		11. ESTIMATED NUMBER OF PERSONS BENEFITING	
a. FEDERAL \$.00	b. APPLICANT .00	12. TYPE OF APPLICATION A- New B- Renewal C- Revision D- Continuation E- Augmentation Enter appropriate letter <input type="checkbox"/>	
c. STATE .00	d. LOCAL .00	15. TYPE OF CHANGE (For 12 c or 12 e) A- Increase Dollars B- Decrease Dollars C- Increase Duration D- Decrease Duration E- Cancellation F- Other (Specify): Enter appropriate letter(s) <input type="checkbox"/>	
e. OTHER .00	f. TOTAL \$.00	17. PROJECT DURATION Months	
14. CONGRESSIONAL DISTRICTS OF: a. APPLICANT b. PROJECT		18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY Year month day 19	
19. EXISTING FEDERAL IDENTIFICATION NUMBER		21. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No	
20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)		22. THE APPLICANT CERTIFIES THAT: a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved. b. If required by OAS Chapter A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached: (1) <input type="checkbox"/> (2) <input type="checkbox"/> (3) <input type="checkbox"/>	
23. CERTIFYING REPRESENTATIVE a. TYPED NAME AND TITLE b. SIGNATURE c. DATE SIGNED Year month day 19		24. AGENCY NAME	
25. ORGANIZATIONAL UNIT		26. FEDERAL APPLICATION IDENTIFICATION	
27. ADDRESS		28. FEDERAL GRANT IDENTIFICATION	
29. ACTION TAKEN <input type="checkbox"/> a. AWARDED <input type="checkbox"/> b. REJECTED <input type="checkbox"/> c. RETURNED FOR AMENDMENT <input type="checkbox"/> d. DEFERRED <input type="checkbox"/> e. WITHDRAWN		30. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)	
31. FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00		32. ACTION DATE Year month day 19	
33. FEDERAL AGENCY A-95 ACTION a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OAS Chapter A-95, it has been or is being made. b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)		34. STARTING DATE Year month day 19	
		35. ENDING DATE 19	
		37. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No	

SECTION I - APPLICANT/RECIPIENT DATA

SECTION II - CERTIFICATION

SECTION III - FEDERAL AGENCY ACTION

1300.17

Attachment M

SECTION IV—REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

GENERAL INSTRUCTIONS

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APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk "*" and use the remarks section on the back of the form. An explanation follows for each item:

- | Item | Item |
|---|--|
| 1. Mark appropriate box. Pre-application and application guidance is in OMB Circular A-102 and Federal agency program instructions. Notification of intent guidance is in Circular A-95 and procedures from clearinghouse. Applicant will not use "Report of Federal Action" box. | 10. Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit affected, list it rather than subunits. |
| 2a. Applicant's own control number, if desired | 11. Estimated number of persons directly benefiting from project. |
| 2b. Date Section I is prepared | 12. Use appropriate code letter. Definitions are: |
| 3a. Number assigned by State clearinghouse, or if delegated by State, by areawide clearinghouse. All requests to Federal agencies <i>must</i> contain this identifier if the program is covered by Circular A-95 and required by applicable State/areawide clearinghouse procedures. If in doubt, consult your clearinghouse. | A. New. A submittal for the first time for a new project. |
| 3b. Date applicant notified of clearinghouse identifier. | B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year. |
| 4a-4h. Legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request. | C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease). |
| 5. Employer identification number of applicant as assigned by Internal Revenue Service. | D. Continuation. An extension for an additional funding/budget period for a project the agency initially agreed to fund for a definite number of years. |
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| 7. Brief title and appropriate description of project. For notification of intent, continue in remarks section if necessary to convey proper description. | 14a. Self explanatory. |
| 8. Mostly self-explanatory. "City" includes town, township or other municipality. | 14b. The district(s) where most of actual work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide." |
| 9. Check the type(s) of assistance requested. The definitions of the terms are: | 15. Complete only for revisions (Item 12c), or augmentations (Item 12e). |
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| C. Loan. Self explanatory. | 18. Estimated date pre-application/application will be submitted to Federal agency if this project requires clearinghouse review. If review not required, this date would usually be same as date in Item 2b. |
| D. Insurance. Self explanatory. | |
| E. Other. Explain on remarks page. | |

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

GENERAL INSTRUCTIONS

This is a multi-purpose standard form. First, it will be used by applicants as a required facesheet for pre-applications and applications submitted in accordance with OMB Circular A-102. Second, it will be used by Federal agencies to report to clearinghouses on major actions taken on applications reviewed by clearinghouses in accordance with OMB Circular A-95. Third, it will be used by Federal agencies to notify States of grants-in-aid awarded in accordance with Treasury Circular 1082. Fourth, it may be used, on an optional basis, as a notification of intent from applicants to clearinghouses, as an early initial notice that Federal assistance is to be applied for (clearinghouse procedures will govern).

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- | Item | Item |
|---|--|
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| 2a. Applicant's own control number, if desired | 11. Estimated number of persons directly benefiting from project. |
| 2b. Date Section I is prepared. | 12. Use appropriate code letter. Definitions are: |
| 3a. Number assigned by State clearinghouse, or if delegated by State, by areawide clearinghouse. All requests to Federal agencies <i>must</i> contain this identifier if the program is covered by Circular A-95 and required by applicable State/areawide clearinghouse procedures. If in doubt, consult your clearinghouse. | A. New. A submittal for the first time for a new project. |
| 3b. Date applicant notified of clearinghouse identifier. | B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year. |
| 4a-4h. Legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request. | C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease). |
| 5. Employer identification number of applicant as assigned by Internal Revenue Service. | D. Continuation. An extension for an additional funding/budget period for a project the agency initially agreed to fund for a definite number of years. |
| 6a. Use Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint-funding) write "multiple" and explain in remarks. If unknown, cite Public Law or U.S. Code. | E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged. |
| 6b. Program title from Federal Catalog. Abbreviate if necessary. | 13. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of the change. For decreases enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 13a, amount requested from Federal Government; 13b, amount applicant will contribute; 13c, amount from State, if applicant is not a State; 13d, amount from local government, if applicant is not a local government; 13e, amount from any other sources, explain in remarks. |
| 7. Brief title and appropriate description of project. For notification of intent, continue in remarks section if necessary to convey proper description. | 14a. Self explanatory. |
| 8. Mostly self-explanatory. "City" includes town, township or other municipality. | 14b. The district(s) where most of actual work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide." |
| 9. Check the type(s) of assistance requested. The definitions of the terms are: | 15. Complete only for revisions (Item 12c), or augmentations (Item 12e). |
| A. Basic Grant. An original request for Federal funds. This would not include any contribution provided under a supplemental grant. | 16. Approximate date project expected to begin (usually associated with estimated date of availability of funding). |
| B. Supplemental Grant. A request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share). | 17. Estimated number of months to complete project after Federal funds are available. |
| C. Loan. Self explanatory. | 18. Estimated date pre-application/application will be submitted to Federal agency if this project requires clearinghouse review. If review not required, this date would usually be same as date in Item 2b. |
| D. Insurance. Self explanatory. | |
| E. Other. Explain on remarks page. | |

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- | <i>Item</i> | <i>Item</i> |
|--|---|
| 19. Existing Federal identification number if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA". | 20. Indicate Federal agency to which this request is addressed. Street address not required, but do use ZIP. |
| | 21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached. |

APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete items 23a, 23b, and 23c. If clearinghouse review is required, item 22b must be fully completed. An explanation follows for each item:

- | <i>Item</i> | <i>Item</i> |
|--|--|
| 22b. List clearinghouses to which submitted and show in appropriate blocks the status of their responses. For more than three clearinghouses, continue in remarks section. All written comments submitted by or through clearinghouses must be attached. | 23b. Self explanatory. |
| 23a. Name and title of authorized representative of legal applicant. | 23c. Self explanatory. |
| | <i>Note:</i> Applicant completes only Sections I and II. Section III is completed by Federal agencies. |

FEDERAL AGENCY PROCEDURES FOR SECTION III

If applicant-supplied information in Sections I and II needs no updating or adjustment to fit the final Federal action, the Federal agency will complete Section III only. An explanation for each item follows:

- | <i>Item</i> | <i>Item</i> |
|---|---|
| 24. Executive department or independent agency having program administration responsibility. | 35. Name and telephone no. of agency person who can provide more information regarding this assistance. |
| 25. Self explanatory. | 36. Date after which funds will no longer be available. |
| 26. Primary organizational unit below department level having direct program management responsibility. | 37. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks. |
| 27. Office directly monitoring the program. | 38. For use with A-95 action notices only. Name and telephone of person who can assure that appropriate A-95 action has been taken—If same as person shown in item 35, write "same". If not applicable, write "NA". |
| 28. Use to identify non-award actions where Federal grant identifier in item 30 is not applicable or will not suffice. | |
| 29. Complete address of administering office shown in item 26. | |
| 30. Use to identify award actions where different from Federal application identifier in item 28. | |
| 31. Self explanatory. Use remarks section to amplify where appropriate. | |
| 32. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 32a, amount awarded by Federal Government; 32b, amount applicant will contribute; 32c, amount from State, if applicant is not a State; 32d, amount from local government if applicant is not a local government; 32e, amount from any other sources, explain in remarks. | |
| 33. Date action was taken on this request. | |
| 34. Date funds will become available. | |

Federal Agency Procedures—special considerations

- A. Treasury Circular 1082 compliance.** Federal agency will assure proper completion of Sections I and III. If Section I is being completed by Federal agency, all applicable items must be filled in. Addresses of State Information Reception Agencies (SCIRA's) are provided by Treasury Department to each agency. This form replaces SF 240, which will no longer be used.
- B. OMB Circular A-95 compliance.** Federal agency will assure proper completion of Sections I, II, and III. This form is required for notifying all reviewing clearinghouses of major actions on all programs reviewed under A-95. Addresses of State and areawide clearinghouses are provided by OMB to each agency. Substantive differences between applicant's request and/or clearinghouse recommendations, and the project as finally awarded will be explained in A-95 notifications to clearinghouses.
- C. Special note.** In most, but not all States, the A-95 State clearinghouse and the (TC 1082) SCIRA are the same or 'ce. In such cases, the A-95 award notice to the State clearinghouse will fulfill the TC 1082 award notice requirement to the State SCIRA. Duplicate notification should be avoided.

Exhibit M-3. Application for Federal Assistance
(Nonconstruction Programs)
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PART II
PROJECT APPROVAL INFORMATION

OMB NO. 50-106 186

Item 1.
Does this assistance request require State, local, regional, or other priority rating? _____ Yes _____ No
Name of Governing Body _____
Priority Rating _____

Item 2.
Does this assistance request require State, or local advisory, educational or health clearances? _____ Yes _____ No
Name of Agency or Board _____
(Attach Documentation)

Item 3.
Does this assistance request require clearinghouse review in accordance with OMB Circular A-95? _____ Yes _____ No
(Attach Comments)

Item 4.
Does this assistance request require State, local, regional or other planning approval? _____ Yes _____ No
Name of Approving Agency _____
Date _____

Item 5.
Is the proposed project covered by an approved comprehensive plan? _____ Yes _____ No
Check one: State
Local
Regional
Location of Plan _____

Item 6.
Will the assistance requested serve a Federal installation? _____ Yes _____ No
Name of Federal Installation _____
Federal Population benefiting from Project _____

Item 7.
Will the assistance requested be on Federal land or installation? _____ Yes _____ No
Name of Federal Installation _____
Location of Federal Land _____
Percent of Project _____

Item 8.
Will the assistance requested have an impact or effect on the environment? _____ Yes _____ No
See instructions for additional information to be provided.

Item 9.
Will the assistance requested cause the displacement of individuals, families, businesses, or farms? _____ Yes _____ No
Number of:
Individuals _____
Families _____
Businesses _____
Farms _____

Item 10.
Is there other related assistance on this project previous, pending, or anticipated? _____ Yes _____ No
See instructions for additional information to be provided.

Item 11.
Is the project in a designated flood hazard area? _____ Yes _____ No
See instructions for additional information to be provided.

Exhibit M-3. Application for Federal Assistance (Nonconstruction Programs)

INSTRUCTIONS

PART II

Negative answers will not require an explanation unless the Federal agency requests more information at a later date. Provide supplementary data for all "Yes" answers in the space provided in accordance with the following instructions:

Item 1 - Provide the name of the governing body establishing the priority system and the priority rating assigned to this project.

Item 2 - Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval.

Item 3 - Attach the clearinghouse comments for the application in accordance with the instructions contained in Office of Management and Budget Circular No. A-95. If comments were submitted previously with a preapplication, do not submit them again but any additional comments received from the clearinghouse should be submitted with this application.

Item 4 - Furnish the name of the approving agency and the approval date.

Item 5 - Show whether the approved comprehensive plan is State, local or regional, or if none of these, explain the

scope of the plan. Give the location where the approved plan is available for examination and state whether this project is in conformance with the plan.

Item 6 - Show the population residing or working on the Federal installation who will benefit from this project.

Item 7 - Show the percentage of the project work that will be conducted on federally-owned or leased land. Give the name of the Federal installation and its location.

Item 8 - Describe briefly the possible beneficial and harmful impact on the environment of the proposed project. If an adverse environmental impact is anticipated, explain what action will be taken to minimize the impact. Federal agencies will provide separate instructions if additional data is needed.

Item 9 - State the number of individuals, families, businesses, or farms this project will displace. Federal agencies will provide separate instructions if additional data is needed.

Item 10 - Show the Federal Domestic Assistance Catalog number, the program name, the type of assistance, the status and the amount of each project where there is related previous, pending or anticipated assistance. Use additional sheets, if needed.

PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

Exhibit M-3. Application for Federal Assistance (Nonconstruction Programs)

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INSTRUCTIONS

PART III

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may not require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1-4, Columns (a) and (b).

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single program requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to *multiple programs where none* of the programs *require* a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple programs where one or more programs require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g).

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For *continuing grant program applications*, submit these forms before the end of each funding period as required by

the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period *only* if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes to existing grants*, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should *not* equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets were prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-h - Show the estimated amount for each direct cost budget (object class) category for each column with program, function or activity heading.

Line 6i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost. Refer to FMC 74-4.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5. When additional sheets were prepared, the last two sentences apply only to the first page with summary totals.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	\$	\$	\$	\$
9.				
10.				
11.				
12. TOTALS	\$	\$	\$	\$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$	\$	\$	\$	\$
14. Non-Federal					
15. TOTAL	\$	\$	\$	\$	\$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	\$	\$	\$	\$
17.				
18.				
19.				
20. TOTALS	\$	\$	\$	\$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

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PART IV PROGRAM NARRATIVE (Attach per instruction)

Exhibit M-3. Application for Federal Assistance (Nonconstruction Programs)

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INSTRUCTIONS

PART III
(continued)

Section C. Source of Non-Federal Resources

Line 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet. (See Attachment F, FMC 74-7. *

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the amount of cash and in-kind contributions to be made by the applicant as shown in Section A. (See also Attachment F, FMC 74-7.

Column (c) - Enter the State contribution if the applicant is *not* a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuing grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This Section need not be completed for amendments, changes, or supplements to funds for the current year of existing grants.

If more than four lines are needed to list the program titles submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F - Other Budget Information.

Line 21 - Use this space to explain amounts for individual direct object cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, pre-determined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations required herein or any other comments deemed necessary.

INSTRUCTIONS

PART IV
PROGRAM NARRATIVE

Prepare the program narrative statement in accordance with the following instructions for all new grant programs. Requests for continuation or refunding and changes on an approved project should respond to item 5b only. Requests for supplemental assistance should respond to question 5c only.

1. OBJECTIVES AND NEED FOR THIS ASSISTANCE.

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

2. RESULTS OR BENEFITS EXPECTED.

Identify results and benefits to be derived. For example, when applying for a grant to establish a neighborhood health center provide a description of who will occupy the facility, how the facility will be used, and how the facility will benefit the general public.

3. APPROACH.

- a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program, function or activity, provided in the budget. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.
- b. Provide for each grant program, function or activity, quantitative monthly or quarterly projections of the accomplishments to be achieved in such terms as the number of jobs created; the number of people served; and the number of patients treated. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

- c. Identify the kinds of data to be collected and maintained and discuss the criteria to be used to evaluate the results and successes of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in item 2 are being achieved.

- d. List organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

4. GEOGRAPHIC LOCATION.

Give a precise location of the project or area to be served by the proposed project. Maps or other graphic aids may be attached.

5. IF APPLICABLE, PROVIDE THE FOLLOWING INFORMATION:

- a. For research or demonstration assistance requests, present a biographical sketch of the program director with the following information; name, address, phone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project.
- b. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location approach, or time delays, explain and justify. For other requests for changes or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded, or if individual budget items have changed more than the prescribed limits contained in Attachment K to Office of Management and Budget Circular No. A-102, explain and justify the change and its effect on the project.
- c. For supplemental assistance requests, explain the reason for the request and justify the need for additional funding.

Exhibit M-3. Application for Federal Assistance (Nonconstruction Programs)

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PART V

ASSURANCES

The Applicant hereby assures and certifies that he will comply with the regulations, policies, guidelines and requirements, including OMB Circulars No. A-95, A-102 and No. A-87, as they relate to the application, exceptance and use of Federal funds for this federally-assisted project. Also the Applicant assures and certifies to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.
4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-846) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.
5. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.
7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.
9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.
10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

Exhibit M-3. Application for Federal Assistance (Nonconstruction Programs)

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PART V (Continued)

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

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Attachment M

OMB Approval No. 05-P0109

FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION	a. NUMBER	3. STATE APPLICATION IDENTIFIER	a. NUMBER
1. TYPE OF ACTION (Mark appropriate box) <input type="checkbox"/> PREAPPLICATION <input type="checkbox"/> APPLICATION <input type="checkbox"/> NOTIFICATION OF INTENT (SPL) <input type="checkbox"/> REPORT OF FEDERAL ACTION		Leave Blank	b. DATE Year month day 19	b. DATE ASSIGNED Year month day 19	
4. LEGAL APPLICANT/RECIPIENT a. Applicant Name b. Organization Unit c. Street/P.O. Box d. City e. County f. State g. Contact Person (Name & telephone No.)			5. FEDERAL EMPLOYER IDENTIFICATION NO. a. NUMBER b. TITLE (From Federal Catalog)		
7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT		8. TYPE OF APPLICANT/RECIPIENT A - State B - Interstate C - District D - County E - City F - School District G - Special Purpose District H - Community Action Agency I - Higher Educational Institute J - Indian Tribe K - Other (Specify): Enter appropriate letter <input type="checkbox"/>		9. TYPE OF ASSISTANCE A - Basic Grant B - Supplemental Grant C - Loan D - Insurance E - Other Enter appropriate letter(s) <input type="checkbox"/>	
10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)		11. ESTIMATED NUMBER OF PERSONS BENEFITING		12. TYPE OF APPLICATION A - New B - Renewal C - Revision D - Continuation E - Augmentation Enter appropriate letter <input type="checkbox"/>	
13. PROPOSED FUNDING		14. CONGRESSIONAL DISTRICTS OF:		15. TYPE OF CHANGE (For 12 c or 12 e)	
a. FEDERAL \$.00	b. APPLICANT .00	a. APPLICANT	b. PROJECT	A - Increase Dollars B - Decrease Dollars C - Increase Duration D - Decrease Duration E - Cancellation F - Other (Specify): Enter appropriate letter(s) <input type="checkbox"/>	
c. STATE .00	d. LOCAL .00	16. PROJECT START DATE Year month day 19	17. PROJECT DURATION Months		
e. OTHER .00	f. TOTAL \$.00	18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY Year month day 19		19. EXISTING FEDERAL IDENTIFICATION NUMBER	
20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)				21. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No	
22. THE APPLICANT CERTIFIES THAT		a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.		b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached: (1) <input type="checkbox"/> No response <input type="checkbox"/> Response attached (2) <input type="checkbox"/> (3) <input type="checkbox"/>	
23. CERTIFYING REPRESENTATIVE		a. TYPED NAME AND TITLE	b. SIGNATURE	c. DATE SIGNED Year month day 19	
24. AGENCY NAME			25. APPLICATION RECEIVED 19		
26. ORGANIZATIONAL UNIT		27. ADMINISTRATIVE OFFICE		28. FEDERAL APPLICATION IDENTIFICATION	
29. ADDRESS			29. FEDERAL GRANT IDENTIFICATION		
31. ACTION TAKEN <input type="checkbox"/> a. AWARDED <input type="checkbox"/> b. REJECTED <input type="checkbox"/> c. RETURNED FOR AMENDMENT <input type="checkbox"/> d. DEFERRED <input type="checkbox"/> e. WITHDRAWN		32. FUNDING		33. ACTION DATE Year month day 19	
		a. FEDERAL \$.00	b. APPLICANT .00	34. STARTING DATE Year month day 19	
		c. STATE .00	d. LOCAL .00	35. ENDING DATE Year month day 19	
		e. OTHER .00	f. TOTAL \$.00	37. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No	
38. FEDERAL AGENCY A-95 ACTION		a. In taking above action, any comments received from clearinghouses were considered, if agency response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made.		b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)	

Exhibit M-4. Application for Federal Assistance (For Construction Programs)



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Attachment M

SECTION IV—REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

GENERAL INSTRUCTIONS

This is a multi-purpose standard form. First, it will be used by applicants as a required facesheet for pre-applications and applications submitted in accordance with OMB Circular A-102. Second, it will be used by Federal agencies to report to clearinghouses on major actions taken on applications reviewed by clearinghouses in accordance with OMB Circular A-95. Third, it will be used by Federal agencies to notify States of grants-in-aid awarded in accordance with Treasury Circular 1082. Fourth, it may be used, on an optional basis, as a notification of intent from applicants to clearinghouses, as an early initial notice that Federal assistance is to be applied for (clearinghouse procedures will govern).

APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk and use the remarks section on the back of the form. An explanation follows for each item.

- | Item | Item |
|---|--|
| 1. Mark appropriate box. Pre-application and application guidance is in OMB Circular A-102 and Federal agency program instructions. Notification of intent guidance is in Circular A-95 and procedures from clearinghouse. Applicant will not use "Report of Federal Action" box. | 10. Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit affected, list it rather than subunits. |
| 2a. Applicant's own control number, if desired. | 11. Estimated number of persons directly benefiting from project. |
| 2b. Date Section I is prepared. | 12. Use appropriate code letter. Definitions are:
A. New. A submittal for the first time for a new project.
B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year.
C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease).
D. Continuation. An extension for an additional funding/budget period for a project the agency initially agreed to fund for a definite number of years.
E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged. |
| 3a. Number assigned by State clearinghouse, or if delegated by State, by areawide clearinghouse. All requests to Federal agencies <i>must</i> contain this identifier if the program is covered by Circular A-95 and required by applicable State/areawide clearinghouse procedures. If in doubt, consult your clearinghouse. | 13. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included, if the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of the change. For decreases enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 13a, amount requested from Federal Government; 13b, amount applicant will contribute; 13c, amount from State, if applicant is not a State; 13d, amount from local government, if applicant is not a local government; 13e, amount from any other sources, explain in remarks. |
| 3b. Date applicant notified of clearinghouse identifier. | 14a. Self explanatory. |
| 4a-4h. Legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request. | 14b. The district(s) where most of actual work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide." |
| 5. Employer identification number of applicant as assigned by Internal Revenue Service. | 15. Complete only for revisions (Item 12c), or augmentations (Item 12e). |
| 6a. Use Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint-funding) write "multiple" and explain in remarks. If unknown, cite Public Law or U.S. Code. | 16. Approximate date project expected to begin (usually associated with estimated date of availability of funding). |
| 6b. Program title from Federal Catalog. Abbreviate if necessary. | 17. Estimated number of months to complete project after Federal funds are available. |
| 7. Brief title and appropriate description of project. For notification of intent, continue in remarks section if necessary to convey proper description. | 18. Estimated date pre-application/application will be submitted to Federal agency if the project requires clearinghouse review. If review not required, this date would usually be same as date in Item 2b. |
| 8. Mostly self-explanatory. "City" includes town, township or other municipality. | |
| 9. Check the type(s) of assistance requested. The definitions of the terms are:
A. Basic Grant. An original request for Federal funds. This would not include any contribution provided under a supplemental grant.
B. Supplemental Grant. A request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share).
C. Loan. Self explanatory.
D. Insurance. Self explanatory.
E. Other. Explain on remarks page. | |

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- | <i>Item</i> | <i>Item</i> |
|--|---|
| 19. Existing Federal identification number if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA". | 20. Indicate Federal agency to which this request is addressed. Street address not required, but do use ZIP. |
| | 21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached. |

APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete items 22a, 22b, and 23c. If clearinghouse review is required, item 22b must be fully completed. An explanation follows for each item:

- | <i>Item</i> | <i>Item</i> |
|--|--|
| 22b. List clearinghouses to which submitted and show in appropriate blocks the status of their responses. For more than three clearinghouses, continue in remarks section. All written comments submitted by or through clearinghouses must be attached. | 23b. Self explanatory. |
| 23a. Name and title of authorized representative of legal applicant. | 23c. Self explanatory. |
| | <i>Note:</i> Applicant completes only Sections I and II. Section III is completed by Federal agencies. |

FEDERAL AGENCY PROCEDURES FOR SECTION III

If applicant-supplied information in Sections I and II needs no updating or adjustment to fit the final Federal action, the Federal agency will complete Section III only. An explanation for each item follows:

- | <i>Item</i> | <i>Item</i> |
|---|---|
| 24. Executive department or independent agency having program administration responsibility. | 35. Name and telephone no. of agency person who can provide more information regarding this assistance. |
| 25. Self explanatory. | 36. Date after which funds will no longer be available. |
| 26. Primary organizational unit below department level having direct program management responsibility. | 37. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks. |
| 27. Office directly monitoring the program. | 38. For use with A-95 action notices only. Name and telephone of person who can assure that appropriate A-95 action has been taken—If same as person shown in item 35, write "same". If not applicable, write "NA". |
| 28. Use to identify non-award actions where Federal grant identifier in item 30 is not applicable or will not suffice. | |
| 29. Complete address of administering office shown in item 26. | |
| 30. Use to identify award actions where different from Federal application identifier in item 26. | |
| 31. Self explanatory. Use remarks section to amplify where appropriate. | |
| 32. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 32a, amount awarded by Federal Government; 32b, amount applicant will contribute; 32c, amount from State, if applicant is not a State; 32d, amount from local government if applicant is not a local government; 32e, amount from any other sources, explain in remarks. | |
| 33. Date action was taken on this request. | |
| 34. Date funds will become available. | |

Federal Agency Procedures—special considerations

- A. Treasury Circular 1082 compliance.** Federal agency will assure proper completion of Sections I and III. If Section I is being completed by Federal agency, all applicable items must be filled in. Addresses of State Information Reception Agencies (SCIRA's) are provided by Treasury Department to each agency. This form replaces SF 240, which will no longer be used.
- B. OMB Circular A-95 compliance.** Federal agency will assure proper completion of Sections I, II, and III. This form is required for notifying all reviewing clearinghouses of major actions on all programs reviewed under A-95. Addresses of State and areawide clearinghouses are provided by OMB to each agency. Substantive differences between applicant's request and/or clearinghouse recommendations, and the project as finally awarded will be explained in A-95 notifications to clearinghouses.
- C. Special note.** In most, but not all States, the A-95 State clearinghouse and the (TC 1082) SCIRA are the same office. In such cases, the A-95 award notice to the State clearinghouse will fulfill the TC 1082 award notice requirement to the State SCIRA. Duplicate notification should be avoided.

PART II
PROJECT APPROVAL INFORMATION

<hr/>	
Item 1.	
Does this assistance request require State, local, regional, or other priority rating?	Name of Governing Body _____ Priority Rating _____
_____ Yes _____ No	
<hr/>	
Item 2.	
Does this assistance request require State, or local advisory, educational or health clearances?	Name of Agency or Board _____
_____ Yes _____ No	(Attach Documentation)
<hr/>	
Item 3.	
Does this assistance request require clearinghouse review in accordance with OMB Circular A-95?	(Attach Comments)
_____ Yes _____ No	
<hr/>	
Item 4.	
Does this assistance request require State, local, regional or other planning approval?	Name of Approving Agency _____ Date _____
_____ Yes _____ No	
<hr/>	
Item 5.	
Is the proposed project covered by an approved comprehensive plan?	Check one: State <input type="checkbox"/> Local <input type="checkbox"/> Regional <input type="checkbox"/>
_____ Yes _____ No	Location of Plan _____
<hr/>	
Item 6.	
Will the assistance requested serve a Federal installation?	Name of Federal Installation _____ Federal Population benefiting from Project _____
_____ Yes _____ No	
<hr/>	
Item 7.	
Will the assistance requested be on Federal land or installation?	Name of Federal Installation _____ Location of Federal Land _____ Percent of Project _____
_____ Yes _____ No	
<hr/>	
Item 8.	
Will the assistance requested have an impact or effect on the environment?	See instructions for additional information to be provided.
_____ Yes _____ No	
<hr/>	
Item 9.	
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?	Number of: Individuals _____ Families _____ Businesses _____ Farms _____
_____ Yes _____ No	
<hr/>	
Item 10.	
Is there other related assistance on this project previous, pending, or anticipated?	See instructions for additional information to be provided.
_____ Yes _____ No	
<hr/>	
Item 11.	
Is the project in a designated flood hazard area?	See instructions for additional information to be provided.
_____ Yes _____ No	
<hr/>	

Exhibit M-4. Application for Federal Assistance (for Construction Programs)

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INSTRUCTIONS

PART II - SECTION A

Negative answers will not require an explanation unless the Federal agency requests more information at a later date. Provide supplementary data for all "Yes" answers in the space provided in accordance with the following instructions.

Item 1 - Provide the name of the governing body establishing the priority system and the priority rating assigned to this project.

Item 2 - Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval.

Item 3 - Attach the clearinghouse comments for the application in accordance with the instructions contained in Office of Management and Budget Circular No. A-95. If comments were submitted previously with a preapplication, do not submit them again but any additional comments received from the clearinghouse should be submitted with this application.

Item 4 - Furnish the name of the approving agency and the approval date.

Item 5 - Show whether the approved comprehensive plan is State, local or regional, or if none of these, explain the

scope of the plan. Give the location where the approved plan is available for examination and state whether this project is in conformance with the plan.

Item 6 - Show the Federal population residing or working on the federal installation who will benefit from this project.

Item 7 - Show the percentage of the project work that will be conducted on federally-owned or leased land. Give the name of the Federal installation and its location.

Item 8 - Briefly describe the possible beneficial and/or harmful impact on the environment because of the proposed project. If an adverse environmental impact is anticipated, explain what action will be taken to minimize the impact. Federal agencies will provide separate instructions if additional data is needed.

Item 9 - State the number of individuals, families, businesses, or farms this project will displace. Federal agencies will provide separate instructions if additional data is needed.

Item 10 - Show the Federal Domestic Assistance Catalog number, the program name, the type of assistance, the status and amount of each project where there is related previous, pending, or anticipated assistance. Use additional sheets, if needed.

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INSTRUCTION

PART II - SECTION B

11. SITES AND IMPROVEMENTS: _____ Not required. _____ Attached as exhibits Applicant intends to acquire the site through: _____ Eminent domain _____ Negotiated purchase. _____ Other means (specify)
12. TITLE OR OTHER INTEREST IN THE SITE IS OR WILL BE VESTED IN: _____ Applicant. _____ Agency or institution operating the facility. _____ Other (specify)
13. INDICATE WHETHER APPLICANT OPERATOR HAS: _____ Fee simple title _____ Leasehold interest. _____ Other (specify)
14. IF APPLICANT OPERATOR HAS LEASEHOLD INTEREST, GIVE THE FOLLOWING INFORMATION: a. Length of lease or other estate interest _____, and number of years to run _____ b. Is lease renewable? _____ Yes _____ No c. Current appraised value of land \$ _____ d. Annual rental rate \$ _____
15. ATTACH AN OPINION FROM ACCEPTABLE TITLE COUNSEL DESCRIBING THE INTEREST APPLICANT OPERATOR HAS IN THE SITE AND CERTIFYING THAT THE ESTATE OR INTEREST IS LEGAL AND VALID.
16. WHERE APPLICABLE, ATTACH SITE SURVEY, SOIL INVESTIGATION REPORTS AND COPIES OF LAND APPRAISALS.
17. WHERE APPLICABLE, ATTACH CERTIFICATION FROM ARCHITECT ON THE FEASIBILITY OF IMPROVING EXISTING SITE TOPOGRAPHY.
18. ATTACH PLOT PLAN.
19. CONSTRUCTION SCHEDULE ESTIMATES: _____ Not required. _____ Being prepared, _____ Attached as exhibits Percentage of completion of drawings and specifications at application date: Schematics _____ % Preliminary _____ % Final _____ %
20. TARGET DATES FOR: Bid Advertisement _____ Contract Award _____ Construction Completion _____ Occupancy _____
21. DESCRIPTION OF FACILITY: _____ Not required _____ Attached as exhibits Drawings - Attach any drawings which will assist in describing the project. Specifications - Attach copies of completed outline specifications. (If drawings and specifications have not been fully completed, please attach copies or working drawings that have been completed.)

NOTE: ITEMS ON THIS SHEET ARE SELF-EXPLANATORY. THEREFORE, NO INSTRUCTIONS ARE PROVIDED.



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Attachment M

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OMB NO. 50-R0184

PART III - BUDGET INFORMATION - CONSTRUCTION

SECTION A - GENERAL

- 1. Federal Domestic Assistance Catalog No.
- 2. Functional or Other Breakout

SECTION B - CALCULATION OF FEDERAL GRANT

Cost Classification	Use only for revisions		Total Amount Required
	Latest Approved Amount	Adjustment + or (-)	
1. Administration expense	\$	\$	\$
2. Preliminary expense			
3. Land, structures, right-of-way			
4. Architectural engineering basic fees			
5. Other architectural engineering fees			
6. Project inspection fees			
7. Land development			
8. Relocation Expenses			
9. Relocation payments to individuals and Businesses			
10. Demolition and removal			
11. Construction and project improvement			
12. Equipment			
13. Miscellaneous			
14. Total (Lines 1 through 13)			
15. Estimated Income (if applicable)			
16. Net Project Amount (Line 14 minus 15)			
17. Less: Ineligible Exclusions			
18. Add: Contingencies			
19. Total Project Amt. (Excluding Rehabilitation Grants)			
20. Federal Share requested of Line 19			
21. Add Rehabilitation Grants Requested (100 Percent)			
22. Total Federal grant requested (Lines 20 & 21)			
23. Grantee share			
24. Other shares			
25. Total project (Lines 22, 23 & 24)	\$	\$	\$

Exhibit M-4. Application for Federal Assistance (for Construction Programs)

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INSTRUCTIONS

PART III

Section A. General

1. Show the Federal Domestic Assistance Catalog Number from which the assistance is requested. When more than one program or Catalog Number is involved and the amount cannot be distributed to the Federal grant program or catalog number on an overall percentage basis, prepare a separate set of Part III forms for each program or Catalog Number. However, show the total amounts for all programs in Section B of the basic application form.
2. Show the functional or other categorical breakdowns, if required by the Federal grantor agency. Prepare a separate set of Part III forms for each category.

Section B. Calculation of Federal Grant

When applying for a new grant, use the Total Amount Column only. When requesting revisions of previously awarded amounts, use all columns.

Line 1 - Enter amounts needed for administration expenses including such items as travel, legal fees, rental of vehicles and any other expense items expected to be incurred to administer the grant. Include the amount of interest expenses when authorized by program legislation and also show this amount under Section E Remarks.

Line 2 - Enter amounts pertaining to the work of locating and designing, making surveys and maps, sinking test holes, and all other work required prior to actual construction.

Line 3 - Enter amounts directly associated with the acquisition of land, existing structures, and related right-of-way.

Line 4 - Enter basic fees for architectural engineering services.

Line 5 - Enter amounts for other architectural engineering services, such as surveys, tests, and borings.

Line 6 - Enter fees for inspection and audit of construction and related programs.

Line 7 - Enter amounts associated with the development of land where the primary purpose of the grant is land improvement. Site work normally associated with major construction should be excluded from this category and shown on Line 11.

Line 8 - Enter the dollar amounts needed to provide relocation advisory assistance, and the net amounts for replacement (last resort) housing. Do not include relocation administration expenses on this Line; include them on Line 1.

Line 9 - Enter the estimated amount of relocation payments to be made to displaced persons, business concerns and non-profit organizations for moving expenses and replacement housing.

Line 10 - Enter the gross salaries and wages of employees of the grantees who will be directly engaged in performing demolition or removal of structures from developed land. This line should show also the cost of demolition or re-

movel of improvements on developed land under a third party contract. Reduce the costs on this line by the amount of expected proceeds from the sale of salvage, if so instructed by the Federal grantor agency. Otherwise, show the proceeds on Line 15.

Line 11 - Enter amounts for the actual construction of, addition to, or restoration of a facility. Also include in this category the amounts of project improvements such as sewers, streets, landscaping and lighting.

Line 12 - Enter amounts for equipment both fixed and movable exclusive of equipment used for construction. For example, include amounts for permanently attached laboratory tables, built-in audio visual systems, moveable desks, chairs, and laboratory equipment.

Line 13 - Enter amounts for items not specifically mentioned above.

Line 14 - Enter the sum of Lines 1-13.

Line 15 - Enter the estimated amount of program income that will be earned during the grant period and applied to the program.

Line 16 - Enter the difference between the amount on Line 14 and the estimated income shown on Line 15.

Line 17 - Enter amounts for those items which are part of the project but not subject to Federal participation (See Section C, Line 26g, Column (1)).

Line 18 - Enter the estimated amount for contingencies. Compute this amount as follows. Subtract from the net project amount shown on Line 16 the ineligible project exclusions shown on Line 17 and the amount which is excluded from the contingency provisions shown in Section C, Line 26g, Column (2). Multiply the computed amount by the percentage factor allowed by the grantor agency in accordance with the Federal program guidance. For those grants which provide for a fixed dollar allowance in lieu of a percentage allowance, enter the dollar amount of this allowance.

Line 19 - Show the total amount of Lines 16, 17, and 18. (This is the amount to which the matching share ratio prescribed in program legislation is applied.)

Line 20 - Show the amount of Federal funds requested exclusive of funds for rehabilitation purposes.

Line 21 - Enter the estimated amounts needed for rehabilitation expense if rehabilitation grants to individuals are made for which grantees are reimbursed 100 percent by the Federal grantor agency in accordance with program legislation. If the grantees share in part of this expense show the total amount on Line 13 instead of on Line 21 and explain in Section E.

Line 22 - Show the total amount of the Federal grant requested.

Line 23 - Show the amount from Section D, Line 27h.

Line 24 - Show the amount from Section D, Line 28c.

Line 25 - Self-explanatory.

Exhibit M-4. Application for Federal Assistance (for Construction Programs)

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SECTION C - EXCLUSIONS		
Classification	Ineligible for Participation (1)	Excluded from Contingency Provision (2)
26		
a	\$	\$
b		
c		
d		
e		
f		
g	Totals \$	\$
SECTION D - PROPOSED METHOD OF FINANCING NON-FEDERAL SHARE		
27. Grantee Share		\$
a. Securities		
b. Mortgages		
c. Appropriations (By Applicant)		
d. Bonds		
e. Tax Levies		
f. Non Cash		
g. Other (Explain)		
h. TOTAL - Grantee share		
28. Other Shares		
a. State		
b. Other		
c. Total Other Shares		
29. TOTAL		\$
SECTION E - REMARKS		

INSTRUCTIONS

PART III

Section C. Exclusions

Line 26 a-g - Identify and list those costs in Column (1) which are part of the project cost but are not subject to Federal participation because of program legislation or Federal grantor agency instructions. The total amount on Line g should agree with the amount shown on Line 17 of Section B. Show in Column (2) those project costs that are subject to Federal participation but are not eligible for inclusion in the amount used to compute contingency amounts as provided in the Federal grantor agency instructions.

Section D. Proposed Method of Financing Non-Federal Share

Line 27 a-g - Show the source of the grantee's share. If cash is not immediately available, specify the actions completed to date and those actions remaining to make cash available under Section E Remarks. Indicate also the period of time that will be required after execution of the grant agreement to obtain the funds. If there is a noncash contribution, explain what this contribution will consist of.

Line 27 h - Show the total of Lines 27 a-g. This amount must equal the amount shown in Section B, Line 23.

Line 28 a - Show the amount that will be contributed by a State or state agency, *only* if the applicant is *not* a State or state agency. If there is a noncash contribution, explain what the contribution will consist of under Section E Remarks.

Line 28 b - Show the amount that will be contributed from other sources. If there is a noncash contribution, explain what this contribution will consist of under Section E Remarks.

Line 28 c - Show the total of Lines 28a and 28b. This amount must be the same as the amount shown in Section B, line 24.

Line 29 - Enter the totals of Line 27h and Line 28c.

Section E. Other Remarks

Make any remarks pertinent to the project and provide any other information required by these instructions or the grantor agency. Attach additional sheets, if necessary.

PART IV

PROGRAM NARRATIVE

Prepare the program narrative statement in accordance with the following instructions for all new grant programs. Requests for supplemental assistance should be responsive to Item 5b only. Requests for continuation or refunding or other changes of an approved project should be responsive to Item 5c only.

1. OBJECTIVES AND NEED FOR THIS ASSISTANCE.

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

2. RESULTS OR BENEFITS EXPECTED.

Identify results and benefits to be derived. For example, include a description of who will occupy the facility and show how the facility will be used. For land acquisition or development projects, explain how the project will benefit the public.

3. APPROACH.

- a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements.
- b. Provide for each grant program monthly or quarterly quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and their target dates.
- c. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the

needs identified and discussed are being met and if the results and benefits identified in Item 2 are being achieved.

- d. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

4. GEOGRAPHIC LOCATION.

Give a precise location of the project and area to be served by the proposed project. Maps or other graphic aids may be attached.

5. IF APPLICABLE, PROVIDE THE FOLLOWING INFORMATION:

- a. Describe the relationship between this project and other work planned, anticipated, or underway under the Federal Assistance listed under Part II, Section A, Item 10.
- b. Explain the reason for all requests for supplemental assistance and justify the need for additional funding.
- c. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach or time delays, explain and justify. For other requests for changes or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded or if individual budget items have changed more than the prescribed limits contained in Attachment K, ~~Div. 4-702~~ explain and justify the change and its effect on the project.

Attachment M

PART V

ASSURANCES

The applicant hereby assures and certifies that he will comply with the regulations, policies, guidelines and requirements, including Office of Management and Budget Circulars Nos. A-87, A-88, and A-102, as they relate to the application, acceptance and use of Federal funds for this federally-assisted project. Also, the applicant gives assurance and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with the provisions of: Executive Order 11298, relating to evaluation of flood hazards, and Executive Order 11298, relating to the prevention, control, and abatement of water pollution.
3. It will have sufficient funds available to meet the non-Federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes constructed.
4. It will obtain approval by the appropriate Federal agency of the final working drawings and specifications before the project is advertised or placed on the market for bidding; that it will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved plans and specifications; that it will submit to the appropriate Federal agency for prior approval changes that alter the costs of the project, use of space, or functional layout; that it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the construction grant program(s) have been met.
5. It will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the Federal grantor agency may require.
6. It will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable Federal, State and local agencies for the maintenance and operation of such facilities.
7. It will give the grantor agency and the Comptroller General through any authorized representative access to and the right to examine all records, books, papers, or documents related to the grant.
8. It will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A117.1-1961, as modified (41 CFR 101-17.703). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.
9. It will cause work on the project to be commenced within a reasonable time after receipt of notification from the approving Federal agency that funds have been approved and that the project will be prosecuted to completion with reasonable diligence.
10. It will not dispose of or encumber its title or other interests in the site and facilities during the period of Federal interest or while the Government holds bond, whichever is the longer.
11. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
12. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
13. It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.
14. It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with Office of Management and Budget Circular No. A-102.
15. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
16. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.

Exhibit M-4. Application for Federal Assistance (For Construction Programs)

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PART V
ASSURANCES CONTINUED

17. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be utilized in the project is under consideration for listing by the EPA.
18. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
19. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

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Attachment M

OMB Approval No. 05-PB16

FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION	3. STATE APPLICATION IDENTIFIER
1. TYPE OF ACTION (Mark appropriate box.)	<input type="checkbox"/> PREAPPLICATION	a. NUMBER	a. NUMBER
	<input type="checkbox"/> APPLICATION	b. DATE Year month day	b. DATE ASSIGNED Year month day
	<input type="checkbox"/> NOTIFICATION OF INTENT (Opt.)	19	19
	<input type="checkbox"/> REPORT OF FEDERAL ACTION	Leave Blank	
4. LEGAL APPLICANT/RECIPIENT		5. FEDERAL EMPLOYER IDENTIFICATION NO.	
a. Applicant Name		6. PROGRAM	
b. Organization Unit		a. NUMBER	
c. Street/P.O. Box		b. TITLE	
d. City		(From Federal Catalog)	
e. State		a. COUNTY	
f. Contact Person (Name & telephone No.)		b. ZIP Code	
7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT		8. TYPE OF APPLICANT/RECIPIENT	
		A - State	
		B - Interstate	
		C - Federal	
		D - County	
		E - City	
		F - School District	
		G - Special Purpose District	
		H - Community Action Agency	
		I - Higher Educational Institution	
		J - Indian Tribe	
		K - Other (Specify):	
		Enter appropriate letter <input type="checkbox"/>	
10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)		9. TYPE OF ASSISTANCE	
		A - Basic Grant	
		B - Supplemental Grant	
		C - Loan	
		D - Insurance	
		E - Other Enter appropriate letter(s) <input type="checkbox"/>	
11. ESTIMATED NUMBER OF PERSONS BENEFITING		12. TYPE OF APPLICATION	
		A - New	
		B - Renewal	
		C - Revision	
		D - Continuation	
		E - Augmentation	
		Enter appropriate letter <input type="checkbox"/>	
13. PROPOSED FUNDING		14. CONGRESSIONAL DISTRICTS OF:	
a. FEDERAL \$.00	a. APPLICANT	b. PROJECT	
b. APPLICANT .00	16. PROJECT START DATE Year month day		17. PROJECT DURATION Months
c. STATE .00	19		
d. LOCAL .00	18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY		19. EXISTING FEDERAL IDENTIFICATION NUMBER
e. OTHER .00	Year month day		
f. TOTAL \$.00	19		
20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)		21. REMARKS ADDED	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
22. THE APPLICANT CERTIFIES THAT	a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.		b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached:
	(1) <input type="checkbox"/>		No response <input type="checkbox"/>
	(2) <input type="checkbox"/>		Response attached <input type="checkbox"/>
	(3) <input type="checkbox"/>		
23. CERTIFYING REPRESENTATIVE	a. TYPED NAME AND TITLE	b. SIGNATURE	c. DATE SIGNED Year month day
			19
24. AGENCY NAME		25. APPLICATION RECEIVED 19	
26. ORGANIZATIONAL UNIT		27. ADMINISTRATIVE OFFICE	
29. ADDRESS		28. FEDERAL APPLICATION IDENTIFICATION	
31. ACTION TAKEN		30. FEDERAL GRANT IDENTIFICATION	
<input type="checkbox"/> a. AWARDED	32. FUNDING		34. STARTING DATE Year month day
<input type="checkbox"/> b. REJECTED	a. FEDERAL \$.00	33. ACTION DATE 19	19
<input type="checkbox"/> c. RETURNED FOR AMENDMENT	b. APPLICANT .00	35. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)	
<input type="checkbox"/> d. DEFERRED	c. STATE .00		
<input type="checkbox"/> e. WITHDRAWN	d. LOCAL .00		
	e. OTHER .00	36. ENDING DATE Year month day	
	f. TOTAL \$.00	19	
38. FEDERAL AGENCY A-95 ACTION		37. REMARKS ADDED	
a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made.		<input type="checkbox"/> Yes <input type="checkbox"/> No	
		b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)	

SECTION I - APPLICANT/RECIPIENT DATA

SECTION II - CERTIFICATION

SECTION III - FEDERAL AGENCY ACTION



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Attachment M

SECTION IV—REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

GENERAL INSTRUCTIONS

This is a multi-purpose standard form. First, it will be used by applicants as a required facesheet for pre-applications and applications submitted in accordance with OMB Circular A-102. Second, it will be used by Federal agencies to report to clearinghouses on major actions taken on applications reviewed by clearinghouses in accordance with OMB Circular A-95. Third, it will be used by Federal agencies to notify States of grants-in-aid awarded in accordance with Treasury Circular 1082. Fourth, it may be used, on an optional basis, as a notification of intent from applicants to clearinghouses, as an early initial notice that Federal assistance is to be applied for (clearinghouse procedures will govern).

APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk "*" and use the remarks section on the back of the form. An explanation follows for each item.

- | Item | Item | | |
|-------|---|------|---|
| 1 | Mark appropriate box. Pre-application and application guidance is in OMB Circular A-102 and Federal agency program instructions. Notification of intent guidance is in Circular A-95 and procedures from clearinghouse. Applicant will not use "Report of Federal Action" box. | 10. | Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit affected, list it rather than subunits. |
| 2a | Applicant's own control number, if desired. | 11. | Estimated number of persons directly benefiting from project. |
| 2b | Date Section I is prepared. | 12. | Use appropriate code letter. Definitions are: |
| 3a | Number assigned by State clearinghouse, or if delegated by State, by areawide clearinghouse. All requests to Federal agencies <i>must</i> contain this identifier if the program is covered by Circular A-95 and required by applicable State/areawide clearinghouse procedures. If in doubt, consult your clearinghouse. | A | New. A submittal for the first time for a new project. |
| 3b | Date applicant notified of clearinghouse identifier. | B | Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year. |
| 4a-4h | Legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request. | C | Revision. A modification to project nature or scope which may result in funding change (increase or decrease). |
| 5. | Employer identification number of applicant as assigned by Internal Revenue Service. | D | Continuation. An extension for an additional funding/budget period for a project the agency initially agreed to fund for a definite number of years. |
| 6a. | Use Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint-funding) write "multiple" and explain in remarks. If unknown, cite Public Law or U.S. Code. | E | Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged. |
| 6b. | Program title from Federal Catalog. Abbreviate if necessary. | 13. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of the change. For decreases enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakdowns in remarks. Item definitions: 13a, amount requested from Federal Government; 13b, amount applicant will contribute; 13c, amount from State, if applicant is not a State; 13d, amount from local government, if applicant is not a local government; 13e, amount from any other sources, explain in remarks. |
| 7. | Brief title and appropriate description of project. For notification of intent, continue in remarks section if necessary to convey proper description. | 14a. | Self explanatory. |
| 8. | Mostly self-explanatory. "City" includes town, township or other municipality. | 14b. | The district(s) where most of actual work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide." |
| 9. | Check the type(s) of assistance requested. The definitions of the terms are: | 15. | Complete only for revisions (item 12c), or augmentations (item 12e). |
| A. | Basic Grant. An original request for Federal funds. This would not include any contribution provided under a supplemental grant. | 16. | Approximate date project expected to begin (usually associated with estimated date of availability of funding). |
| B. | Supplemental Grant. A request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share). | 17. | Estimated number of months to complete project after Federal funds are available. |
| C. | Loan. Self explanatory. | 18. | Estimated date pre-application/application will be submitted to Federal agency if the project requires clearinghouse review. If review not required, this date would usually be same as date in item 2b. |
| D. | Insurance. Self explanatory. | | |
| E. | Other. Explain on remarks page. | | |

Attachment M

- | Item | Item |
|--|---|
| 19. Existing Federal identification number if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA". | 20. Indicate Federal agency to which this request is addressed. Street address not required, but do use ZIP. |
| | 21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached. |

APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete items 23a, 23b, and 23c. If clearinghouse review is required, item 22b must be fully completed. An explanation follows for each item:

- | Item | Item |
|--|---|
| 22b. List clearinghouses to which submitted and show in appropriate blocks the status of their responses. For more than three clearinghouses, continue in remarks section. All written comments submitted by or through clearinghouses must be attached. | 23b. Self explanatory. |
| 23a. Name and title of authorized representative of legal applicant. | 23c. Self explanatory. |
| | Note: Applicant completes only Sections I and II. Section III is completed by Federal agencies. |

FEDERAL AGENCY PROCEDURES FOR SECTION III

If applicant-supplied information in Sections I and II needs no updating or adjustment to fit the final Federal action, the Federal agency will complete Section III only. An explanation for each item follows:

- | Item | Item |
|---|---|
| 24. Executive department or independent agency having program administration responsibility. | 35. Name and telephone no. of agency person who can provide more information regarding this assistance. |
| 25. Self explanatory. | 36. Date after which funds will no longer be available. |
| 26. Primary organizational unit below department level having direct program management responsibility. | 37. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks. |
| 27. Office directly monitoring the program. | 38. For use with A-95 action notices only. Name and telephone of person who can assure that appropriate A-95 action has been taken—If same as person shown in item 35, write "same". If not applicable, write "NA". |
| 28. Use to identify non-award actions where Federal grant identifier in item 30 is not applicable or will not suffice. | |
| 29. Complete address of administering office shown in item 26. | |
| 30. Use to identify award actions where different from Federal application identifier in item 26. | |
| 31. Self explanatory. Use remarks section to amplify where appropriate. | |
| 32. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 32a, amount awarded by Federal Government; 32b, amount applicant will contribute; 32c, amount from State, if applicant is not a State; 32d, amount from local government if applicant is not a local government; 32e, amount from any other sources, explain in remarks. | |
| 33. Date action was taken on this request. | |
| 34. Date funds will become available. | |

Federal Agency Procedures—special considerations

- A. *Treasury Circular 1082 compliance.* Federal agency will assure proper completion of Sections I and III. If Section I is being completed by Federal agency, all applicable items must be filled in. Addresses of State Information Reception Agencies (SCIRA's) are provided by Treasury Department to each agency. This form replaces SF 240, which will no longer be used.
- B. *OMB Circular A-95 compliance.* Federal agency will assure proper completion of Sections I, II, and III. This form is required for notifying all reviewing clearinghouses of major actions on all programs reviewed under A-95. Addresses of State and area-wide clearinghouses are provided by OMB to each agency. Substantive differences between applicant's request and/or clearinghouse recommendations, and the project as finally awarded will be explained in A-95 notifications to clearinghouses.
- C. *Special note.* In most, but not all States, the A-95 State clearinghouse and the (TC 1082) SCIRA are the same office. In such cases, the A-95 award notice to the State clearinghouse will fulfill the TC 1082 award notice requirement to the State SCIRA. Duplicate notification should be avoided.

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Attachment M

3

OMB NO. 50-R0100

APPLICATION FOR FEDERAL ASSISTANCE (Short Form)

PART II - BUDGET DATA

Object Class Categories	Current Approved Budget (a)	Change Requested (b)	New or Revised Budget (c)
1. Personnel			
2. Fringe Benefits			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Construction			
8. Other			
9. Total Direct Charges			
10. Indirect Charges			
11. TOTAL			
12. Federal Share			
13. Non-Federal Share			
14. Program Income			

15. Detail on Indirect Costs:

Type of Rate (Mark one box)

Provisional

Predetermined

Final

Fixed

Rate _____ % Base \$ _____ Total Amount \$ _____

PART III

Program Narrative Statement

(Attach additional sheets, if necessary)

INSTRUCTIONS

PART II

Items 1-11 - Enter on Lines 1-11 in Column (c) the total amounts needed for the project. If this is an application for new grants, leave Columns (a) and (b) blank. If this is an application for amendments, changes or supplements, show the current approved budget in Column (a); enter in Column (b) on the appropriate line(s) the amount of the change, amendment or supplement, add each line entry in Column (a) to the line entries in Column (b); and enter the total for each line in Column (c). The amounts shown in Column (c) represent the amount of the new or revised grant budget.

Item 12 - Enter the Federal share of the amount on Line 11.

Line 13 - Enter the non-Federal share of the amount on Line 11.

Item 14 - Enter the amount of estimated income, if any, which will be applied to the grant. Do not add or subtract

this amount from the total project amount. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant award.

Item 15 - Enter the type of indirect cost rate (provisional, predetermined, final or fixed), the rate that will be in effect during the funding period, and the amount of the base to which the rate is applied.

INSTRUCTIONS

PART III

The program narrative statement should be brief, preferably one or two paragraphs which show the need, objectives, approach, the geographical location of the project and the benefits expected to be obtained from the assistance. Also attach any data that may be needed to establish the applicant's eligibility for receiving assistance under the Federal program.

PART IV

ASSURANCES

The Applicant hereby assures and certifies that he will comply with the regulations, policies, guidelines, and requirements including OMB Circulars Nos. A-87, A-86, and A-102, as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the Applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.
4. It will comply with requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.
5. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.
7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
8. It will give the grantor agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.
9. It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with Office of Management and Budget Circular No. A-102.
10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

Exhibit M-5. Application for Federal Assistance (Short Form)

PART V (Continued)

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.0) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

Exhibit M-5. Application for Federal Assistance (Short Form)

(Page 8 of 8)

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

PART V (Continued)

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.0) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

Exhibit M-5. Application for Federal Assistance (Short Form)

(Page 8 of 8)

PROPERTY MANAGEMENT STANDARDS

1. This Attachment prescribes uniform standards governing the utilization and disposition of property furnished by the Federal Government or acquired in whole or in part with Federal funds or whose cost was charged to a project supported by a Federal grant. Federal grantor agencies shall require grantees to observe these standards under grants from the Federal Government and shall not impose additional requirements unless specifically required by Federal law. The grantees shall be authorized to use their own property management standards and procedures as long as the provisions of this Attachment are included.

2. The following definitions apply for the purpose of this Attachment:

a. Real property. Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

b. Personal property. Personal property of any kind except real property. It may be tangible -- having physical existence, or intangible -- having no physical existence, such as patents, inventions, and copyrights.

c. Nonexpendable personal property. Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

d. Expendable personal property. Expendable personal property refers to all tangible personal property other than nonexpendable property.

e. Excess property. Excess property means property under the control of any Federal agency which, as determined by the head thereof, is no longer required for its needs or discharge of its responsibilities.

f. Acquisition cost of purchased nonexpendable personal property. Acquisition cost of an item of purchased nonexpendable personal property means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

g. Exempt property. Exempt property means tangible personal property acquired in whole or in part with Federal funds, and title to which is vested in the recipient without further obligation to the Federal Government except as provided in subparagraph 6a below. Such unconditional vesting of title will be pursuant to any Federal legislation that provides the Federal sponsoring agency with adequate authority.

3. Real property. Each Federal grantor agency shall prescribe requirements for grantees concerning the use and disposition of real property funded partly or wholly by the Federal Government. Unless otherwise provided by statute, such requirements, as a minimum, shall contain the following:

a. Title to real property shall vest in the recipient subject to the condition that the grantee shall use the real property for the authorized purpose of the original grant as long as needed.

b. The grantee shall obtain approval by the grantor agency for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.

c. When the real property is no longer needed as provided in a and b above, the grantee shall request disposition instructions from the Federal agency or its successor Federal agency. The Federal agency shall observe the following rules in the disposition instructions:

(1) The grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by

applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(2) The grantee may be directed to sell the property under guidelines provided by the Federal agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the grantee shall be entitled to compensation computed by applying the grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

4. Federally-owned nonexpendable personal property. Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal agency. Upon completion of the agreement or when the property is no longer needed, the grantee shall report the property to the Federal agency for further agency utilization.

If the Federal agency has no further need for the property, it shall be declared excess and reported to the General Services Administration. Appropriate disposition instructions will be issued to the recipient after completion of the Federal agency review.

5. Exempt property. When statutory authority exists title to nonexpendable personal property acquired with project funds shall be vested in the recipient upon acquisition unless it is determined that to do so is not in the furtherance of the objectives of the Federal sponsoring agency. When title is vested in the recipient the recipient shall have no other obligation or accountability to the Federal Government for its use or disposition except as provided in 6a below.

6. Other nonexpendable property. When other nonexpendable tangible property is acquired by a grantee with project funds

title shall not be taken by the Federal Government but shall vest in the grantee subject to the following conditions:

a. Right to transfer title. For items of nonexpendable personal property having a unit acquisition cost of \$1,000 or more, the Federal agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(1) The property shall be appropriately identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal agency shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal agency fails to issue disposition instructions within the 120 calendar-day period, the grantee shall apply the standards of subparagraph 6b and 6c as appropriate.

(3) When the Federal agency exercises its right to take title, the personal property shall be subject to the provisions for federally-owned nonexpendable property discussed in paragraph 4, above.

(4) When title is transferred either to the Federal Government or to a third party, the provisions of subparagraph 6c(2)(b) should be followed.

b. Use of other tangible nonexpendable property for which the grantee has title.

(1) The grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the grantee shall use the property in connection with its other federally sponsored activities, in the following order of priority:

(a) Activities sponsored by the same Federal agency.

(b) Activities sponsored by other Federal agencies.

(2) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal agency that financed the property; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal agency. User charges should be considered if appropriate.

c. Disposition of other nonexpendable property. When the grantee no longer needs the property as provided in 6b above, the property may be used for other activities in accordance with the following standards:

(1) Nonexpendable property with a unit acquisition cost of less than \$1,000. The grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(2) Nonexpendable personal property with a unit acquisition cost of \$1,000 or more. The grantee may retain the property for other uses provided that compensation is made to the original Federal agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the grantee has no need for the property and the property has further use value, the grantee shall request disposition instructions from the original grantor agency.

The Federal agency shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Federal agency to determine whether a requirement for the property exists in other Federal agencies. The Federal agency shall issue instructions to the grantee no later than 120 days after the grantee request and the following procedures shall govern:

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(a) If so instructed or if disposition instructions are not issued within 120 calendar days after the grantee's request, the grantee shall sell the property and reimburse the Federal agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the grantee shall be permitted to deduct and retain from the Federal share \$100 or ten percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(b) If the grantee is instructed to ship the property elsewhere the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(c) If the grantee is instructed to otherwise dispose of the property, the grantee shall be reimbursed by the Federal agency for such costs incurred in its disposition.

d. Property management standards for nonexpendable property. The grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(1) Property records shall be maintained accurately and shall include:

(a) A description of the property.

(b) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(c) Source of the property including grant or other agreement number.

(d) Whether title vests in the grantee or the Federal Government.

(e) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(f) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for

which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(g) Location, use and condition of the property and the date the information was reported.

(h) Unit acquisition cost.

(i) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a grantee compensates the Federal agency for its share.

(2) Property owned by the Federal Government must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the grantee shall promptly notify the Federal agency.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) Where the grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

7. Expendable personal property. Title to expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding \$1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other federally sponsored project or program, the grantee shall retain the property for use on nonfederally sponsored activities, or

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sell it, but must in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

8. Intangible property.

a. Inventions and patents. If any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored by the Federal Government, such fact shall be promptly and fully reported to the Federal agency. Unless there is a prior agreement between the grantee and the Federal agency on disposition of such items, the Federal agency shall determine whether protection on the invention or discovery shall be sought. The Federal agency will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

b. Copyrights. Except as otherwise provided in the terms and conditions of the agreement the author or the grantee organization is free to copyright any books, publications, or other copyrightable materials developed in the course of or under a Federal agreement, but the Federal agency shall reserve a royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

9. Excess personal property. When title to excess property is vested in grantees such property shall be accounted for and disposed of in accordance with paragraphs 6c and 6d of this attachment.

PROCUREMENT STANDARDS

1. Applicability

a. This Attachment establishes standards and guidelines for the procurement of supplies, equipment, construction and services for Federal assistance programs. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and executive orders.

b. No additional procurement requirements or subordinate regulations shall be imposed upon grantees by executive agencies unless specifically required by Federal law or executive orders or authorized by the Administrator for Federal Procurement Policy. This prohibition is not applicable to payment conditions issued in accordance with Treasury Circular 1075, individual grantee requirements pursuant to Section 10 of the basic circular or the provisions of this or other OMB circulars.

c. Provisions of current subordinate requirements not conforming to this Attachment shall be rescinded by grantor agencies unless approved by the Office of Federal Procurement Policy (OFPP).

2. Grantee/Grantor Responsibility

a. These standards do not relieve the grantee of any contractual responsibilities under its contracts. The grantee is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered in support of a grant. These include but are not limited to source evaluation, protests, disputes, and claims. Executive agencies shall not substitute their judgment for that of the grantee unless the matter is primarily a Federal concern. Violations of law are to be referred to the local, State, or Federal authority having proper jurisdiction.

b. Grantees shall use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements for Federal Assistance Programs

conform to the standards set forth in this Attachment and applicable Federal law.

3. Grantee Procurement Improvement

Executive agencies awarding Federal grants or other assistance which require or allow for procurement by the recipients are encouraged to assist recipients in improving their procurement capabilities by providing them with technical assistance training, publications, and other aid.

4. Procurement System Reviews

a. Executive agencies are encouraged to perform reviews of their grantees' procurement systems if a continuing relationship with the grantee is anticipated or a substantial amount of the Federal assistance is to be used for procurement and review of individual contracts is anticipated. The purpose of the review shall be to determine: (1) whether a grantee's procurement system meets the standards prescribed by this Attachment or other criteria acceptable to the OFPP, such provisions of the Model Procurement Code for State and local government; and (2) whether the grantee's procurement system should be certified by the reviewing agency. Such a review will also give an agency an opportunity to give technical assistance to a grantee to remedy its procurement system if it does not fully comply. In addition, such a review may provide a basis for deciding whether the grantee's contracts and related procurement documents should be subject to the grantor's prior approval, as provided by Section 6.

b. In conducting procurement system review, grantor agencies will evaluate a grantee's procurement system in terms of whether it complies with the standards prescribed by this Attachment and represents a fair, efficient and effective procurement system. To the maximum extent feasible, reviewers will rely upon State or local evaluations and analyses performed by agencies or organizations independent of the grantee contracting activity.

c. When a Federal grantor agency completes a procurement review, it shall furnish a report to the grantee, with a copy to OFPP.

d. All agencies should normally rely upon the resultant findings or certification for a period of 24 months before another review is performed.

e. Reviews shall be conducted in accordance with standards and guidelines approved or issued by OFPP.

f. The reviews authorized by Section 6 are waived if a grantee's procurement system is certified.

5. Protest Procedures

a. Grantor agencies may develop an administrative procedure to handle complaints or protests regarding grantee contractor selection actions. The procedure shall be limited as follows:

a. No protest shall be accepted by the grantor agency until all administrative remedies at the grantee level have been exhausted.

b. Review is limited to:

(i) Violations of Federal law or regulations. Violations of State or local law shall be under the jurisdiction of State or local authorities.

(ii) Violations of grantee's protest procedures or failure to review a complaint or protest.

6. Grantor Review of Proposed Contracts

Federal grantor pre-award review and approval of the grantee's proposed contracts and related procurement documents, such as requests for proposal and invitations for bids, is permitted only under the following circumstances:

a. The procurement is expected to exceed \$10,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation.

b. The procurement expected to exceed \$10,000 specifies a "brand name" product; or

c. The grantee's procurement procedures or operation fails to comply with one or more significant aspects of this Attachment. The grantor agency shall notify the grantee in writing, with a copy of such notification to the OFPP.

7. Code of Conduct

Grantees shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- a. The employee, officer or agent;
- b. Any member of his immediate family;
- c. His or her partner; or
- d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The grantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

Grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

8. Procurement Procedures

The grantee shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by grantee officials to avoid the purchase of unnecessary or duplicative items. Consideration should be given to consolidation or breaking out to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, grantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

9. Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms

a. It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

(1) Including qualified small and minority businesses on solicitation lists.

(2) Assuring that small and minority businesses are solicited whenever they are potential sources.

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

(5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

(6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in 1 through 5 above.

b. Grantees shall take similar appropriate affirmative action in support of women's business enterprises.

c. Grantees are encouraged to procure goods and services from labor surplus areas.

d. Grantor agencies may impose additional regulations and requirements in the foregoing areas only to the extent specifically mandated by statute or presidential direction.

10. Selection procedures

a. All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and

Attachment O

free competition consistent with this Attachment. Procurement procedures shall not restrict or eliminate competition. Example of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business; (2) noncompetitive practices between firms; (3) organizational conflicts of interest; and (4) unnecessary experience and bonding requirements.

b. The grantee shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitations of offers, whether by competitive sealed bids or competitive negotiation shall:

(a) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

(b) Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

11. Method Procurement

Procurement under grants shall be made by one of the following methods, as described herein: (a) small purchase procedures; (b) competitive sealed bids (formal advertising); (c) competitive negotiation; (d) noncompetitive negotiation.

a. Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than \$10,000. Grantees shall comply with State or local small purchase dollar limits under \$10,000. If small purchase procedures are used for a procurement under a grant, price or rate quotations shall be obtained from an adequate number of qualified sources.

b. In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(1) In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum, the following:

(a) A complete, adequate and realistic specification or purchase description is available.

(b) Two or more responsible suppliers are willing and able to compete effectively for the grantee's business.

(c) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(2) If formal advertising is used for a procurement under a grant the following requirements shall apply:

(a) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(b) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(c) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(d) A firm-fix-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the grantee indicates that such discounts are generally taken.

(e) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.

c. In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under a grant, the following requirements shall apply:

(1) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(2) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(3) The grantee shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(4) Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.

(5) Grantees may utilize competitive negotiation procedures for procurement of architectural/engineering professional services, whereby competitors' qualifications are evaluated and the most qualified competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

d. Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(1) The item is available only from a single source;

(2) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;

(3) The Federal grantor agency authorizes noncompetitive negotiation; or

(4) After solicitation of a number of sources, competition is determined inadequate.

e. Additional innovative procurement methods may be used by grantees with the approval of the grantor agency. A copy of such approval shall be sent to the OFPP.

12. Contract Pricing

The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used. Grantees shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts under grants shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

13. Grantee Procurement Records

Grantees shall maintain records sufficient to detail the significant history of a procurement. These records shall

include, but are not necessarily limited to information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

14. Contract Provision

In addition to provisions defining a sound and complete procurement contract, any recipient of Federal grant funds shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by the provision, Federal law or the grantor agency.

a. Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

b. All contracts in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

c. All contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

d. All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.

e. When required by the Federal grant program legislation, all construction contracts in excess of \$2,000, awarded by grantees and subgrantees shall include a provision for compliance

with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the grantor agency.

f. Where applicable, all contracts awarded by grantees and subgrantees in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

g. The contract shall include notice of grantor agency requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of grantor agency requirements and regulations pertaining to copyrights and rights in data.

h. All negotiated contracts (except those awarded by small purchase procedures) awarded by grantees shall include a

provision to the effect that the grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

Grantees shall require contractors to maintain all required records for three years after grantees make final payments and all other pending matters are closed.

i. Contracts, subcontracts, and subgrants of amounts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the grantor agency and to the USEPA Assistant Administrator for Enforcement (EN-329).

j. Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

Grantor agencies are permitted to require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.

15. Contract Administration

Grantees shall maintain a contract administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

AUDIT REQUIREMENTS

1. This Attachment establishes audit requirements for State and local governments, and Indian tribal governments that receive Federal assistance. It provides for independent audits of financial operations, including compliance with certain provisions of Federal law and regulation. The requirements are established to ensure that audits are made on an organization-wide basis, rather than on a grant-by-grant basis. Such audits are to determine whether (a) financial operations are conducted properly, (b) the financial statements are presented fairly, (c) the organization has complied with laws and regulations affecting the expenditure of Federal funds, (d) internal procedures have been established to meet the objectives of federally assisted programs, and (e) financial reports to the Federal Government contain accurate and reliable information. Except where specifically required by law, no additional requirements for audit will be imposed unless approved by the Office of Management and Budget.

2. Definitions.

"Cognizant agency" means the Federal agency that is assigned audit responsibility for a particular recipient organization by the Office of Management and Budget.

"Recipient organization" means a State department, a local government, an Indian tribal government, or a subdivision of such entities, that receives Federal assistance. It does not include State and local institutions of higher education or hospitals, which are covered by Circular A-110.

3. State and local governments and Indian tribal governments shall use their own procedures to arrange for independent audits, and to prescribe the scope of audits, provided that the audits comply with the requirements set forth below. Where contracts are awarded for audit services, the contracts shall include a reference to this Attachment.

4. The provisions of this Attachment do not limit the authority of Federal agencies to make audits of recipient organizations.

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However, if independent audits arranged for by recipients meet the requirements prescribed below, all Federal agencies shall rely on them, and any additional audit work shall build upon the work already done.

5. Audits shall be made in accordance with the General Accounting Office Standards for Audit of Governmental Organizations, Programs, Activities and Functions, the Guidelines for Financial and Compliance Audits of Federally Assisted Programs, any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

6. Audits will include, at a minimum, an examination of the systems of internal control, systems established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of recipient organizations. These examinations are to determine whether:

a. There is effective control over and proper accounting for revenues, expenditures, assets, and liabilities.

b. The financial statements are presented fairly in accordance with generally accepted accounting principles.

c. The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data, and are presented in accordance with the terms of applicable agreements, and in accordance with Attachment H of this Circular.

d. Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

7. In order to accomplish the purposes set forth above, a representative number of charges to Federal awards shall be tested. The test shall be representative of (1) the universe of Federal awards received, and (2) all costs categories that materially affect the award. The test is to determine whether the charges:

a. Are necessary and reasonable for the proper administration of the program.

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- b. Conform to any limitations or exclusions in the award.
- c. Were given consistent accounting treatment and applied uniformly to both federally assisted and other activities of the recipient.
- d. Were net of applicable credits.
- e. Did not include costs properly chargeable to other federally assisted programs.
- f. Were properly recorded (i.e., correct amount, date) and supported by source documentation.
- g. Were approved in advance, if subject to prior approval in accordance with OMB Circular A-87.
- h. Were incurred in accordance with competitive purchasing procedures if covered by Attachment O of this Circular.
- i. Were allocated equitably to benefiting activities, including non-Federal activities.
8. Audits usually will be made annually, but not less frequently than every two years.
9. If the auditor becomes aware of irregularities in the recipient organization, the auditor shall promptly notify the cognizant agency and recipient management officials above the level of involvement. Irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets.
10. The audit report shall include:
- a. Financial statements, including footnotes, of the recipient organization.
- b. The auditors' comments on the financial statements which should:
- (1) Identify the statements examined, and the period covered.
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(2) Identify the various programs under which the organization received Federal funds, and the amount of the awards received.

(3) State that the audit was done in accordance with the standards in paragraph 5.

(4) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

c. The auditors' comments on compliance and internal control should:

(1) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses.

(2) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements and reports.

(3) Contain an expression of positive assurance with respect to compliance with requirements for tested items, and negative assurance for untested items.

d. Comments on the accuracy and completeness of financial reports and claims for advances or reimbursement to Federal agencies.

e. Comments on corrective action taken or planned by the recipient.

11. Work papers and reports shall be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the cognizant agency of the need to extend the retention period. The audit workpapers shall be made available upon request to the cognizant agency or its designees and the General Accounting Office or its designees.

12. The Office of Management and Budget will work with Federal agencies and State and local governments to assure that recipient audits are made in accordance with the standards set forth in paragraph 5.

13. The Office of Management and Budget will designate cognizant agencies for major recipient organizations.

14. The cognizant agency shall have the following responsibilities:

a. Obtain or make quality assessment reviews of the work of non-Federal audit organizations, and provide the results to other interested audit agencies. (If a non-Federal audit organization is responsible for audits of recipients that have different cognizant audit agencies, a single quality assessment review should be arranged.)

b. Assure that all audit reports of recipients that affect federally assisted programs are received, reviewed, and distributed to appropriate Federal audit officials. These officials will be responsible for distributing audit reports to their program officials.

c. Whenever significant inadequacies in an audit are disclosed, the recipient organization will be advised and the auditor will be called upon to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient organization and Federal awarding agencies of the facts and its recommendation. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies.

d. Assure that satisfactory audit coverage is provided in a timely manner and in accordance with the provisions of this Attachment.

e. Provide technical advice and act as a liaison between Federal agencies, independent auditors, and recipient organizations.

f. Maintain a followup system on audit findings and investigative matters to assure that audit findings are resolved.

g. Inform other affected audit agencies of irregularities uncovered. The audit agencies, in turn, shall inform all appropriate officials in their agencies. State or local government law enforcement and prosecuting authorities shall also be informed of irregularities within their jurisdiction.

15. Recipients shall require subrecipients that are State and local governments or Indian tribal governments to adopt the requirements in paragraph 1 through 11 above. The recipient shall ensure that the subrecipient audit reports are received as required, and shall submit the reports to the cognizant agency. The cognizant agency will have the responsibility for these reports described in paragraph 14.

16. Small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts awarded with Federal funds. Grantees of Federal funds shall take the following affirmative action to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals as defined in P.L. 95-507 are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available, and arrange time frames for the audit so as to encourage and facilitate participation by small or disadvantaged audit firms.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small or disadvantaged firms.

d. Encourage contracting with small or disadvantaged audit firms which have traditionally audited government programs, and in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small or disadvantaged audit firms as described in paragraph a when a contract is too large for an individual small or disadvantaged audit firm.

f. Use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the Community Services Administration in the solicitation and utilization of small or disadvantaged audit firms.

U.S. Department of Housing and Urban Development

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HUD-401



Report:

SB 341:

POSITION PAPERS
& FISCAL NOTES

SB 341

POSITION PAPERS

AND

FISCAL NOTES

Those submitting:

Office of the Governor
Department of Administration
Department of Commerce
Department of Community and Regional Affairs
Department of Education
Department of Environmental Conservation
Department of Fish & Game
Department of Health and Social Services
Department of Labor
Department of Law
Department of Military & Veterans Affairs
Department of Natural Resources
Department of Public Safety
Department of Revenue
Department of Transportation and Public Facilities
University of Alaska



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

MEMORANDUM

TO: Jim Ayers, Director
Legislative Relations
Office of the Governor

DATE: February 4, 1986

PHONE: 465-3616

FROM: Michael A. Nizich
Director, Division of
Administrative Services
Office of the Governor

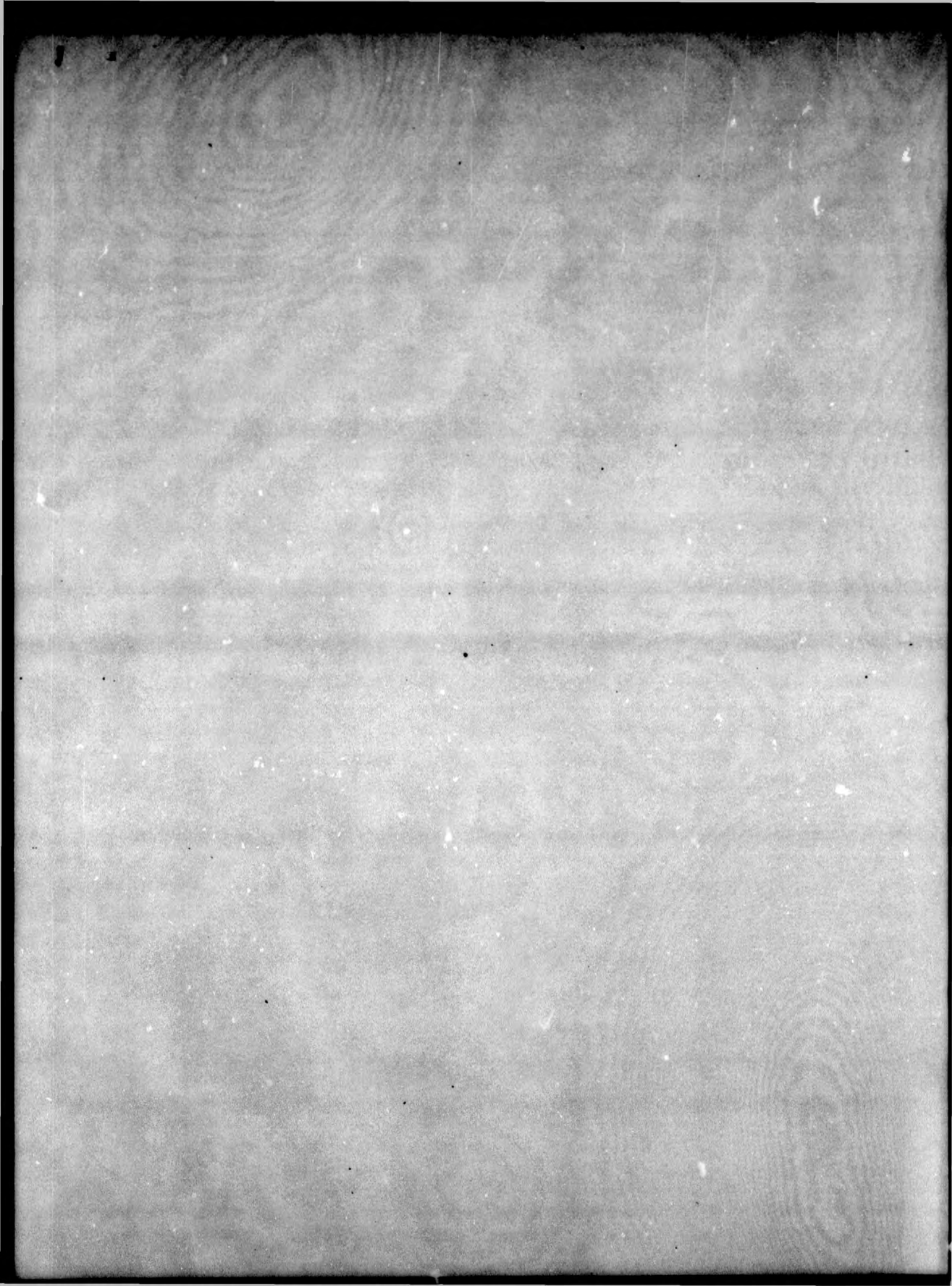
SUBJECT: SB 341

The Department of Administration has requested all State agencies to carefully review SB 341 ("An Act Relating to State Procurement Practices and Procedures") and to submit position papers and fiscal notes to your office. I have reviewed this bill in detail, and find no substantive changes from current practices and procedures. Although I am aware that a substantial amount of time was spent on this issue by the Senate Committee on State Procurement Practices and Procedures, the Department of Administration and the Department of Law, there is nothing in this bill that materially changes the way State agencies currently purchase goods and services (with the exception of Legislative Affairs).

No fiscal note is attached to this memo. It is not possible to determine what fiscal impact this legislation will have on the Office of the Governor until the required regulations are promulgated by the Department of Administration.

I am available to answer questions or discuss this issue further at your convenience.

cc: Ray Gillespie
Laurie Herman
Marsha Hubbard



Position Paper
SB 341

This bill establishes fair, comprehensive and modern procurement practices and procedures for the State. It causes these practices and procedures to be applied as consistently as possible among the executive, legislative and judicial branches of State government. It helps to promote broad-based competition and increased economy in all State procurement activities. It provides safeguards for the maintenance of a procurement system of quality and integrity while permitting continued development of the procurement practices and policies of the State.

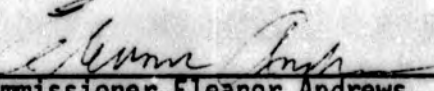
The Department of Administration supports this bill with the attached amendments.



Robert J. Link, Director
Division of General Services & Supply

2/4/86

Date



Commissioner Eleanor Andrews
Department of Administration

2/4/86

Date

Analysis of Bill/Program Effects
SB 341

This bill will create the need for a complete revision of chapter 15 of the Administrative Code and complete revision of the Policy and Procedures Manual for the contracting section of the Division of General Services & Supply. These revisions will be accomplished through a professional services contract.

Sec. 36.30.005

Executive branch procurement authority is centralized with the commissioner of Administration and the chief procurement officer, but may be delegated as specified in the bill.

Sec. 36.30.005(b)

The procurement authority related to construction and the State Equipment Fleet and the control over construction and the State Equipment Fleet is transferred to the commissioner of Transportation and Public Facilities (DOT&PF), subject to regulations adopted by the commissioner of Administration.

Sec. 36.30.010

The chief procurement officer may be removed from office by the commissioner only for cause. The term of office of the chief procurement officer expires when the term of office of the Governor expires.

Sec. 36.30.010

Unless specifically provided otherwise, the chief procurement officer is responsible for the procurement, inventory and sale of all goods and services used by the State and for the regulations necessary to carry out the intent of the bill.

Sec. 36.30.015

The Department of Transportation and Public Facilities may contract for the procurement of equipment for the State Equipment Fleet.

Sec. 36.30.015-.020-.030

The judicial and legislative branches and the Alaska Railroad Corporation must adopt procurement procedures which are substantially equivalent to the procedures prescribed in this bill.

Sec. 36.30.050

Lists of contractors to provide goods and services must be developed and maintained. These lists must be used and made available for use by all branches of State government.

Sec. 36.30.050

A person who wishes to be on the contractors' list must have a valid Alaska business license and pay a biennial fee. The requirement that all those on the contractors' list have an Alaska business license may be in conflict with

federal restraint of trade laws. The State may face legal challenges to this requirement from out-of-state contractors.

Sec. 36.30.060

The commissioner must adopt regulations governing specifications for goods and services and monitor the use of these specifications.

Sec. 36.30.070

The commissioner must adopt regulations governing the management, sale and disposal of goods.

Sec. 36.30.080

The Department of Administration must lease space for the use of the State or an agency. If the lease agreement is for an amount in excess of \$1,000,000 annual rent, the department must provide notice to the legislature as described in the bill.

Sec. 36.30.140

The bill provides that the procurement officers must open all invitations in the presence of at least one witness.

Sec. 36.30.160

Late bids will not be accepted unless the delay was due to an error of a State employee directly responsible for opening the bids.

Sec. 36.30.190

The commissioner may provide by regulation that, in cases where it is not practical or advantageous to procure goods or services through competitive bidding, these goods or services may be procured through competitive sealed proposals. In cases where competitive sealed proposals are used, the chief procurement officer or, for construction contracts and procurements for the State Equipment Fleet, the commissioner of DOT&PF, must determine in writing that the use of competitive bidding is not practical or advantageous to the State.

Sec. 36.30.210

All contractors and subcontractors responding to a request for competitive sealed proposals must have a valid Alaska business license. The requirement that all those on the contractors list have an Alaska business license may be in conflict with federal restraint of trade laws. The State may face legal challenges to this requirement from out-of-state contractors.

Sec. 36.30.300

Goods and services may be procured without competitive sealed bids or competitive sealed proposals or other forms of competition only after a written determination has been made by the commissioner that there is only one source for the required goods or services. Current law permits the commissioner to limit bid solicitation or to waive bidding requirements when a finding is made that it is in the best interest of the State to do so. From December 1, 1984, to December 1, 1985, the Division of General Services & Supply processed 548 bid waiver requests under current law. Of those sampled, only 20 percent meet the sole source requirement of the new bill. This means that under the new bill 438 more competitive sealed bids would be required.

Sec. 36.30.360

The procurement officer is required to prepare a written determination of responsibility of a bidder in accordance with regulations adopted by the commissioner.

Sec. 36.30.365

The bill requires that the procurement officer provide each bidder a notice of intent to award a contract (abstract) at least ten days prior to the award of the contract. Current law requires that five days pass from the time the abstract is issued until the award becomes final. This change will affect the operations of the Division of General Services & Supply in that it will add a minimum of five working days to the length of each competitive sealed bid and competitive sealed proposal.

Sec. 36.30.390

The bill requires that before using a multi-term contract the procurement officer will determine, in writing, that the estimated requirements are reasonably firm and continuing for the proposed period of the contract and that the contract will serve the best interest of the State by encouraging effective competition or otherwise promoting economies in State procurement. This will add additional time to the transaction each time a multi-term contract is used.

Sec. 36.30.430-.460

The bill requires the commissioner to adopt regulations to permit the inclusion in contracts of clauses providing for adjustments in prices, time of performance, and remedies for liquidated damages, delay or nonperformance, and termination of the contract for default or the convenience of the State. The procurement officer may vary these required clauses provided a written determination justifying the change is made and that this determination is reviewed and approved by the Department of Law. This procedure will have an operational impact on the Division of General Services & Supply, since it will build in additional time to the preparation of each nonstandard bid. The additional time will be caused by the requirement to make a written determination and have it approved by the Department of Law. Neither of these steps are required under the current law.

Sec. 36.30.540

The bill requires that the commissioner report to the legislature every two years any matters that involved litigation, any recommendations for changes of this chapter, usage of sole source and emergency procurements provisions of this chapter and a summary of the information concerning competitive sealed proposals.

Sec. 36.30.560-.565-.570

The bill provides that an interested party may protest the award of a contract, the proposed award of a contract or the solicitation for goods or services before the bid is opened. The protest must be filed in writing with the procurement officer and according to the form described in the bill, including, a detailed statement of the factual and legal grounds of the protest and the form of relief requested. Depending on the nature of the protest, it may be filed up to ten days from the date of the notice of intent to award. This is a change from the existing law, in that it allows five

additional days for a protest to be filed. If a protest is received after a contract has been awarded the procurement officer must give notice to the contractor or, if no award has been made, to all interested parties. This will require additional work on the part of the procurement officers since they are not now required to provide the notices referenced above. The increase in time allotted for the receipt of protests will add to the time it takes to conduct competitive sealed bids.

Sec. 36.30.575

After a protest is filed an award may be made unless the procurement officer determines in writing that reasonable probability exists that the protest will be sustained or that stay of the award is not contrary to the best interest of the State. This changes existing law. Currently awards are automatically stayed when a protest is received. The award remains in abeyance until the hearing officer renders a decision on the protest. The new bill creates additional work for the procurement officers since it permits them to make a first-line, written determination on the propriety of the protest.

Sec. 36.30.580

The bill requires the procurement officer to issue a written decision containing the basis for the decision within 14 days after a protest is filed. A copy of the decision must be furnished to the protester by a type of mail that provides evidence of receipt. The time for a decision may be extended up to 26 days by the commissioner for cause. If the decision is not made by the date due, the protester may proceed as if the procurement officer had issued a decision adverse to the protester. This requires additional work on the part of the procurement officers. Under current law the written decision to the protester is prepared by the hearing officer. This change will also require additional work from the support staff, since they will have to keep files of the decision and the evidence of receipt of mail by the protester.

Sec. 36.30.585

The bill requires that the procurement officer implement an appropriate remedy if the procurement officer sustains the protest. This is a change from the current law. Currently the hearing officer determines whether or not a protest should be sustained and directs an appropriate remedy. The new bill will create additional work for the procurement officers.

Sec. 36.30.590

The bill permits a protester to appeal the decision made by the procurement officer to the commissioner. The appeal must be filed within five days of the protester's receipt of the procurement officer's decision and identify the factual or legal errors which form the basis for the appeal. A copy of the appeal must be filed with the procurement officer. This will have an operational impact on the bid process because it adds an additional five days to it.

Sec. 36.30.595

The bill requires that the procurement officer immediately give notice to the contractor, if a contract has been awarded, or to all interested parties if no award has been made. The commissioner must, on request, furnish a copy of the appeal to any person notified above. Under current law the person who files the appeal is responsible for providing a copy of their appeal to all

interested parties. This change will create additional work for the procurement officers.

Sec. 36.30.605

The new bill requires that the procurement officer file a complete report on the protest and decision with the commissioner within seven days from the time the protest appeal is filed. The commissioner may extend this time if the procurement officer requests it in writing and there is sufficient reason to warrant an extension. The commissioner must notify the protester in writing of the date the report is due if an extension is granted. The protester may file comments on the protest report with the commissioner within seven days of the protester's receipt of the protest report. The protester must file copies of these comments with the procurement officer and other interested parties. The commissioner may extend this time if the protester requests it in writing and there is sufficient reason to warrant an extension. The commissioner must notify the procurement officer in writing of the date the report is due if an extension is granted. None of this is required under current law. It will cause an operational and fiscal impact on the Division of General Services & Supply. The operational impact will be the additional 14 days, minimum, that it takes to close the transaction.

Sec. 36.30.620

The bill permits a contractor to file a claim concerning a contract awarded under this section. If a claim is filed the procurement officer must review the facts relating to the controversy, obtain legal, fiscal or other necessary advice and issue a written decision within 90 days after receipt of the claim. This time may be extended by the commissioner for good cause if the controversy concerns an amount in excess of \$50,000. If an extension is granted the procurement officer must so notify the contractor and advise the contractor of the date by which a decision will be issued. The procurement officer must send a copy of the decision to the contractor by some method that provides evidence of receipt. If the decision is not issued by the date due, the contractor may proceed as if a decision was made that was adverse to the contractor.

If a contract controversy cannot be resolved by agreement the matter must be immediately forwarded to the commissioner. The procedures described above are not in the current law. They will create additional work for the procurement officers.

Sec. 36.30.625

The bill permits an appeal, based on legal or factual errors of the procurement officer's decision, to be filed with the commissioner. A copy of the appeal must be filed with the procurement officer.

Sec. 36.30.630

The bill provides that the commissioner may, within 15 days of the receipt of an appeal, adopt the decision of the procurement officer or schedule a hearing.

Sec. 36.30.635

The bill provides that a person, for cause, may be debarred from doing business with the State, for a period not to exceed three years, after consultation with the using agency and the attorney general and after a hearing. It further provides that a person, for probable cause, may be suspended from doing business with the State, for a period not to exceed three months, after consultation with the using agency and the attorney general.

Proposed Technical Amendments to
SB 341

Sec. 36.30.010
Page 2
Lines 21, 22, 23, 24, 25

PROPOSED AMENDMENT

(a) The commissioner shall appoint to the partially exempt service the chief procurement officer of the State who is responsible for the procurement and management of supplies, services, and professional services for agencies in the executive branch.

REASON: To clarify the intent of the bill because elsewhere it makes the chief procurement officer for the management of supplies during their life cycle, including the responsibility for property management, inventory and disposal.

Sec. 36.30.015
Page 3
Lines 21, 22, 23

PROPOSED AMENDMENT

(a) The Department of Transportation and Public Facilities may contract for construction and procurements for the acquisition and operation of equipment in the State Equipment Fleet.

REASON: To clarify the intent of the bill, that is, to permit the Department of Transportation and Public Facilities to procure cars, trucks, graders, and necessary supplies for the operation of the State Equipment Fleet.

Sec. 36.30.015
Page 3
Lines 25, 26, 27

PROPOSED AMENDMENT

The commissioner of Transportation and Public Facilities may delegate to another agency the authority to contract for construction (.) and for the procurement of equipment to be added to the State Equipment Fleet.

REASON: To clarify the intent of the bill. Without the proposed amendment, the bill says that the commissioner of Transportation and Public Facilities may only delegate the authority to contract for construction and implies that none of the other authority vested in that position may be delegated.

Sec. 36.30.015

Page 4

Lines 5, 6, 7

PROPOSED AMENDMENT

(b) The commissioner may delegate to an agency the authority contract for and manage (SUPPLIES) services, professional services and supplies, except property of the State Equipment Fleet. (SERVICES AND PROFESSIONAL SERVICES.)

REASON: To clarify the intent of the bill.

Sec. 36.30.120

Page 10

Lines 8, 9, 10, 11, 12, 13

PROPOSED AMENDMENT

Bid security must be in an amount equal to at least

(1) 10 percent of the amount of the bid if the bid does not exceed \$100,000; (OR) and

(2) five percent of the amount of (THE) a bid exceeding \$100,000 . if the bid exceeds \$100,000.

REASON: To clarify the intent of the bill, that is, that the bid security required for a contract greater than \$100,000 is more than the bid security required for a contract of less than \$100,000.

Sec. 36.30.140

Page 11

Lines 21, 22

PROPOSED AMENDMENT

The bids are not open for public inspection until after a (CONTRACT IS AWARDED.) notice of intent to award a contract has been issued.

REASON: This proposed amendment will permit bidders to inspect all of the bid responses at the time a notice of intent to award a contract is issued and to file a protest then, rather than after the contract has been awarded.

Sec. 36.30.240
Page 16
Lines 5, 6, 7, 8, 9

PROPOSED AMENDMENT

Offerors reasonably susceptible of being selected for award shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and before the award of the contract for the purpose of obtaining best and final offers.

REASON: To clarify the intent of the bill, that is, that the contracting agency may accord specific offerors an opportunity to discuss and revise their competitive sealed proposals and submit their best and final offer but that this may be done only with offerors whose proposals initially met the intent of the competitive sealed proposal and were reasonably susceptible of being selected for award.

Sec. 36.30.380
Page 20
Lines 10, 11, 12, 13, 14

PROPOSED AMENDMENT

Except for a contract awarded through competitive sealed bidding (AND) or a firm fixed-price contract, a contract may not be used unless it has been determined in writing by the procurement officer that the proposed contractor's accounting system

REASON: To clarify the intent of the bill. That contracts established by competitive bid or other contracts with a fixed-price need not have the approval of the contractor's accounting system. These are contracts established by bid which do not have a firm fixed price.

Sec. 36.30.510
Page 25
Lines 8, 9, 10

PROPOSED AMENDMENT

A contract file open for public inspection must be kept by (THE COMMISSIONER AND) the contracting agency for each contract awarded under competitive sealed proposals.

REASON: The proposed amendment would eliminate the need for duplicate sets of contract files to be kept.

Proposed Amendments to
SB 341

Sec. 36.30.320(b)(2)
Page 18
Lines 25, 26, 27

(WITH A PERSON UNDER THIS SUBSECTION IF THE TOTAL AMOUNT OF PROFESSIONAL SERVICES CONTRACTS AWARDED TO THAT PERSON FROM THE AGENCY EXCEEDS \$25,000 IN A 12 MONTH PERIOD.)

REASON: The intent of this section--to prevent the spending of a large amount of funds with a contractor in small parts to avoid the competitive process--is covered by (d) of this section. This paragraph will prevent a contractor who has received a contract over \$25,000 from being considered for small contracts since it would be necessary to issue an RFP in order to consider them.

Sec. 36.30.300(d)
Page 18
Line 3--insert

(d) The using agency may submit written evidence to support a determination that there are a limited number of suppliers capable of providing specific requirements. If the determination is made by the commissioner of Administration or the commissioner of Transportation and Public Facilities as appropriate that a limited number of suppliers are capable of providing specific requirements and that use of the notice requirements of 36.30.130 is inappropriate the procurement officer shall seek the maximum competition practicable from those suppliers determined to be capable of meeting the State's requirements.

REASON: There are numerous circumstances in which a piece of equipment requires a part, accessory, or attachment which is only available from authorized dealers or representatives. The availability of the dealers authorized to sell within the state is often limited. It is appropriate to seek maximum competition from those capable of supplying the required items. It is inappropriate to notify numerous bidders who cannot possibly supply the requirements.

Sec. 36.30.130
Page 10 lines 19-29
Page 11 lines 1-8

We do not have a problem with the requirements of this section as we have been operating under these requirements. We would resist an effort to make the presently optional forms of notice mandatory. Requiring all forms of notice would increase work, paperwork, and more important, advertising costs significantly.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
 Bill/Resolution No.: Senate Bill 341
 Title: "An act relating to state pro-
 curement practices and procedures and
 providing for an effective date."
 Sponsor: Rules by request for Senate
 Requestor: Select committee
 Date of Request: _____

FISCAL DETAIL
 Agency Affected: _____
 BRU: Department of Administration
Division of Administrative Services
 Components: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES	0	80.7	161.3	166.1	171.1	176.2
TRAVEL	0	8.9	17.8	18.3	18.8	19.4
CONTRACTUAL	0	38.2	76.4	78.7	81.1	83.5
SUPPLIES	0	1.0	1.9	2.0	2.1	2.2
EQUIPMENT	0	8.0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	136.8	257.4	265.1	273.1	281.3
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	136.8	257.4	265.1	273.1	281.3
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL		137.3	257.4	265.1	273.1	281.3

POSITIONS:

FULL-TIME	0	3	3	3	3	3
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Attached.

Prepared By: Gary Bader *Gary M. Bader* Phone: 465-2277
 Division: Administrative Services Date: 2/6/86
 Approved by Commissioner: Eleanor Andrews *Eleanor Andrews* Date: 2/7/86
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Senate Bill No. 341

SUBJECT OF PROPOSED BILL:

State procurement practices and procedures.

SUMMARY/EXPLANATION OF INTENT:

"To simplify, clarify, and modernize the law governing Procurements by the State."

ESTIMATED FISCAL IMPACT:

Capital: 0
Operating: \$136,800 FY 87
 \$257,400 FY 88

ANALYSIS:

A. Assumptions

1. Enactment of Senate Bill #341 will significantly impact the Department of Administration and the present method of bid solicitation and the subsequent protest and appeal process.

Because of the changes in Article 2 and Article 3 which will be addressed by General Services and Supply, an increased number of protests and appeals is anticipated by General Services and Supply. The changes proposed by Senate Bill #341 to the protest and appeals procedures and possible subsequent hearings are listed below:

Section 36.30.590 creates a two-step protest/appeal process for goods and services contract awards where previously there was only one step. Prior to SB341, a decision was made by the Commissioner of Administration to deny a protest, to rule on a protest or hear the protest. This decision can be based on timeliness and/or merit. This Bill creates a first step whereby a protest can be filed with the procurement officer. If the protestor is not satisfied with the decision of the procurement officer, a written appeal is to be filed within five days with the Commissioner. Unless the appeal is determined to be untimely or that no facts are in dispute, the appeal will go into the hearing process. This is based on the assumption that the Commissioner of Administration will not decide to delegate appeals and hearings to the department involved. This assumption is based on the need for efficiency and standardizing which can only be obtained by centralization. It is estimated that approximately 122 appeals will be heard by a hearing officer.

Section 36.30.595(b) requires the Commissioner to furnish a copy of filed appeals to "all interested parties." This newly required clerical function will require a mailing of an estimated ten notifications per each appeals and other related functions.

Section 36.30.630 grants the Commissioner 15 days after receipt of a written appeal to adopt the procurement officer's decision regarding contract controversies or determine if there should be a hearing. It is assumed that in order to make the decision, the Commissioner will conduct a complete investigation of the facts surrounding the contract controversy. This investigation should be exhaustive.

Section 36.30.650 and Section 36.30.660 are newly created to place into law procedures regarding debarment, suspension and reinstatement. Hearings may be held following receipt of a written appeal requesting a reconsideration or reinstatement. Based upon evidence showing that the cause no longer exists or has been mitigated, a Hearing Officer may make recommendations to the Commissioner.

2. Of the Goods and Services contracts, during the December 1, 1984, to December 1, 1985 period, 390 bid solicitations were conducted and 548 bid waivers were allowed by the commissioner as being in the best interest of the State. Of these 548 waivers, only 20% would meet the criteria of sole source or emergency requirements of the new bill. Therefore, under the new law, an additional 438 bid solicitations would be required. Of the 390 bids, there were 61 protests or 15.6%. Using this percentage, of the total solicitations required by the new law, 130 protests could be anticipated.

$$(390 + 438) * 15.6\% = 130 \text{ appeals}$$

Of these 130 expected protests, it is anticipated that approximately 52 will be resolved prior to requiring a hearing.

130	anticipated protests
-52	40% will be resolved by a purchasing officer decision
-11	8.5% will be deemed untimely
<u>67</u>	anticipated hearings or rulings based on submitted briefs

67	anticipated hearings based on Goods and Services contracts.
+50	anticipated appeals regarding contract controversies
+ 3	anticipated appeals regarding debarment and suspension
+ 2	anticipated appeals regarding reinstatement
<u>122</u>	anticipated total hearings

3. Inflation is estimated at three percent per year.

B. Staff Requirement

1. 122 hearings are anticipated per year.
2. Each Hearing Officer can hear and file on one appeal per week, based on estimates provided by Department of Labor.

3. General Government Unit (GGU)

Hours per year	= 1,950 hrs/yr
Annual Leave	= (127.5)
Five days Sick Leave	= (37.5)
Holidays (ten days)	= <u>(75.0)</u>
Employee Annual Hours Worked	1,710 hrs/yr
Employee Weeks worked/yr	45.6 wk/yr

4. 122 anticipated hearings/yr + 46 hearings/H.O. = 2.6 H.O./yr.
There is presently one hearing officer in the Department of Administration; thus 2 additional Hearing Officers are required.

C. Costs:

1. Personal Services: \$80,657* (January 1, 1987 - June 20, 1987)
\$161,314 (FY 88)

(2) Hearing Officers	R/21A	2 X \$ 59,934 = \$119,868
Administrative Asst.	R14B	\$ 41,446 = \$ 41,446
	TOTAL	<u>\$161,314</u>

* FY 87 (.5 x 161,314) = 80,657

2. Travel: \$8,884 (January 1, 1987 - June 30, 1987)
Full year cost is \$17,768 for FY 88.

(a) Assumes 25% of hearings in Anchorage requiring two days per diem per trip at \$80/day

(1) Airfare	\$ 352
(2) Perdiem 2 X 80 -	<u>160</u>
(3) 30 trips X 512 X	\$15,360

(b) Assumes 3% of hearing in Fairbanks requiring two days per diem per trip at \$90/day.

(1) Airfare	\$ 422
(2) Perdiem 2 X 90 -	<u>180</u>
(3) 4 trips X 602 =	\$2,408

3. Contractual: \$38,216 (January 1, 1987 - June 30, 1987)
Full year cost is \$76,432 for FY 88.

(a) Centrex (3 X \$512) -	\$1,536
(b) Photocopies and transcripts	1,200
(c) Telephone-toll (\$10/call X 2 calls X 20/day x 12)	4,800
Data Processing Chargeback	500
(d) Professional Services	\$59,400

Because a large percentage of contracts are put to bid at the same time, many appeals will occur at the same time. Because unheard appeals will delay contract awards, the appeals must be heard in a timely manner. It is therefore assumed that 15% of

the appeals will be heard by a contracted hearing officer. The average cost of a contracted hearing has been \$3,000 - \$4,000 in the past.

$$18 \times \$3,300 = \$59,400$$

(e) Space Rental: \$8,996
Hr Off Range 21 = 85 X 2 = 170 sq. ft.
Admin Asst. Range 14 = 85 85 sq. ft.
25% Circulation = 64 sq. ft.
Total 319 sq. ft.

$$319 \text{ Sq. Ft.} \times \$2.35^* \text{ mo} \times 12 = \$8,996$$

* average per sq. ft./mo in Juneau

4. Supplies: \$900 (January 1, 1987 - June 30, 1987)
Full year cost is \$1,854 (FY 88)
FY 87: 3 emp X \$50/mo X 6 mo - \$900
FY 88: 3 emp X \$50/mo X 12 mo X 1.03 Inflation = \$1,854

5. Equipment (one-time) : \$7,954

(a) Furniture

Chairs (3@ \$150)	\$ 450
Desks (3@ \$500)	\$1,500
File Cabinet (4@ \$366)	\$1,464

(b) Office Equipment

Calculators (2 @ \$270)	\$ 540
Computer Terminal w/word-processing hook-up	4,000

Position Title Hearing Officers (2)			No. of Positions 2	Range/Step 21A	Barg. Unit G	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 24	RP Number	Location Juneau		Election District	Leg.		
Type of Expenditure			Justification					
		Amount	<p>Three hearing officers will be required in FY 87 to hear appeals that have not been satisfied at the procurement officer or preliminary hearing officer level. Presently, one hearing officer position exists in the Department of Administration, therefore, two additional officers are required. The duties include, but are not limited to; review of decisions of procurement officers, review of all pertinent documentation and materials, notification to all interested parties of filed appeals, and conducting hearings according to AS 36.670.</p> <p><u>SINGLE POSITION COST PER YEAR</u></p> <p>\$3,812 X 12 = \$45,744.00 Benefits = 14,190.39 Total = 59,934.39</p>					
1	2	3						
Salary	91,488							
Benefits	28,381							
Premium Pay	0							
Other	0							
Total Personal Services		119,869						
Travel	13 trips Anch, 4 trips Ebks	17,768						
Contractual		13,521						
Commodities		865						
Equipment		2,764						
Other								
Total Cost		154,787						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004	154,787						
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
For B&M Use Only								
Key Number								

**Request For
New Position**

Agency Department of Administration
BRU Administrative Services
Component Administrative Services

FY 87

Page 7 of 7
Revised Date

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 02-05-86

REQUEST
Bill/Resolution No.: SB 341
Title: An act relating to the State
procurement practices and procedures;
and providing for an effective date.
Sponsor: Senate Rules
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Administration
BRU: General Services & Supply
Components: Purchasing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES		222.7	445.5	460.5	475.5	490.9
TRAVEL		10.0				
CONTRACTUAL		189.0	38.0	43.0	38.0	43.0
SUPPLIES						
EQUIPMENT		72.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		493.7	483.5	503.5	513.5	533.9
FEDERAL FUNDS						
OTHER						
TOTAL		493.7	483.5	503.5	513.5	533.9

POSITIONS:

FULL-TIME		9	9	9	9	9
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Attached

Prepared By: Robert J. Link *Robert J. Link* Phone: 465-2250
 Division: General Services & Supply Date: 02-05-86

Approved by Commissioner: Eleanor Andrews Date: 02-05-86
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Senate Bill No. 341

FISCAL NOTE ANALYSIS:

A. REGULATIONS-PROCEDURES DEVELOPMENT AND TRAINING = \$135,000

The bill will create the need for a complete revision of the chapter 15 of the Administrative Code. This revision will be accomplished through a professional legal services contract. to write the regulations and conduct the required public hearings and is estimated to cost \$55,000 (see detail below).

The bill will create the need for a complete revision of the Policy and Procedures Manual for the contracting section of the Division of General Services and Supply. This revision will be accomplished through a professional services contract with an associate attorney. The cost of this contract plus the necessary printing is estimated to be \$25,000 (see detail below) .

Since the bill will completely revise the statute, and subsequently the administrative code and the policy and procedures manual of the division, we estimate that it will train approximately 310 state employees. in the newly required procedures. This will be accomplished through a professional services contract with an instructor plus printing and travel for an amount estimated to be (see detail below) \$55,000.

Legal services contract for regulations: \$100.00/hr x 83hr/month x 6 months = \$50,000.

Para-legal Contract for Policy and Procedures Manual: \$40.00/hr x 83hr/month x 6 months = \$20,000.

Instructors Contract: Develop training modules at \$60/hr x 525hrs = \$31,500 + train 310 people x \$50/person = \$15,500 for a total of \$47,000

Printing of the Policy and Procedures Manual: 200 manuals x \$25 = \$5000

Printing of the Training Materials: 400 training guides x \$7.50 = \$3000

Travel for public hearings in four locations: 2 people x \$385/airfare + \$240/perdiem x 4 locations = \$5000

Travel for training in four locations: 2 people x

\$385/airfare + \$240/perdiem x 4 locations = \$5000
Total \$135,000

The Department of Transportation has also budgeted for training and procedures development. The amounts which they have budget are to provide for procedures and training in the procurement of construction and its related activities. The amounts budget by General Services are for procurements not related to construction.

B. BIDDERS LIST = \$45,000

Lists of contractors to provide goods and services must be developed and maintained. These lists must be used and made available for use by all branches of state government. Department of Administration, Division of General Services and Supply is responsible for developing, maintaining, and making the lists available for use by all branches of state government. This will be accomplished through a professional services data processing contract. The cost of this contract is estimated to be \$40,000 one-time contractual expense of

A person who wishes to be on the contractors list must have a valid Alaska business license and pay a biennial fee. The fees will be received and processed by the administrative support staff. We estimate that the cost of receiving and processing the fees will be \$5,000. This is equal to 312 hours of an administrative support technicians time at \$16.01 per hour. This is a biennial contractual expense since the administrative support staff is budgeted for by purchasing, but once the funds are received they are transferred to the Division of Administrative Services. The Division of General Services and Supply then contracts with the Division of Administrative Services for administrative support. This is a biennial contractual expense of \$5,000.

C. Workload Impact = \$313,700

The Division of General Services currently has 13 purchasing agents. It is anticipated that the increased work load (see detail description on the New Position Request Form) will require the addition of 9 new purchasing agents.

9 positions x \$49,503 salary and benefits,
purchasing agent III, range 18A = \$445,527
(because the bill goes into effect in
January) = \$222,763 personal services

increase in FY87. \$445,527 personal services increase in FY88. We estimate that this cost will increase each succeeding fiscal year due to merit increases.

Each of the 9 new purchasing agent positions will required by the bill will need approximately \$8,000 in equipment (systems furniture and micro-computers). $\$8,000 \times 9 = \$72,000$
This is a one-time equipment expense.

The cost of printing and advertising bids will increase from \$46,100 to \$81,120. An annual increase of \$35,020.

$$\begin{aligned} \$46,100 : 704 &= \$65 \times 1248 = \$81,120 \\ - \$46,100 &= \$35,020 \end{aligned}$$

The cost of mailing bids will increase from \$3,800 to \$6,739. An annual increase of \$2,939.

$$\begin{aligned} \$3,800 : 704 &= \$5.40 \times 1248 = \$6,739 \\ - \$3,800 &= \$2,939 \end{aligned}$$

D. SUMMARY

1. Personal Services \$222,763

9 positions x \$49,503 salary and benefits, purchasing agent III, range 18A = \$445,527 (because the bill goes into effect in January) = \$222,763 personal services increase in FY87.

2. Travel \$10,000

Travel for public hearings in four locations: 2 people x \$385/airfare + \$240/perdiem x 4 locations = \$5000

Travel for training in four locations: 2 people x \$385/airfare + \$240/perdiem x 4 locations = \$5000

3. Contractual Services \$189,000

Legal services contract for regulations: \$100.00/hr x 83hr/month x 6 months = \$50,000.

Para-legal Contract for Policy and Procedures Manual: \$40.00/hr x 83hr/month x 6 months = \$20,000.

Instructors Contract: Develop training modules at \$60/hr x 525hrs = \$31,500 + train 310 people x \$50/person = \$15,500 for a total of \$47,000

Printing of the Policy and Procedures Manual: 200 manuals x \$25 = \$5000

Printing of the Training Materials: 400 training guides x \$7.50 = \$3000

Data processing contract for bidders List = \$40,000

Maintenance secretarial support of bidders list = \$5,000.

The cost of printing and advertising bids will increase from \$46,100 to \$81,120. An annual increase of \$35,020. for an FY 87 (6 months) of \$15,510.

The cost of mailing bids will increase from \$3,800 to \$6,739. An annual increase of \$2,939 for an FY 87 (6 months) amount of \$1470.

4. Equipment \$72,000

Equipment for the 9 new purchasing agent positions will be \$8,000 x 9 = \$72,000

Position Title Purchasing Agent III		No. of Positions 9	Range/Step T8A	Barg. Unit SGU	Gov.	Approv.	Disapp.
Time Status Full-time	Staff Months 6	RP Number	Location Juneau/Anch		Election District	Leg.	
Type of Expenditure		Amount					
1	2	3					
Salary	168,106						
Benefits	54,657						
Premium Pay							
Other							
Total Personal Services		222,763					
Travel							
Contractual							
Commodities							
Equipment		72,000					
Other							
Total Cost		294,763					
Receipt Code	Funding Source						
	Federal Receipts	1002					
	G. F. Match	1003					
	General Funds	1004					
	I-A Receipts	1005					
	Program Receipts	1028					
	CIP Receipts	1061					
	Other						
<p>Justification</p> <p>Sec. 36.30.300</p> <p>Under the new bill goods and services may be procured without competitive sealed bids only after a written determination has been made by the commissioner that there is only one source for the required goods or services. Current law permits the commissioner to limit bid solicitation or to waive bidding requirements when a finding is made that it is in the best interest of the State to do so.</p> <p>We estimate an average of 680 acquisitions per year are being purchased under the bid waiver provision of the current law. Purchases made under a bid waiver require 20 percent of the work of a purchase made under a competitive sealed bid.</p> <p>For planning purposes, we consider one average competitive sealed bid to be equal to one Work Unit and five bid waivers to be one Work Unit. During the past fiscal year the Division of General Services & Supply processed 704 competitive sealed bids (704 Work Units) and 680 bid waiver requests (680 ÷ 5) = 136 Work Units). The sum of these activities equals 840 Work Units for the division or 60 Work Units per year for each of 14 purchasing agents. [704 ÷ 136 (680 ÷ 5) = 840 ÷ 60 = 14] Since this data base was compiled the staff has been reduced by one (1) position to a total of 13 purchasing agents.</p> <p>Of the bid waivers sampled, only 20 percent meet the sole source or emergency requirement of the new bill. This means that we will have to accomplish the additional 80 percent work necessary to make these purchases as competitive sealed bids. This will create an additional 544 Work Units (680 x .8 = 544). This amount and the remaining 27.2 Work Units (bid waivers, 136 ÷ 5 = 27.2) will be added to the 704 competitive sealed bids we are currently doing. The sum of this equals 1,275 Work Units for the division. At a production rate of 60 Work Units per year for</p>							
<p>For B&M Use Only</p> <p>Key Number _____</p>							

1/1D1/0210-03/1

**Request For
New Position**

Agency Department of Administration
 BRU General Services & Supply
 Component Purchasing

FY 87

Page 1 of 2
 Revised Date _____

each purchasing agent it will require 21.25 purchasing agents to accomplish The 1,275 Work Units.

However, the pre-bid opening and post-bid opening protest/appeal procedures described in Sec. 36.30.560 through 36.30.605 are not required under existing law. For the period December 1, 1984, through December 1, 1985, 61 protests were received under the current law. We estimate that we will receive approximately 130 protests and appeals per year under the new bill. We estimate that the time required to respond to each of these protest/appeals will be equivalent to three (3) Work Units per year. Thus, each purchasing agent's annual Work Unit production will be reduced from 60 Work Units to 57 Work Units because of the time diverted to responding to protests/appeals. This means that it will require 22.36 purchasing agents to accomplish the 1,275 Work Units.

$$[704 + 544 (680 \times .8) + 27.2 (136 + 5) = 1,275 + 57 = 22.36]$$

22.36 purchasing agents required under the new bill

13 current purchasing agents

9.36 additional purchasing agent positions required

Nine (9) positions x \$49,503 salary and benefits, Purchasing Agent III, range 18A = \$445,527 + 2 (because the bill goes into effect in January) = \$222,763 personal services increases in FY 87. \$445,527 personal services increase in FY 88.

Five (5) of these positions will be located in Juneau and four (4) in Anchorage.

1/11D2/0210-03/3



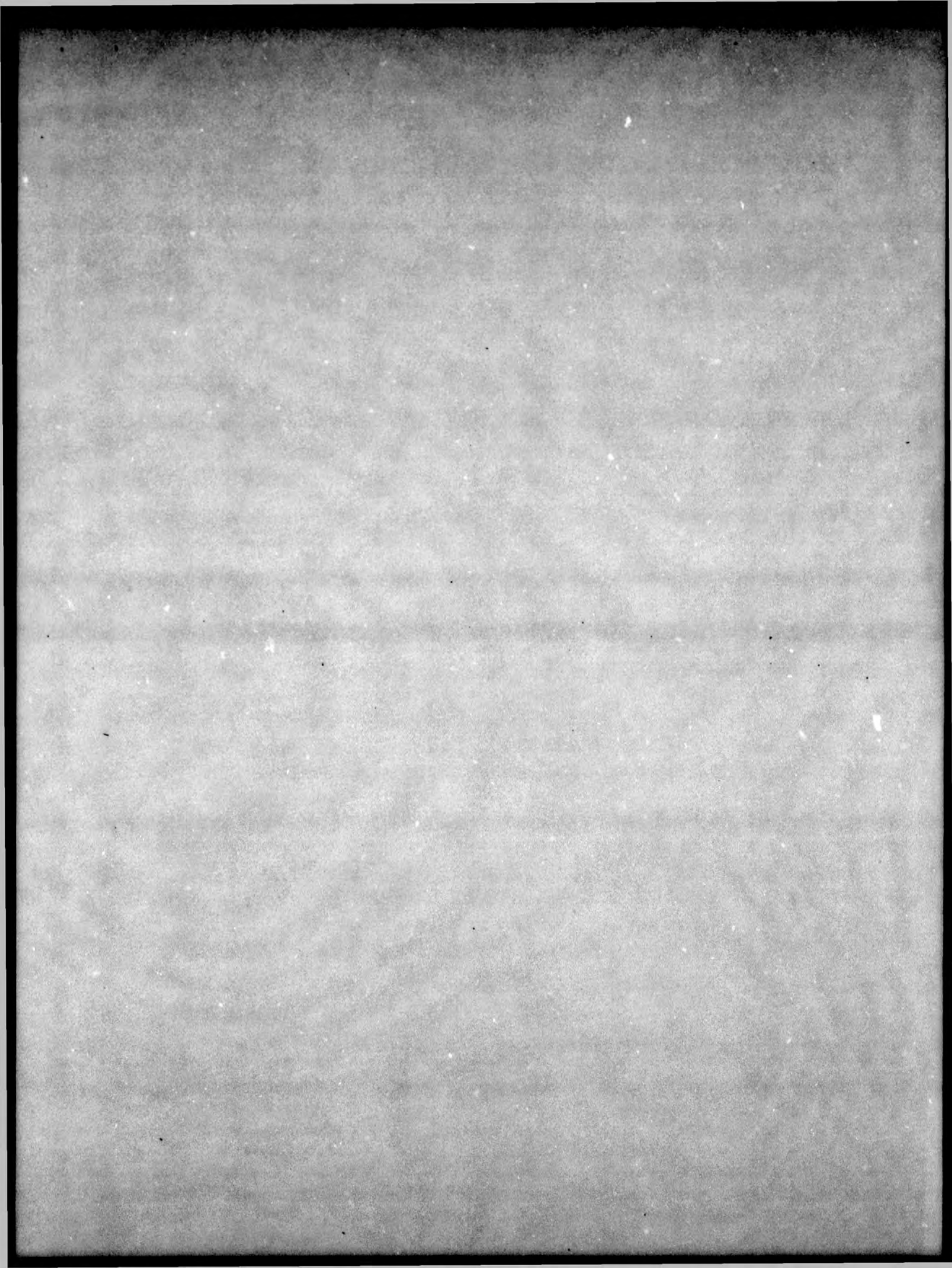
ADDITIONAL
EXPLANATION
FORM

AGENCY Department of Administration
BRU General Services & Supply
COMPONENT Purchasing

FY 87

Page 2 of 2

Revised Date _____





February 5, 1986

Ms. Marsha Hubbard
Deputy Commissioner
Department of Administration
P.O. Box C
Juneau, Alaska 99811

Re: SB 341

Dear Marsha:

Thank you for discussing with me the present activities within the administration to comment on SB 341. As requested, enclosed you may find a packet of comments and support materials that have been forwarded to Commissioner Lounsbury, Department of Commerce and Economic Development, and to Mr. Loren Rasmussen, Department of Transportation and Public Facilities. Mr. Rasmussen has indicated he is working with Bob Link of your department on a project to review and coordinate existing procurement practices of the various agencies in draft regulations for implementation of this bill.

I think you will find the materials and our position self-explanatory. We are out of the four publications of the U.S. Department of Housing and Urban Development (HUD) that specifically govern our procurement activities. One set of these publications was forwarded to Commissioner Lounsbury's office, and we can provide you with additional copies of these documents in about two weeks. Please let me know if you would like to receive them, or if there are any other materials you would like to receive from us.

Thank you for keeping us informed on the status of this legislation and administrative plans to implement its provisions. I, and the staff, are available for further comment at any time.

Sincerely,

ALASKA STATE HOUSING AUTHORITY

Barbara Morse-Quinn
Executive Director

BMQ:mrm

Enclosures

cc: ASHA Board Members



February 5, 1986

Mr. Loren Rasmussen
Department of Transportation
and Public Facilities
Division of Standards
and Technical Services
P.O. Box Z
Juneau, Alaska 99811

Re: SB 341

Dear Mr. Rasmussen:

The information in this package is forwarded in response to your recent telephone request to Preston Johnson, Director, Housing Development and Construction, for the Alaska State Housing Authority (ASHA). We are still waiting for the following federal publications governing our present procurement practices:

HUD Notice CPD 79.31
HUD Transmittal 7460-8
HUD Transmittal 7585.1 Rev-2 CH6-2
HUD Transmittal 7485.1 Rev-2

We have been told they will arrive within the next two weeks, and we will forward them to you, under separate cover, as soon as they are received.

With this letter, please find three letters from the U.S. Department of Housing and Urban Development (HUD) regarding their general oversight of this agency. Also, please find a copy of our existing purchasing regulations, a copy of HUD Form 52663 governing our contracts with HUD, ASHA staff sectional analysis of SB 341, and some related correspondence.

I hope this information is of use to you. Please be advised that we are not in a position, at this time, to endorse any proposed regulations implementing this bill. As you will see, we have serious concerns about being placed in a position of conflict with the policies of our federal funding source.

We would appreciate being informed of any comments you have with regard to our position and would like to receive directly and



Mr. Loren Rasmussen

-2-

February 5, 1986

review any draft regulations you promulgate. Thank you for contacting us. We will look forward to hearing from you again as your work progresses.

Sincerely,

ALASKA STATE HOUSING AUTHORITY

A handwritten signature in cursive script that reads "Barbara Morse-Quinn".

Barbara Morse-Quinn
Executive Director

BMQ:mrm

Enclosures

cc: ASHA Board Members
Commissioner Richard Knapp



January 31, 1986

The Honorable Loren Lounsbury
Commissioner
Department of Commerce and Economic
Development
P.O. Box D
Juneau, AK 99811

ATTENTION: Becky Bear

Re: SB 341

Dear Commissioner Lounsbury:

The Alaska State Housing Authority (ASHA) has been asked by your office to comment on SB 341. We appreciate your forwarding our remarks to their intended recipients. I, and members of the staff, are available for legislative testimony if it is requested or an appearance seems warranted.

The level of our procurement activities for the past twelve months averages nearly \$1,000,000 per month, with approximately 1520 invoices per month being processed. Procurement is presently performed substantially as conceived by the legislation, but is directly governed by our compliance with AS 36; ASHA's purchasing regulations (3 AAC 95.010 et seq.); the published policies, procedures, handbooks, regulations and rules of the U.S. Department of Housing and Urban Development (HUD); and the specific provisions of our Annual Contributions Contract agreements executed by and between HUD and ASHA. Given the existing level of our activity and our current contractual agreements with the federal government, we are seeking exemptions from this legislation, similar to those given to the Alaska Railroad Corporation.

Although our existing regulations have served ASHA well for several years, our regulations would become outdated by the passage of this bill. Should ASHA succeed in being exempted from this legislation, we would propose to review and update our regulations to make them as compatible as possible with each of the final provisions of the new state law. This task would be accomplished in coordination with HUD Counsel and the Office of the Attorney General. In the case of conflict, we may expect that federal authority over our procedures would prevail.



The Honorable Loren Lounsbury

Page 2

January 31, 1986

I have attached comments from HUD officials outlining certain areas of concern, a copy of the pertinent sections of our contracts with them, a statistical analysis of our present level of procurement, and a staff sectional analysis. Due to an immediate deadline for comment these remarks are being telecopied, while backup information on HUD's published policies is arriving under separate cover.

For your information, we have been asked to coordinate directly with the Department of Administration and the Department of Transportation and Public Facilities in providing them with materials on our existing procedures. It is my understanding that they are reviewing all agencies' regulations and public policies for future regulation drafting efforts.

Thank you for providing us with this opportunity to comment. Please contact me if you are in need of additional information on this subject.

Sincerely,

ALASKA STATE HOUSING AUTHORITY

A handwritten signature in cursive script, reading "Barbara Morse-Quinn".

Barbara Morse-Quinn
Executive Director

BMQ/smr

Enclosures:

- 1) HUD Correspondence, January 24, 1986 (2 letters)
- 2) ASHA Staff Sectional Analysis
- 3) Analysis of Purchases 1/85-1/86
- 4) Correspondence to Senator Faiks, December 13, 1985
- 5) Annual Contributions Contract, SF-210
- 6) ASHA Purchasing Regulations (3 AAC 95-010 et seq.)
- 7) HUD Publications
 - ° Notice CPD 79-31
 - ° Transmittal 7460-8
 - ° Transmittal 7585.1 REV-2 CHG-1
 - ° Transmittal 7485.1 REV-2

cc: ASHA Board Members



U.S. Department of Housing and Urban Development
 Anchorage Office, Region X
 701 "C" Street, Box 64
 Anchorage, Alaska 99513

RECEIVED
 ASHA

JAN 24 1986

JAN 24 '86

Barbara Morse-Quinn, Executive Director
 Alaska State Housing Authority
 Post Office Box 100080
 Anchorage, Alaska 99510-0080

cc	EX cc
cc	DEX cc
cc	Eq. Dept
cc	EX Sec
	Board

Dear Ms. Morse-Quinn:

Subject: Relationship of Alaska State Housing Authority
 and the U. S. Department of Housing and Urban Development

This is in response to your letter dated January 17, 1986, requesting our comments on the relationship of Alaska State Housing Authority (ASHA) and U. S. Department of Housing and Urban Development (HUD).

The relationship is a contractual one which is defined by the terms of the Annual Contributions Contract. Under that document a public housing authority (PHA) is provided federal funds for the specific purpose of providing and operating housing for families of lower income. The funding is designated for specific projects and may only be used in accordance with the HUD-approved development program, contract terms, and HUD regulations and policies. Should the funding approved by HUD for a particular project not be made available to the PHA, it would be necessary for the federal government to provide additional funding in order for HUD to meet its contractual responsibilities to the PHA. For this reason, HUD cannot approve any arrangement whereby the PHA does not have total access to and control of, the funds supplied by HUD. As a small example of this, HUD requires the PHA to invest the funds provided in order to earn interest. The amount of funding provided has been calculated on the basis that a certain amount of interest will have been received by the PHA. Any attempt to make HUD funds provided to ASHA restricted as to access or control or subject to legislative approval would be strongly opposed by HUD. In this regard, I have been advised by our Headquarters' office that the Department has already taken such a position with another state when it recently advised the governor of that state that remedial legislation must be enacted to eliminate legislative control over HUD funds.

I am not in a position to discuss how HUD's legislation compares with that of other federal agencies. It is my impression, however, that HUD may have more authority, than other agencies, to become directly responsible

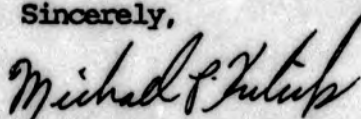
:

for the activities usually undertaken by a state agency using federal funds. For example, the default provisions of the statute and Annual Contributions Contract provide that title and/or possession be given to the Secretary, at the Secretary's discretion, should the PHA fail to observe the terms of the contract. In any case, HUD funds are specifically designated for an identifiable project to be developed or managed by a named PHA and are not considered generalized housing funds earmarked particular to be used in a state.

For additional comments, I refer you to the Regional Counsel's letter dated October 17, 1985, which speaks to the relationship between ASHA and HUD. Finally, we do believe the Attorney General's Opinion of June 9, 1983, interpreting AS 18.55.110 may have direct relevance to the issues you raised.

I hope this is of some assistance to you. Please keep us fully informed of your discussions on this matter and feel free to contact Susan Olsen, Chief Counsel, at 271-4683 for additional comments.

Sincerely,



Michael P. Kulick
Manager



U.S. Department of Housing and Urban Development
Anchorage Office, Region X
701 "C" Street, Box 64
Anchorage, Alaska 99513

F.M.Q.

JAN 24 1986

Barbara Morse-Quinn, Executive Director
Alaska State Housing Authority
Post Office Box 100080
Anchorage, Alaska 99510-0080

RECEIVED
ASHA

JAN 24 '86

Route EX Sec
Route DEX cc
Route All Depts
File EX Sec
1 Hm-3 extra

Dear Ms. Morse-Quinn:

Subject: Senate Bill 8001
Proposed State Procurement Act

In response to your inquiry of December 13, 1985, we have reviewed the above-referenced bill from the perspective of its impact on Alaska State Housing Authority (ASHA) and U. S. Department of Housing and Urban Development (HUD) programs and operations. We find that, overall, as written, it may be viewed as burdensome and restrictive from a practical standpoint, and as undesirable to HUD in terms of foreseeable increased costs, time delays, and lack of adequate protections for federally-funded housing projects. We do not find the proposed act to be of particular value to either ASHA or HUD, inasmuch as we firmly believe that there are adequate and appropriate safeguards currently in place to meet any concerns the state may have with regard to fairness, economy, and control. This is accomplished by way of ASHA regulations and HUD's regulations and policies, and the requirements of the Annual Contributions Contract between HUD and ASHA.

While it is difficult to analyze the full impact, on an agency or federally-funded program, of a law for which regulations have not yet been written, we offer the following comments on the bill, along with responses to your comments to Senator Faiks.

As to the delegability of professional services authority, as well as the authority to procure supplies and other services (as referenced in your first two pages of comments), we think that the only logical interpretation of AS 36.30.015(b) is that such authority is delegable. However, there is no requirement that the authority be delegated, and, clearly, the adoption of regulations is not delegable, nor is there any requirement that the individual departments or agencies participate in the formulation of the regulations. While ASHA presently has the power under AS 18.55.100 to adopt its own regulations, the proposed legislation would apparently remove this power,

and we see this as a significant deficiency of the law from a practical and policy standpoint. We think that any applicable regulations should be written in accordance with HUD requirements. Additionally, as you are aware, HUD is particularly concerned with contracting for construction and has developed extensive "boiler-plate" provisions which are required to be utilized in any such contracts. We see great possibilities for conflict should the authority not be delegated to ASHA and should the regulations not comport with HUD's requirements.

We agree that most matters covered in your numbered paragraphs (2) and (3) are covered by HUD regulations, procedures, or other requirements which variously are less, or more, restrictive than that proposed by the state bill. This is true, of course, about most of the sections of the legislation. In HUD's view, a few of the areas which would raise immediate and strong conflict are: Section 36.30.080, which could involve the administration of federal funds for lease purposes through the state treasury; Section 36.30.170, which provides for an Alaska bidder preference; Section 36.30.270, which requires the approval of the Department of Law to alter any contract terms, rather than HUD's counsel; and Section 36.30.015, which requires the attorney general's approval of any contract for legal services. As an additional note, it appears that use of the consolidated supply program would be seriously curtailed or delayed in that already selected competitive bid suppliers would have to resubmit to the state's competitive bid process.

The extensive bid documentation required in Section 36.30.110, as discussed in your paragraph (5), does appear to be cumbersome and bound to cause delays. Further, we think the requirements for Alaska business licenses, as applied to subcontractors in supply contracts, is unduly restrictive and burdensome. HUD policy expects procurement procedures to be as broad and competitive as possible. As mentioned earlier, the provision for Alaska bidder preference is totally unacceptable for federally-funded ASHA projects. This raises questions also about the acceptability of Section 36.30.050, which requires every agency's use of a centrally maintained list of contractors.

Regarding your paragraph (6), HUD requires acceptable bid security of five percent. We would undoubtedly find that the ten percent requirement would be unacceptably excessive and would not be willing to approve these extra costs to a project.

Section 36.30.200(b), as referenced in your paragraph (8), appears to be unduly burdensome in that written determinations must be obtained from the chief procurement officer or the commissioner of transportation and public facilities prior to ASHA's ability to enter a contract by other means than a competitive bid (except where emergency or small procurement standards are met). Under the proposed legislation, authority for these determinations is not delegable.

We agree that ASHA's current regulations regarding emergency conditions are more narrowly defined than the proposed language, and, therefore, less apt to present grounds for disputes, either before or after a procurement action is taken [reference your paragraph (9)].

As to your paragraphs (10) and (11), we do not believe that either Section 36.30.370 or Section 36.30.380 conflicts with HUD regulations. However, to require an agency to review and analyze the capability of a proposed contractor's accounting system is, we think, excessively burdensome.

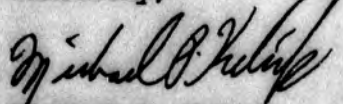
As you point out in your paragraph (12), HUD's policies, procedures and contract provisions, as well as its regulations, do govern the distribution and administration of federal monies designated for public housing projects. Section 36.30.890 of the proposed bill, therefore, provides only a limited exemption to ASHA. Limited exemption could jeopardize ASHA's receipt of HUD funds in an instance of conflict with the state procurement statute. We note the relevance of the Alaska Attorney General's opinion of June 9, 1983, on the applicability of Title 36 to ASHA, wherein he discusses AS 18.55.110 as follows:

. . . We believe the more probable legislative intent was to provide an explicit statutory exemption in instances where the application of state law would jeopardize the receipt of federal assistance. . . . By the statute's own terms, the focus of the exemption is 'to secure [federal] financial aid for housing projects.' . . . Consequently, we interpret AS 18.55.110 as exempting the application of state or local law when a federal funding entity, properly exercising its discretion, notifies ASHA in writing that the receipt of federal funds would be jeopardized were State or local law deemed applicable.

It seems to us that this opinion may be an instructive and persuasive rationale for exempting ASHA from the proposed procurement statute. We tend to agree with you that an acceptable alternative to what we view as a basis for recurring interpretive, managerial, and legal problems under the proposed law, would be to include ASHA as an exempt agency along with the railroad, the legislature, and the court system. If ASHA is not made exempt, then, at a minimum, we would want to see added the terms "policy or other requirement" to the existing terms "federal statute or regulation" in AS 36.30.890.

Thank you for this opportunity to comment.

Sincerely,



Michael P. Kulick
Manager



U.S. Department of Housing and Urban Development
Anchorage Office, Region X
701 "C" Street, Box 64
Anchorage, Alaska 99513

RECEIVED
ASHA

JAN 31 '86

JAN 31 1986

Barbara Morse-Quinn, Executive Director
Alaska State Housing Authority
Post Office Box 100080
Anchorage, Alaska 99510-0080

Route	EX cc
Route	DEX cc
Route	All Dept Leads cc
File	EX Sec
	Board

Dear Ms. Morse-Quinn:

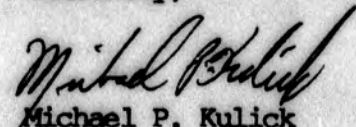
Subject: Senate Bill 8001
Proposed State Procurement Act

It has just come to our attention that Senate Bill 8001 does provide for an amendment to AS 18.55.100 by adding, "(d) The authority's power to contract, lease, rent, construct, acquire, procure and provide for services under this section is governed by AS 36.30."

We think the only logical application of this subsection with respect to leasing and renting is where Alaska State Housing Authority is procuring a lease for itself, equipment rentals, or similar transactions.

We do not recall any aspect of Senate Bill 8001 which would apply to the leasing of space to tenants. Inasmuch as Alaska State Housing Authority's tenant leasing policies and practices are subject to the U. S. Department of Housing and Urban Development's regulations and other requirements, we would find objectionable any application of Senate Bill 8001 in this regard.

Sincerely,


Michael P. Kulick
Manager

INTER OFFICE MEMORANDUM

DATE January 31 1986

FROM: Dick Pryor, Contracts and Budgeting Officer
TO: Barbara Morse-Quinn, Executive Director
SUBJECT: Procurement Bill Study Group

The study group as appointed by your memorandum of January 23, 1986 has reviewed State Bill 341. This bill would enact a State Procurement Code. As written, Senate Bill 341 would require the Alaska State Housing Authority to fully comply with the statute and the subsequent regulations developed by the Department of Administration.

Our review of the bill brings us to the same conclusions as expressed by the U.S. Department of Housing and Urban Development (HUD) in their letter to ASHA of January 24, 1986 (copy attached).

ASHA was established by the state to meet the federal requirements of a public housing authority for the purposes of applying for and receiving HUD funding for public low- and moderate-income housing. This funding is provided under the terms and conditions of a federal contract called an Annual Contributions Contract (ACC). This contract requires our compliance with HUD federal statutes, regulations and policies, or other requirements HUD may so determine are necessary. ASHA is subject to an annual HUD audit and periodic management review by HUD. Our contracting and procurement process must comply with federal law, HUD policy, and the provisions of the ACC contract. This process is reviewed extensively by federal officials. Each individual contract we let must be approved by HUD.

The imposing of another governmental system on ASHA would make our procurement and contracting process excessively cumbersome and costly to administer. Were this bill to pass in its present form, HUD funding of these projects would be seriously jeopardized. In addition, we would expect that the assets of the Authority would be reduced by an amount equal to the cost of developing a procurement office and redevelopment of our accounting system.

It is the recommendation of the study group that ASHA be exempted from the state procurement code. To our knowledge, ASHA is the only authority or state entity that receives and expends federal funding directly. ASHA is governed by extensive federal statutes, regulations, policy, and contract provisions in the expenditures of these funds. ASHA, as a federally recognized public housing authority, receives the funds by entering into

INTER OFFICE MEMORANDUM

DATE January 31 1986

FROM: Dick Pryor
TO: Barbara Morse-Quinn
SUBJECT: Procurement Bill Study Group

Page 2

contracts directly with the federal government. Budgets are submitted and approved annually by HUD. The apparent control of this federal funding by the State as proposed by this bill and the subsequent regulations that would be promulgated will affect our continued funding under our contracts with HUD. Therefore, our sectional comments are as follows:

Section 36.30.990(1) should be changed to include the Alaska State Housing Authority as an exempt agency along with the Alaska Railroad Corporation. Section 10 of the bill relating to AS 18.55.100 must be deleted.

In the event ASHA is not exempted from the bill, Section 36.30.890 must be changed to include "federal policy and other requirements" in addition to the existing terms "federal statutes and regulations". Also Section 36.30.015 must include the authority to delegate for contracting for services and professional services. If ASHA is not to be exempt from Senate Bill 341, we propose to receive full delegation for all our procurement and contracting activities.

In the further event that ASHA is not exempt from the bill and the above changes to the bill in Sections 36.30.890 and 36.30.015 are not made, ASHA's ability to effectively expend federal funds will be severely affected. The ability to operate the federally-funded low- and moderate-income housing statewide would be jeopardized. We anticipate HUD officials would enter into a legal dialogue with ASHA and state officials to resolve these matters to their satisfaction.

If no changes to the bill are made the following sections would cause serious problems in our ability to operate as a Public Housing Authority (PHA) under federal law:

1. Section 36.36.015. As written the inability of DOA to delegate authority to contract for technical services and professional services would be very cumbersome for ASHA.
2. Section 36.30.040. Most of the things mentioned in this section are governed by HUD policy and handbooks for the housing programs and would present conflicts not exempted by Section 36.30.890.

INTER OFFICE MEMORANDUM

DATE January 31 1986

FROM: Dick Pryor
TO: Barbara Morse-Quinn
SUBJECT: Procurement Bill Study Group

Page 3

3. Section 36.30.110. The requirement for a contractor at the time of bidding to submit names and Alaska Business Licenses is considered by HUD to be unduly restrictive on the bidding process.
4. Section 36.30.120. HUD policy is to require a 5% bid bond for all contracts. Anything higher is considered excessive and would not be allowed by HUD.
5. Section 36.30.160(b). An allowance for correction of mistakes in bid after bid opening is an unacceptable practice and should not be permitted for any reason.
6. Section 36.30.170. The Alaska bidder preference is unacceptable to HUD.
7. Section 36.30.200(b). The requirement to obtain written determinations from DOA or DOT/PF for entering into a contract by means other than competitive bid is considered by HUD to be unduly burdensome for ASHA in administering HUD approved and funded programs.
8. Section 36.30.270. The requirement for review by the Department of Law of contracts rather than by HUD's legal counsel is unacceptable to HUD, and review by both is burdensome and time consuming if their reviews conflict.
9. Section 36.30.430 and .460. The same comment as in 9 above apply regarding the Alaska Department of Law review.
10. Section 36.30.735(b). The reference to the Alaska State Housing Authority should be deleted and replaced by a more general term referring to all public authorities. Alaska State Housing Authority does not engage in any of the activities governed by the existing statute (44.65.060) which has been incorporated in this section.
11. Section 36.30.890. ASHA must comply with extensive policy, handbooks, contract provisions, and other requirements of HUD that are in conflict with this procurement code. The provision for only federal statute or regulations to prevail is

INTER OFFICE MEMORANDUM

DATE January 31, 1986

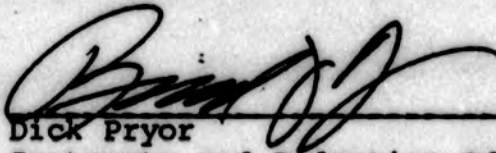
FROM: Dick Pryor
TO: Barbara Morse-Quinn
SUBJECT: Procurement Bill Study Group

Page 4

not sufficient for the continued operation of ASHA on HUD directives.

12. Section 10. Delete entire section. This section is directly in conflict with the HUD requirements set out in comment (11) above.

Enclosed with this report is a copy of HUD's comments on the proposed procurement code and copies of some of HUD's policy handbooks as examples of the current requirements we must meet. Also enclosed is a summary of our procurement activity for the past years.



Dick Pryor
Contracts and Budgeting Officer

DP/laj

Encls.

INTER OFFICE MEMORANDUM

January 31

86

DATE _____ 19 _____

FROM: Edna E. Fremlin, Administrative Assistant for Modernization
TO: Dick Pryor, Contracts and Budgeting Officer
SUBJECT: For Inclusion in Telex Regarding State Procurement Regulations

A complete transition from federal to state regulations would be costly and burdensome for this Authority unless the State would bear the expense.

Before ASHA is bound to State procurement regulations it should be established if federal funds would cease since ASHA is federally supported. ASHA's tenants are federally subsidized in low rent, elderly and Section 8 (private housing) programs as well.

To attempt adopting wholly the State procurement regulations without incorporating all State regulations on all matters could lead to serious consequences, example: wage rates, personnel actions (and duties) related to procurement.

Municipal and State building codes and other codes are adhered to by this Authority whether the construction is State or federally funded. However, procurement for construction should be guided by the source of the funds. State procurement, wage rates and other regulations should apply to State funded programs administered by ASHA. Likewise, federal procurement rules, wage rates, etc., should be the guide to federally funded contracts and purchases.

ASHA's specially funded Federal Modernization programs are two years in duration. This program cannot afford a cumbersome system for advertising bids and for procuring locally.

Bids and materials list are prepared in advance of receiving the funds. Upon receipt of the funds the bids are advertized and small purchasing commences. Shipping freight is also a consideration. The success of these programs is the timing. The State procurement bill offers no flexibility for such a program to function.



Edna E. Fremlin, Administrative
Assistant for Modernization

EEF/laj

ALASKA STATE HOUSING AUTHORITY
ANALYSIS OF PURCHASES*
January 1985 to January 1986

<u>Month</u>	<u>No. of Invoices</u>	<u>Amount</u>
January 1986	1418	\$1,134,071
December 1985	1688	632,310
November 1985	1452	534,836
October 1985	1718	1,240,746
September 1985	1750	589,509
August 1985	1940	892,378
July 1985	1350	536,249
June 1985	1506	1,272,783
May 1985	1726	1,020,969
April 1985	1056	1,737,736
March 1985	1250	907,694
February 1985	1291	1,014,430
January 1985	1613	1,478,645
Average for month	1520	\$ 999,412

*Source: Comptroller, Alaska State Housing Authority



BMP

December 13, 1985

The Honorable Jan Faiks
Senator
Senate Select Interim Committee on
Procurement Practices and Procedures
1024 West Sixth Avenue
Anchorage, Alaska 99501

Dear Senator Faiks:

The staff of the Alaska State Housing Authority (ASHA) has read three drafts of the procurement bill on which your committee has been working. From the most recent teleconference on the bill, it appears that certain sections remain "in process" and are to be given final definition at a later date. We expect that the formal committee process of legislative review will allow further opportunities to comment on this important document and that it will be possible to have these comments incorporated into later drafts. Based on what we have reviewed thus far, the following information regarding this legislation's impact on ASHA is offered:

- (1) Sec.36.30.015(e) should be amended to state: "The boards of directors of the Alaska Railroad Corporation and the Alaska State Housing Authority shall adopt, etc."

As you may know, ASHA currently has in place procurement regulations particularly tailored to its business of constructing, managing and maintaining various types of housing units throughout Alaska. Given the fact that residential wage scales will differ from those applied to other types of public construction and that local building codes, zoning ordinances and construction permit procedures also vary from those used on other public projects, the need to delegate specific residential construction contract authority to ASHA becomes more apparent. Although this issue could be addressed administratively after the fact, it would be more straightforward for such delegation to receive direct legislative review and approval prior to passage of a new procurement law.



12/13/85

With regard to the procurement of supplies and services (non-professional) with which we maintain some 3500 housing units across the State, it is again important to understand our current practices. Developed in accordance with U.S. Department of Housing and Urban Development policies, 3 AAC 95.010, et. seq. is a sophisticated set of regulations with application particular only to housing management uses. ASHA cannot predict and plan for broken pipes, windows or doorways, to name a few of the purchases we make on an as needed and regular basis. Tenants cannot be expected to wait for ASHA to go through individual procurement processes when stoves or refrigerators go out or when a damaged unit is vacated and in need of repairs. With over 1,000 people on waiting lists for low income housing across the State, and with vacancy/unit turnaround goals monitored by the federal government, the additional imposition of a State level review would not change the way we currently operate, nor serve any productive public purpose. Such review will only delay a system that has worked effectively for over forty years, was rewritten in 1981, and is in no current need of modification.

ASHA's procedures on professional services contracting have been performed in recent years under AS 36.98.010, et. seq., except in those cases where to follow such procedures is demonstrated to jeopardize our receipt of federal funds (AS 18.55.110). The lack of delegable professional services authority under this section is particularly troublesome to ASHA. State boilerplate articles, under Appendix A of Professional Services Contract Form 02-093 (Rev 10/82) are frequently not specific nor detailed enough to protect the interests of the U.S. Department of Housing and Urban Development and the Authority on large scale professional service contracts. By far the majority of our contractual agreements contain explicitly detailed articles created by and for ASHA projects. These contracts cannot be reduced to the generalities of the standard State professional services statement without significant loss to ASHA of contractual protections developed by the Authority through experience, research and course of dealing. ASHA is not automatically covered by the Division of Risk Management, the Division of Labor Relations, nor the Office of the Attorney General for



contractual problems arising after the fact. The protection of our assets from various liabilities or contingencies remains foremost in our minds when entering into a contractual agreement. It is inappropriate, at best, for the State to weaken our abilities to specifically protect federal funds for no demonstrated public purpose. If the Commissioner of Administration is not able to delegate this authority, then ASHA should be added to the Railroad, University and Court System with clear exemptions from this section.

- (2) Sec.36.30.040(b)(8-13) regarding storerooms and inventories; classes of contractual services; price analysis; payments and performance bonds; cost principles in negotiations; and discrimination in contracting are areas where the U.S. Department of Housing and Urban Development directly monitors this housing authority. Any regulations adopted under this section which would apply to this agency will need to be reviewed and coordinated with the U.S. Department of Housing and Urban Development, Regional Counsel; for compliance with federal regulations.
- (3) Sec.36.30.070(1-4) Governed by federal regulations applicable to ASHA.
- (4) Sec.36.30.080(b) This language should be reviewed by bond counsel to any parties entering into lease-financing or lease-purchase agreements.
- (5) Sec.36.30.110 These items should be required after bid award but before notice to proceed. Gathering this information is an unnecessarily cumbersome task for unsuccessful bidders to perform and would inundate agency personnel with useless reviews of extraneous information.
- (6) Sec.36.30.120(b)(1-2) The 10% requirement of this section is higher than necessary and these unnecessary costs are eventually borne by the contracting agency within the cost of total project development. 5% is standard for construction purposes.



- (8) Sec.36.30.200 This article almost precludes the state from using design/built options given the restrictions on competitive sealed proposals. Competitive sealed proposals become relegated to a second class type of solicitation and limit creativity of thought for development of new concepts in construction within budgeted fund limits.
- (9) Sec.36.30.310 This section is more broadly written than that in current ASHA regulations. This agency would have a lower level of comfort operating under a statute prescribing an open-ended or subjective interpretation of instances affecting "public health, welfare or safety." Also, there is no consideration given to an analysis of time or urgency in determining an "emergency" exists.
- (10) Sec.36.30.370 May conflict with U.S. Department of Housing and Urban Development regulations.
- (11) Sec.36.30.380 May conflict with U.S. Department of Housing and Urban Development regulations.
- (12) Sec.36.30.890 ASHA is not covered sufficiently by this section to avoid conflict with federal government practices and procedures. Federal due process allows public notice on regulations to come after the fact and, in the interim, to administer programs through interpretations of handbooks or other non-regulatory documents. Although not statute or regulation, this method of program delivery marks a federal preference to model programs after field trial experience is known. The State share of discretionary HUD funds oftentimes depends on ASHA's compliance with federal practices and procedures which aren't necessarily in statutory or regulation form. We would not be sufficiently exempted by this Section to avoid conflict with federal policies and procedures.

These initial comments are generated strictly from an in-house review by our staff. Neither our Board of Directors nor any officials from the U.S. Department of Housing and Urban Development have reviewed the most recent version of this legislation. It is likely they will have additional comments to offer.



The concept of centralized procurement is valuable and efficient for those agencies that may be inexperienced in the complexities of obtaining goods and services and/or have minimal written regulations or policies to structure their procurement activities. The Alaska State Housing Authority falls into neither category. With strict federal oversight and monitoring, federal funds are expended for a valuable public purpose. Financial information on expenditures is well documented and regularly reviewed. Complex volumes of federal procurement instructions are interpreted for ASHA by local HUD officials. Bidding and contracting activities are defined in detail by ASHA regulations.

The procedures of the State Procurement Code are exemplary in nature and should be modeled by all public organizations (including ASHA) operating on state and local levels. However, the delays and generic treatment this agency would experience in having this law superimposed on its existing systems would create confusion and inefficiencies for both the public and the agencies involved. Aside from generating new "paper pushing" positions and having to revamp many existing procedures after implementation, there is virtually no new effect to ASHA's present practices that would be realized from including ASHA in this legislation. Business will continue, only more slowly and at a greater cost to the programs involved.

Thank you for your consideration of these remarks. We shall be following with interest this legislation and look to an enhancement of ASHA's regulations to make them substantially equivalent to this bill in its final version. Should you or any members of the committee wish further information on this matter and its effect on our agency, please let me know.

Sincerely,

ALASKA STATE HOUSING AUTHORITY

A handwritten signature in cursive script that reads "Barbara Morse-Quinn".

Barbara Morse-Quinn
Executive Director

BMQ/jlr
enclosure

cc: Susan Olsen, HUD, Chief Counsel
ASHA Board of Directors
ASHA Department Heads
• Marsha Hubbard, DOA
Steve Hildebrand, DCED

Requisition for Partial Payment of Annual Contributions

U.S. Department of Housing and Urban Development
Section 8 and Section 23
Housing Assistance Payments Program



Note: See instructions in appropriate program handbooks

OMB No. 2502-0348 (exp. 10/31/86)

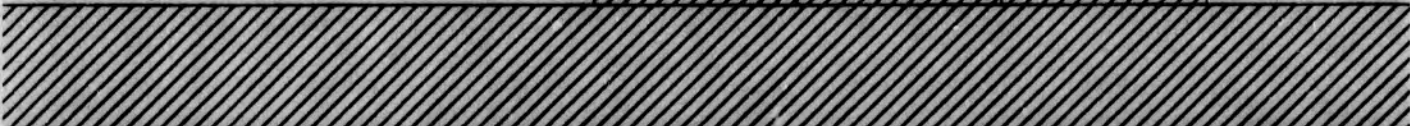
1. Program Type (Mark one) <input type="checkbox"/> Section 23 <input type="checkbox"/> Section 8		2. Date of Requisition	3. Per Quarter Ending:	4. No. of Months in 1st FY	5. Project No.
6. Public Housing Agency (Name and Address)			7. Depository Bank (Name and Address)		
8. PHA Annual Contributions Contract No.			9. Depository Bank Account No.		

10. Housing Program Type (Mark one)
 (a) New Construction
 (b) Substantial Rehabilitation
 (c) Moderate Rehabilitation
 (d) Existing Housing Certificates
 (e) Housing Vouchers

11. PHA Fiscal Year Ending Date (Mark one box and complete year)
 (a) March 31,
 (b) June 30,
 (c) September 30,
 (d) December 31,
 19:

12. Number of Units Under Lease to Eligible Families as of Date of Requisition	13. Average Monthly Housing Assistance Payment Per Unit as of Date of Requisition	14. Estimated Number of Units to be Under Lease at End of Requested Quarter	15. Unit Months Under Lease Year to Date	16. Average Monthly Housing Assistance Payment Per Unit Year to Date
--	---	---	--	--

	Estimate of Required Annual Contributions (a)	Total Cost Incurred and Fees Earned Year to Date (b)			Estimated Additional Cost and Fees Earned to End of Requested Quarter (c)	Cumulative Funds Required (d)
		MM	DD	YY		
17. Preliminary Administrative and General Expense						
18. Carry Over of Preliminary Administrative and General Expense Approved in Previous Fiscal Year						
19. Preliminary Non-Expendable Equipment Expense						
20. Carry Over of Preliminary Non-Expendable Equipment Expense Approved in Previous Fiscal Year						
21. Estimated Housing Assistance Payments (Account 4715)						
22. Estimated Ongoing Administrative Fee						
23. Estimated Hard-to-House Fee (Existing Housing Certificates and Housing Vouchers Only)						
24. Total Independent Public Accountant Audit Costs (Section 8 Only)						
25. Total Allowance Approved for Security and Utility Deposits (Section 23 Only)						
Amount of Requisition						
26. Total Costs Incurred to Date (Sum of Lines 17 through 25)						
27. Total Funds Required to End of Requested Quarter (Sum of Lines 17 through 25)						
28. Payments Received to Date						
29. Payments Previously Approved for Fiscal Year to Date						
30. Over or Underpayment to Date (Difference of Line 28 and Line 26. Do not use brackets)						
31. Partial Payment Requirement During Requested Quarter (Line 27 minus Line 29)						



(01511)

COMMERCE AND ECONOMIC DEVELOPMENT

Register 80, January 1982

3AAC 95.255
3AAC 95.275

(1) the information and materials submitted to the executive director by the party making the protest under 3AAC 95.225; and

(2) the information and materials available to ASHA staff.

(b) A copy of the decision under this section will be mailed or otherwise furnished to the party making the protest.

(c) The decision under this section is the final action that will be taken by ASHA on the protest. (Eff. 11/26/81, Register 80)

ARTICLE 4.
MISCELLANEOUS

Section
265. Federal Assistance
275. Definitions

3AAC 95.265. FEDERAL ASSISTANCE. If federal funds or other federal assistance are involved in any procurement by ASHA, this chapter will govern except to the extent that it is superseded by federal regulations or provisions. (Eff. 11/26/81, Register 80)

3AAC 95.275. DEFINITIONS. Unless the context indicates otherwise, in 3AAC 95.010--3AAC 95.265

(1) "ASHA" means the Alaska State Housing Authority;

(2) "ASHA's central office" means the executive offices of the Alaska State Housing Authority located in Anchorage, Alaska;

(3) "executive director" means the executive director of the Alaska State Housing Authority;

(4) "governmental entity" means a department, office, agency, commissioner, board, bureau, administration, division, authority or other organizational unit of a branch of federal, state, county, borough, municipal or other local government and specifically includes public corporate authorities, the University of Alaska, school districts, and Regional Housing Authorities;

(5) "HUD" means the United States Department of Housing and Urban Development. (Eff. 11/26/81, Register 80)

COMMERCE AND ECONOMIC DEVELOPMENT

Register 80, January 1982

3AAC 95.225
3AAC 95.255

3AAC 95.225. FORM OF PROTEST. A protest under 3AAC 95.215 must be in writing and must set out or contain the following:

- (1) the name of the party making the protest;
- (2) the identity of the solicitation or contract being protested;
- (3) the date the party making the protest first knew of the facts giving rise to the protest;
- (4) the basis and nature of the protest;
- (5) the facts supporting the protest and other relevant information;
- (6) copies of all documents, affidavits, correspondence, and other materials relevant to the protest; and
- (7) a statement of the relief requested. (Eff. 11/26/81, Register 80)

3AAC 95.235. TIME FOR FILING. A protest under 3AAC 95.215 must be filed with the executive director at ASHA's central office within the earlier of

- (1) two business days after the party making the protest knew or should have known of the facts giving rise to the protest; or
- (2) two business days after the party making the protest receives a notice of tentative award. (Eff. 11/26/81, Register 80)

3AAC 95.245. STAY OF PROCUREMENT. If a protest has been filed in accordance with 3AAC 95.215--3AAC 95.235 before contract award, ASHA will not make a contract award unless the executive director determines in writing that

- (1) the items to be procured are urgently required;
- (2) delivery or performance will be unduly delayed by failure to make award promptly; or
- (3) a prompt award will be otherwise in the best interest of ASHA. (Eff. 11/26/81, Register 80)

3AAC 95.255. DECISION. (a) The executive director will issue a written decision on a protest which has been filed in accordance with 3AAC 95.215--3AAC 95.255. The decision will state the reasons for the action taken. The decision will be based on

COMMERCE AND ECONOMIC DEVELOPMENT

Register 80, January 1982

3AAC 95.195
3AAC 95.215

3AAC 95.195. NO COMPETITION CONTRACTS. ASHA will, in its discretion, award a contract through direct negotiation if there is no competition. There is no competition if

- (1) the rates or charges are set by law;
- (2) there is only one source of procurement within the State of Alaska and the contract amount is under \$50,000; or
- (3) there is only one source of procurement within the borough where the goods or services are to be utilized and the contract amount is under \$10,000. (Eff. 11/26/81, Register 80)

3AAC 95.205. NEGOTIATION AFTER UNSUCCESSFUL BIDDING. (a) ASHA will, in its discretion, award a contract through direct negotiation if an invitation to bid has been issued under 3AAC 95.010--3AAC 95.135 and all bids are rejected or no bids are received.

(b) If all bids are rejected, ASHA will give each responsible bidder a reasonable opportunity to negotiate before a contract award is made under this section. Contract award under this section is not, however, limited to bidders on the original solicitation.

(c) Contract award under this section must be at

- (1) a negotiated price lower than the lowest rejected bid by a responsible and responsive bidder under the original solicitation; and
- (2) the lowest negotiated price offered by a responsible and responsive offeror. (Eff. 11/26/81, Register 80)

ARTICLE 3.

PROCUREMENT PROTESTS

Section

215. Right to Protest
225. Form of Protest
235. Time for Filing
245. Stay of Procurement
255. Decision

3AAC 95.215. RIGHT TO PROTEST. An actual or prospective bidder or offeror who is aggrieved in connection with the solicitation or award of a contract by ASHA may file a protest with the executive director. (Eff. 11/26/81, Register 80)

COMMERCE AND ECONOMIC DEVELOPMENT

Register 80, January 1982

3AAC 95.145
3AAC 95.185

ARTICLE 2.
PROCUREMENT BY NEGOTIATION

Section

- 145. Negotiated Contracts
- 155. Small Procurement Contracts
- 165. Professional Services Contracts
- 175. Governmental Contracts
- 185. Emergency Contracts
- 195. No-competition Contracts
- 205. Negotiations After Unsuccessful Bidding

3AAC 95.145. NEGOTIATED CONTRACTS. ASHA will, in its discretion, award the contracts described in 3AAC 95.145-3AAC 95.205 through direct negotiation, without competitive sealed solicitations. (Eff. 11/26/81, Register 80)

3AAC 95.155. SMALL PROCUREMENT CONTRACTS. ASHA will, in its discretion, award a contract for a small procurement in an amount not greater than \$5,000 through direct negotiation. (Eff. 11/26/81, Register 80)

3AAC 95.165. PROFESSIONAL SERVICES CONTRACT. ASHA will, in its discretion, award a contract for professional or technical services, including, but not limited to, a contract with an accountant, appraiser, architect, attorney, consultant, contract manager, draftsman, engineer, financial advisor, or physician, through direct negotiation. (Eff. 11/26/81, Register 80)

3AAC 95.175. GOVERNMENTAL CONTRACTS. ASHA will, in its discretion, award a contract between ASHA and one or more governmental entities or a contract for the procurement of goods or services through a consolidated supply contract or program of a governmental entity through direct negotiation. (Eff. 11/26/81, Register 80)

3AAC 95.185. EMERGENCY CONTRACTS. In an emergency, ASHA will, in its discretion, award a contract by direct negotiation. An emergency exists if ASHA or the public could be seriously or materially injured, financially or otherwise, if the property or services contracted for are not furnished by a certain time and they could not be contracted for by that time by means of competitive sealed solicitations. The executive director shall cause to be made a written record of the facts constituting the emergency and shall determine in writing that an emergency exists before an award is made under this section. This section applies irrespective of whether the emergency could or should have been foreseen. (Eff. 11/26/81, Register 80)

COMMERCE AND ECONOMIC DEVELOPMENT

Register 80, January 1982

3AAC 95.122
3AAC 95.123

(2) the ability and capacity of the bidder or offeror to perform the contract within the time specified without delay or interference;

(3) the character, integrity, reputation, judgment, experience, fitness and efficiency of the bidder or offeror;

(4) the quality of the performance of the bidder or offeror on previous contracts;

(5) the previous and existing compliance by the bidder or offeror with laws, ordinances, or regulations effecting or relating to the contract; and

(6) the sufficiency of the financial resources and ability of the bidder or offeror to perform the contract.

(c) If the lowest responsive bidder is determined to be not responsible, ASHA will, before contract award

(1) notify the bidder of the evidence reflecting upon the bidder's nonresponsibility; and

(2) afford the bidder an opportunity to rebut the evidence and to present relevant evidence as to his responsibility.

(d) If a contract award is made to a bidder other than the lowest responsive bidder, a full and complete written statement of the reasons for the award will be made by the executive director and delivered to the unsuccessful lowest responsive bidder. (Eff. 11/26/81, Register 80)

3AAC 95.135. AWARD. (a) Unless all bids are rejected, ASHA will make contract award in a writing by the executive director to the lowest responsive and responsible bidder.

(b) Unless all proposals are rejected, ASHA will make contract award in a writing by the executive director to the responsible offeror whose proposal is determined in writing by the executive director to be the most advantageous to ASHA, considering price and the evaluation factors set out in the request for proposals or other proposal documents.

(c) ASHA will, in its discretion, issue a notice of tentative award to all bidders or offerors before contract award. The notice of tentative award will set out the name of the bidder or offeror to whom ASHA anticipates making a contract award and the anticipated contract amount. The notice of tentative award will not constitute an acceptance or rejection of a bid or proposal or a contract award by ASHA.

(d) If two or more bids otherwise acceptable for contract award under 3AAC 95.015--3AAC 95.135 are tied, ASHA will make contract award to the tied bidder whose bid is determined in writing by the executive director to be in the best interest of ASHA. (Eff. 11/26/81, Register 80)

COMMERCE AND ECONOMIC DEVELOPMENT

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3AAC 95.115
3AAC 95.125

the public only under the immediate supervision of the executive director or his designee and under conditions which preclude the possibility of a substitution, addition, deletion, or alteration of a bid or proposal. (Eff. 11/26/81, Register 80)

3AAC 95.115. REJECTION OF BIDS AND PROPOSALS. ASHA may reject a bid or proposal for any reason not disallowed by law including, but not limited to, the following:

- (1) the bid or proposal fails to conform to the requirements of the invitation to bid or request for proposals or is otherwise non-responsive;
- (2) the bidder or offeror is not responsible;
- (3) the bidder or offeror has failed to satisfactorily perform on a previous contract with ASHA or a governmental entity;
- (4) the bidder or offeror has unpaid taxes, fees, fines, or other charges due ASHA or a governmental entity;
- (5) the bidder or offeror is currently disbarred or ineligible from bidding on ASHA, federal, state, or other governmental entity contracts;
- (6) the bid or proposal is late;
- (7) the bid or proposal is unsigned;
- (8) the bid or proposal is unreasonable as to price;
- (9) the bid or proposal contains an ambiguity or uncertainty as to any term or condition; or
- (10) the executive director determines in writing that acceptance of the bid or proposal is not in the best interest of ASHA. (Eff. 11/26/81, Register 80)

3AAC 95.125. RESPONSIBILITY OF BIDDERS AND OFFERORS.

(a) ASHA will, in its discretion, make a reasonable inquiry to determine the responsibility of a bidder or offeror. The failure of a bidder or offeror to promptly supply information in connection with such an inquiry is grounds for a determination of non-responsibility with respect to the bidder or offeror.

(b) In determining the responsibility of a bidder or offeror, ASHA will, in its discretion, consider the following factors:

- (1) the ability, capacity and skill of the bidder or offeror to perform the contract;

COMMERCE AND ECONOMIC DEVELOPMENT

Register, 1982, January 1982

3AAC 95.075
3AAC 95.105

3AAC 95.075. LATE BIDS AND PROPOSALS. (a) A bid or proposal received at the office designated in the invitation to bid or request for proposals after the closing time for the submission of bids or proposals, is a late bid or proposal and will not be considered.

(b) Late bids or proposals will be retained by ASHA. (Eff. 11/26/81, Register 80)

3AAC 95.085. RECEIPT OF BIDS AND PROPOSALS. (a) Bids and proposals will be date and time stamped or marked upon receipt by ASHA. Bids and proposals received before the time set for opening will be kept unopened, except that unidentified bids and proposals may be opened by ASHA solely for the purpose of identification.

(b) Bids and proposals opened by mistake or for identification purposes will be immediately resealed in their envelopes. The person responsible for such an opening will write on or attach to the envelope an explanation of the opening, the date and time opened, and his name and position.

(c) Before bid or proposal opening, information concerning the identity and the number of bids or proposals received will be made available only to ASHA employees who have a need for such information within their scope of work, unless otherwise directed in writing by the executive director. (Eff. 11/26/81, Register 80)

3AAC 95.095. MODIFICATION AND WITHDRAWAL OF BIDS AND PROPOSALS. (a) Modified bids and proposals may be submitted at any time before the closing time for submission of bids or proposals. Modified bids and proposals must be submitted in sealed envelopes. The outside of the envelope must identify the contents as a modified bid or proposal and must set out the date and time of the bid or proposal opening.

(b) Bids and proposals may be withdrawn at any time before the closing time for submission of bids or proposals by written notice received at the place for the submission of bids or proposals. (Eff. 11/26/81, Register 80)

3AAC 95.105. OPENING OF BIDS AND PROPOSALS. (a) Bids and proposals received before the time set for opening will be opened in public at the time and place stated in the invitation to bid or request for proposals. The names of the bidders or offerors and the total amounts bid or proposed will be read aloud to the persons present.

(b) Examination of bids and proposals by the public will be permitted if it does not interfere unduly with the conduct of ASHA business. Original bids and proposals may be examined by

COMMERCE AND ECONOMIC DEVELOPMENT

Register 80, January 1982

3AAC 95.045
3AAC 95.065

(6) a general description of the scope of work and services required or a general description of the type, quality and quantity of the items to be purchased; and

(7) bid or proposal guarantee requirements.
(Eff. 11/26/81, Register 80)

3AAC 95.055. PUBLIC NOTICE. (a) At least 20 days before the last day set for the submission of bids or proposals, or 10 days if it is anticipated by ASHA that the contract will not exceed \$25,000, the invitation to bid or request for proposals will be:

(1) published in a newspaper of general circulation in the state;

(2) posted in a public building or ASHA office nearest the municipality, community or area in which the construction will be located or the goods or services will be utilized;

(3) posted in ASHA's central office in Anchorage, Alaska; and

(4) delivered to an office of the Associated General Contractors if the bid or proposal is for construction.

(b) ASHA will, in its discretion, also notify prospective bidders or proposers by any other method including but not limited to

(1) mailing or sending the invitation to bid or request for proposals to prospective bidders or proposers selected by ASHA; and

(2) publishing the invitation to bid or request for proposals in a trade journal.

(c) Failure by a prospective bidder or offeror to receive actual notice of an invitation to bid or request for proposals does not invalidate any bidding or proposal procedure.
(Eff. 11/26/81, Register 80)

3AAC 95.065. SUBMISSION OF BIDS AND PROPOSALS. (a) Bids and proposals must be submitted in sealed envelopes. The outside of an envelope must identify the contents as either a bid or proposal and must set out the date and time of the bid or proposal opening.

(b) Bids and proposals must be submitted so as to be received in the office designated in the invitation to bid or request for proposals no later than the closing time for submission of bids or proposals. (Eff. 11/26/81, Register 80)

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

COMMERCE AND ECONOMIC DEVELOPMENT

Register 80, January 1982

3AAC 95.045
3AAC 95.065

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COMMERCE AND ECONOMIC DEVELOPMENT

Register 80, January 1982

3AAC 95.025
3AAC 95.025

3 AAC 95.025. COMPETITIVE SEALED BIDDING DEFINED.
Competitive sealed bidding is a method of procurement which involves but is not limited to

- (1) public solicitation of bids through an invitation to bid;
- (2) public opening of bids; and
- (3) contract award, if any, to the lowest responsive and responsible bidder. (Eff. 11/26/81, Register 80)

3 AAC 95.035. COMPETITIVE SEALED PROPOSAL DEFINED.
Competitive sealed proposal is a method of procurement which involves but is not limited to

- (1) public solicitation of proposals through a Request for Proposals;
- (2) public opening of proposals;
- (3) negotiations and discussions with responsible offerors whose proposals have been determined in writing by the executive director or his designee to be reasonably susceptible of being selected for award; and
- (4) a contract award, if any, to the responsible offeror whose proposal is most advantageous to ASHA. (Eff. 11/26/81, Register 81)

3AAC 95.045. INVITATION TO BID AND REQUEST FOR PROPOSALS DEFINED. (a) ASHA will solicit bids through the use of an invitation to bid.

(b) ASHA will solicit proposals through the use of a request for proposals.

(c) An invitation to bid and a request for proposals will contain the following information:

- (1) the date of the invitation to bid or request for proposal;
- (2) the closing time for the submission of bids or proposals;
- (3) the place for the submission of bids or proposals;
- (4) the time and place for the opening of the bids or proposals;
- (5) the place where bid or proposal forms or other relevant information regarding the bid or proposal may be obtained;

COMMERCE AND ECONOMIC DEVELOPMENT

Register 80, January 1982

3AAC 95.015

PART 9.
ALASKA STATE HOUSING AUTHORITY

Chapter

- 95. Procurement
(3 AAC 95.110 - 3 AAC 95.320)
- 96. Acquisition of Real Property and Improvements
(3 AAC 96.010 - 3 AAC 96.250)
- 97. Disposition of Real Property
(3 AAC 97.010 - 3 AAC 97.330)
- 98. Public Housing
(3 AAC 98.010 - 3 AAC 98.180)

CHAPTER 95.
PROCUREMENT

Article

- 1. Procurement by Competitive Solicitation
(3 AAC 95.010 - 3 AAC 95.135)
- 2. Procurement by Negotiation
(3 AAC 95.140 - 3 AAC 95.205)
- 3. Procurement Protests
(3 AAC 95.210 - 3 AAC 95.255)
- 4. Miscellaneous
(3 AAC 95.260 - 3 AAC 95.320)

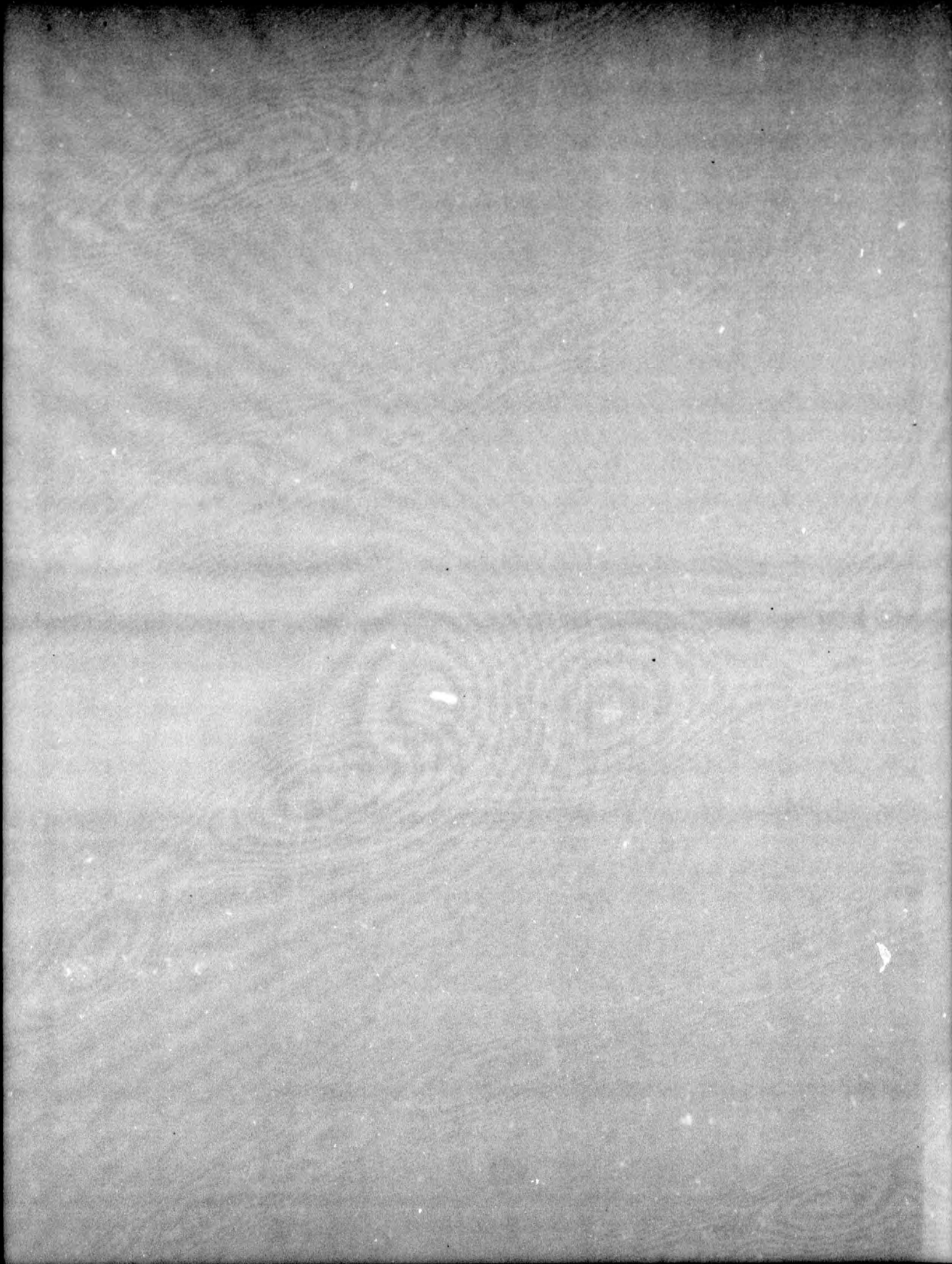
ARTICLE 1.
PROCUREMENT BY COMPETITIVE SOLICITATION

Section

- 15. Contract Award by Competitive Solicitation
- 25. Competitive Sealed Bidding Defined
- 35. Competitive Sealed Proposal Defined
- 45. Invitation to Bid and Request for Proposals Defined
- 55. Public Notice
- 65. Submission of Bids and Proposals
- 75. Late Bids and Proposals
- 85. Receipt of Bids and Proposals
- 95. Modification and Withdrawal of Bids and Proposals
- 105. Opening of Bids and Proposals
- 115. Rejection of Bids and Proposals
- 125. Responsibility of Bidders and Offerors
- 135. Award

3 AAC 95.015. CONTRACT AWARD BY COMPETITIVE SOLICITATION.
(a) ASHA will award all contracts for supplies, materials, equipment, services, construction and the leasing of real property by competitive sealed bidding or by competitive sealed proposal under 3AAC 95.015--3AAC 95.135, except as provided in 3AAC 95.145--3AAC 95.205.

(b) ASHA will, in its discretion, award a contract by competitive sealed proposal if the executive director makes a determination in writing that the use of competitive sealed bidding is not practicable or in the best interest of ASHA due to the nature of the procurement. (Eff. 11/26/81, Register 80)



ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 1985 8672
1455 SCOMM 54: SEN. SELECT INTERIM COMM. ON PROCUREMENT PRACTICES 52.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER POSITION PAPER

POUCH B
JUNEAU, ALASKA 99801
PHONE: (907) 485-4700

949 E. 38TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
PHONE: (907) 563-1073

RE: SB 341

SPONSOR: Senate Rules Committee

Comments

This bill provides for a major restructuring and revision of the statutes governing the procurement of supplies, services, professional services, and construction by State agencies. Several of the requirements currently existing in statutes concerning procurement would be changed. The bill would affect all of the Department's procurement activities.

Grants Definition

Of greatest concern to the Department of Community and Regional Affairs is the possibility that the definition of "procurement" in the bill may be too broad and could be interpreted as applying to many of the Department's current activities.

At issue is the basic distinction between the definitions of procurements and grants. Under section 36.30.850(b)(1) "grants" are exempted from the provisions of the bill. Sections 36.30.990 (10) and (12) of the bill provide the definitions of "grants" and "procurements", respectively. The Department does not believe that these definitions are adequate to differentiate between the two.

If our existing grants are redefined as procurement contracts, as defined under section 36.30.990 (12), the Department would be required to implement a considerable number of additional administrative activities in order to comply with the provisions of SB 341. This, in turn, would substantially increase the need for additional staff and administrative dollars.

For example, due to the limitations on sole source procurements contained in section 36.30.300 of the bill, this Department would be required to prepare a competitive sealed bid or proposal for each of the Legislative Grants (grants authorized under AS 37.05.316 and AS 37.05.317) administered by the Department. A significant number of these grants are appropriated annually to the Department. These new administrative procedures would increase the amount of time required to develop and obtain a signed contract and due to the solicitation requirements may lead, in this example, to the grant being provided to an entity different than that intended to receive the grant by the Legislature.

The Department also notes that Section 44 and Section 60 of SB 341 subjects the Day Care Assistance program and the Displaced Homemaker's program, respectively, to the provisions of the bill. The Department considers these programs to be grants and not procurements and suggests that these sections should be deleted.

Department Recommendations

The Department of Community and Regional Affairs believes that one of the major problems with the definitions of grants and procurements in the bill, is that neither provide an indication of the main beneficiary of the funds.

The Department suggests that procurements are primarily for the acquisition of services or supplies to enable the agency to conduct its operations and hence, are for the direct benefit of the State agency. Conversely, a grant is primarily to serve or fulfill some needed public purpose within the recipient's community and hence, directly benefits that community. The State or grantor agency only benefits indirectly from the project through the increase in the general welfare of the state.

The Department of Community and Regional Affairs suggests that another major distinction between grants and procurements is that grantees are most typically entities which are organized for a public purpose and/or operate in a manner which does not yield them a profit. Conversely, procurements are most typically made with entities which are organized for profit.

In consideration of this discussion, the Department of Community and Regional Affairs would like to offer the following language as providing a much clearer and better definition of a grant.

GRANT: An agreement between a State agency and an entity which is typically not organized for profit (e.g., municipal corporation, non-profit corporation, tribal organization organized under the Indian Reorganization Act, traditional councils) and which typically represents a public interest group (e.g. community, region). The agreement provides for the performance of a public purpose which is primarily for the direct benefit to the people which the grant recipient represents. The State gains only indirectly through the benefit derived by the community or region.

In certain cases, State grants may be made to individuals and entities organized for profit. Further, grants may be made for purposes which result in some private benefit to an individual or entity. However, those types of grants will also have a significant public purpose as defined by law or legislative intent.

The Department believes that such a definition will help to clarify the differences between grants and procurements. This definition would ensure that grants are not mistakenly classified as procurements and subject to the greater administrative requirements provided in SB 341. This, in turn, would significantly reduce the fiscal impact on this Department expected under the present language of the bill.

Civil Liabilities

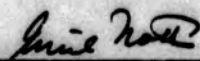
The Department of Community and Regional Affairs is also concerned with the possible effects of section 36.30.930 of the bill which provides for civil and criminal penalties for violations of the provisions of the bill.

The Department believes that individuals who knowingly and willingly violate provisions of the statute should be held personally and financially liable for recovery of the amounts involved.

The Department recognizes an employer should be cognizant of the requirements of the statutes. However, in unusual situations or when procurements are made infrequently by an agency, it is possible for an individual to unknowingly act in a manner contrary to law or regulation. The Department does not believe that individuals should be held liable for fulfilling the requirements of their position, when they have unknowingly violated the provisions of law. The Department believes the State has the responsibility for assuming the liability in such situations.

The Department further believes that in order to assure compliance with the provisions of the bill and avoid such potential individual liability, agencies will be required to establish independent review capabilities comparable to those presently existing within the Department of Administration. This creates a redundancy of effort, and will create a strain on current staffing.

The Department of Community and Regional Affairs does favor the overall intent of the bill. If the above enumerated concerns are properly addressed, the Department will support the measure.



Emil Notti, Commissioner

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 341
 Title : An Act relating to state procurement practices and procedures
 Sponsor : Rules Committee by request
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Community & Regional Affairs
 BRU : Local Government Assistance; Child Assistance, Displaced Homemakers, Administration and Support
 Components : Grants Administration, Child Care, Displaced Homemakers, Administrative Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		202.1	404.1	416.2	428.7	441.6
TRAVEL		9.2	18.4	19.0	19.6	20.2
CONTRACTUAL		11.6	23.2	23.9	24.6	25.3
SUPPLIES		1.8	3.7	3.8	3.9	4.0
EQUIPMENT		18.5				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		243.2	449.4	462.9	476.8	491.1

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		243.2	449.4	462.9	476.8	491.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		10	10	10	10	10
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary This bill provides for a major restructuring and revision of the statutes governing the procurement of supplies, services, professional services, and construction by State agencies. Several of the requirements currently existing in statutes concerning procurement would be changed. The bill would affect all of the Department's procurement activities.

Prepared by : Remond Henderson *Remond Henderson* Phone : 465-4708
 Division : Administrative Services Date : 2/6/86

Approved by Commissioner : *Kevin Pelt?* Date : 2/6/86
 Agency : Community and Regional Affairs

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 341

This fiscal note is a combination of the fiscal impact of SB 341 on various BRU's and components within the Department. Following is a summary of the fiscal impact on each Division.

Assumptions

1. The definition of "procurement" in SB 341 is interpreted as applying to projects currently treated as grants creating an increase in time to prepare and review the required documents.
2. Number of grants each staff could effectively administer would be greatly reduced.
3. The Department receives a significant number of new grants each year.
4. Due to sec. 36.30.930, Civil and Criminal Penalties, the Department would need to provide increased oversight of procurement documents in order to reduce the liability exposure for all staff involved in procurement.

Municipal and Regional Assistance Division

- 4 Grants Administrators to more closely monitor grants and meet increased requirements under proposed procurement provisions - \$182.7
- 1 Clerk Typist III and 1 Administrative Assistant to provide additional clerical and technical support for increased professional staff - \$66.6

Community Development Division

- 1 Grants Administrator and 1 Community Development Specialist I/II to more closely monitor grants and meet increased requirements under proposed procurement provisions \$112.5
- 1 Clerk Typist III to provide additional clerical support - \$32.4

Administrative Services Division

One Administrative Officer I position to provide training and technical assistance to departmental staff to assure compliance with the procurement provisions and to serve as final review of all documents to decrease liability exposure of staff involved in procurement - \$47.7

All positions are full-time 12-month positions. However, since SB 341 is effective January 1, 1987, FY 87 costs are for six months.

NOTE: If the definition of procurement is amended to exclude the bulk of grants administered by the Department, the fiscal impact of the bill would be greatly reduced.

Position Title Grants Administrator - Beginning FY 87			No. of Positions 4	Range/Step 17/A	Borg. Unit GEN	Dev.	Approv.	Disapp.																																															
Time Status PFT	Staff Months 12	RP Number	Location Anchorage	Election District	Leg.																																																		
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>1</th> <th>2</th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>34,740 x 4</td> <td>138,960</td> <td></td> </tr> <tr> <td>Benefits</td> <td>10,930 x 4</td> <td>43,720</td> <td></td> </tr> <tr> <td>Premium Pay</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td>182,680</td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Travel</td> <td></td> <td></td> <td>5,000</td> </tr> <tr> <td>Contractual</td> <td></td> <td></td> <td>12,000</td> </tr> <tr> <td>Commodities</td> <td></td> <td></td> <td>1,000</td> </tr> <tr> <td>Equipment</td> <td></td> <td></td> <td>8,000</td> </tr> <tr> <td>Other</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total Cost</td> <td></td> <td></td> <td>208,680</td> </tr> </tbody> </table>			Type of Expenditure	1	2	3	Salary	34,740 x 4	138,960		Benefits	10,930 x 4	43,720		Premium Pay				Other		182,680		Total Personal Services				Travel			5,000	Contractual			12,000	Commodities			1,000	Equipment			8,000	Other				Total Cost			208,680	Justification Senate Bill 341, as written, would subject virtually all of the Division's grants to unincorporated communities and nonprofit organizations to the provisions of the proposed State procurement practices and procedures. The fiscal impact of this would be significant as virtually all grants would have to be treated as Professional Services Contracts. The procurement practices of the grantee would have to be more closely monitored with corresponding increases in oversight and reporting. The number of grants each administrator could adequately monitor would be greatly reduced. For purposes of this fiscal note it is assumed the average number of grants per administrator would have to be reduced from about 75 per person to 20 grants per person.				
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<table border="1"> <thead> <tr> <th>Receipt Code</th> <th>Funding Source</th> <th></th> </tr> </thead> <tbody> <tr> <td></td> <td>Federal Receipts</td> <td>1002</td> </tr> <tr> <td></td> <td>G. F. Match</td> <td>1003</td> </tr> <tr> <td></td> <td>General Funds</td> <td>1004</td> </tr> <tr> <td></td> <td>I-A Receipts</td> <td>1005</td> </tr> <tr> <td></td> <td>Program Receipts</td> <td>1028</td> </tr> <tr> <td></td> <td>CIP Receipts</td> <td>1061</td> </tr> <tr> <td></td> <td>Other</td> <td></td> </tr> </tbody> </table>			Receipt Code	Funding Source			Federal Receipts	1002		G. F. Match	1003		General Funds	1004		I-A Receipts	1005		Program Receipts	1028		CIP Receipts	1061		Other		These four Grants Administrator positions would prepare grant contracts and procurement documents, closely monitor grant progress, provide advice and grant administration technical assistance, and assist grantees in finishing and closing out contracts. This would require adequate funding for toll calls and some travel funds.																												
Receipt Code	Funding Source																																																						
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	G. F. Match	1003																																																					
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For B&M Use Only Key Number _____																																																							

0317F/1

**Request For
New Position**

Agency Community and Regional Affairs
 BRU Local Government Assistance
 Component Grants Administration

FY 87

Page 1 of 1
 Revised Date _____

Position Title		Administrative Assistant (Beginning FY87)		No. of Positions	Range/Step	Base Unit	Gov.	Approp.	Disapp.
Time Status	Staff Months	RP Number		Location	Election District	Leg.			
PFT	12			Anchorage					
Type of Expenditure				Justification					
1		2		This position would be needed to support the activities of the four (4) additional Grants Administrators required in FY 87, the four (4) new Grants Administrators needed in FY 88 and the three (3) new Grants Administrators needed in FY 89 (see attached related Requests for New Positions).					
		Amount		The Administrative Assistant would assist in maintaining files, keeping grant balances current, advertising and documentation needed to meet procurement and contract requirements, and other general support staff functions					
		3							
Salary		24,865							
Benefits		8,683							
Premium Pay									
Other									
Total Personal Services		33,548							
Travel		-0-							
Contractual		800							
Commodities		200							
Equipment		2,000							
Other									
Total Cost		36,548							
Receipt Code		Funding Source							
		Federal Receipts 1002							
		G. F. Match 1003							
		General Funds 1004		36.5					
		I-A Receipts 1005							
		Program Receipts 1028							
		CIP Receipts 1061							
		Other							
For B&M Use Only									
Key Number									

**Request For
New Position**

Agency Community & Regional Affairs
 BRU Local Government Assistance
 Component Grants Administration

Page of
 Revised Date

FY 87

Position Title Clerk Typist III - Beginning FY 87			No. of Positions 1	Range/Step N/A	Barry Unit 651	Class	Appeal	Change																																															
Time Status PFT	Staff Months 12	RP Number	Location Anchorage		Election District	148																																																	
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>1</th> <th>2</th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td></td> <td>19,573</td> <td></td> </tr> <tr> <td>Benefits</td> <td></td> <td>7,479</td> <td></td> </tr> <tr> <td>Premium Pay</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td></td> <td></td> <td>27,052</td> </tr> <tr> <td>Travel</td> <td></td> <td></td> <td>-0-</td> </tr> <tr> <td>Contractual</td> <td></td> <td></td> <td>700</td> </tr> <tr> <td>Commodities</td> <td></td> <td></td> <td>300</td> </tr> <tr> <td>Equipment</td> <td></td> <td></td> <td>2,000</td> </tr> <tr> <td>Other</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total Cost</td> <td></td> <td></td> <td>30,052</td> </tr> </tbody> </table>			Type of Expenditure	1	2	3	Salary		19,573		Benefits		7,479		Premium Pay				Other				Total Personal Services			27,052	Travel			-0-	Contractual			700	Commodities			300	Equipment			2,000	Other				Total Cost			30,052	Justification This clerical position is needed to support the four (4) additional Grants Administrator positions required in FY 87 to provide increased oversight and monitoring of grants. This Clerk Typist position would type reports and correspondence, file, photocopy, and provide other clerical support to assist the Grants Administrators.				
Type of Expenditure	1	2	3																																																				
Salary		19,573																																																					
Benefits		7,479																																																					
Premium Pay																																																							
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For B&M Use Only Key Number _____																																																							

0317F/3

**Request For
New Position**

Agency Community and Regional Affairs
BRU Local Government Assistance
Component Grants Administration

Page 1 of 1
Revised Date

FY 87

Position Title Community Development Specialist I/II			No. of Positions	Range/Step 16A	Base Unit (GU)	Des.	Approv.	Disapp.																																															
Time Status PFT	Staff Months 12	RP Number	Location Anchorage, AK		Election District	Leg.																																																	
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>1</th> <th>2</th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td></td> <td>32,424</td> <td></td> </tr> <tr> <td>Benefits</td> <td></td> <td>10,403</td> <td></td> </tr> <tr> <td>Premium Pay</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td></td> <td></td> <td>42,827</td> </tr> <tr> <td>Travel</td> <td></td> <td></td> <td>8,200</td> </tr> <tr> <td>Contractual</td> <td></td> <td></td> <td>2,400</td> </tr> <tr> <td>Commodities</td> <td></td> <td></td> <td>500</td> </tr> <tr> <td>Equipment</td> <td></td> <td></td> <td>500</td> </tr> <tr> <td>Other</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total Cost</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>			Type of Expenditure	1	2	3	Salary		32,424		Benefits		10,403		Premium Pay				Other				Total Personal Services			42,827	Travel			8,200	Contractual			2,400	Commodities			500	Equipment			500	Other				Total Cost				Justification <p>Currently no admin. dollars are associated with this program.</p> <p>SB 341 would impose additional regulations that would need to be addressed by a staff member.</p> <p>Presently the program is being administered by a number of different people who spend a portion of their time on this program and are basically funded by other sources. This was an emergency type response to the exclusion by the Legislature, of admin. dollars for this program.</p> <p>If the administration of this program continued to function in this manner we would be unable to implement the requirements set forth in SB 341 in a timely manner.</p> <p>This new position would centrally locate the administration of this program and would be responsible for the requirements that would be placed on this program as a result of SB 341.</p> <p>Presently the program is handled like a "pass through" grants. SB 341 would require this program to be handled as professional services contracts.</p>				
Type of Expenditure	1	2	3																																																				
Salary		32,424																																																					
Benefits		10,403																																																					
Premium Pay																																																							
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For B&M Use Only Key Number _____																																																							

**Request For
New Position**

Agency Community & Regional Affairs
 BRU Job Training Partnership Act
 Component Displaced Homemakers

FY 87

Page 1 of 1
 Revised Date

Position Title Grants Administrator			No. of Positions 1	Range/Step 17A	Barg. Unit GGI	Gen.	Apprec.	Change	
Time Status PFT	Staff Months 12	RP Number	Location Anchorage		Election District	L-2			
Type of Expenditure			Justification						
		Amount	<p>Generally, Child Care grants are awarded to the same contractors yearly. Under SB 341, the Child Care monies would have to go out to bid, probably resulting in new contractors and new local administrators. Therefore, this position would need to provide training and technical assistance to the new recipients.</p> <p>An additional Grants Administrator is needed in order to process the increased amount of paperwork under SB 341.</p>						
1	2	3							
Salary	34,740								
Benefits	10,930								
Premium Pay									
Other									
Total Personal Services		45,670							
Travel		5,200							
Contractual		5,900							
Commodities		600							
Equipment		700							
Other									
Total Cost		58,070							
Receipt Code	Funding Source								
	Federal Receipts 1002								
	G. F. Match 1003								
	General Funds 1004								58.1
	I-A Receipts 1005								
	Program Receipts 1028								
	CIP Receipts 1061								
	Other								
For B&M Use Only Key Number _____									

**Request For
New Position**

Agency Community & Regional Affairs
 BRU Child Assistance
 Component Child Care

Page 1 of 1
 Revised Date

FY 87

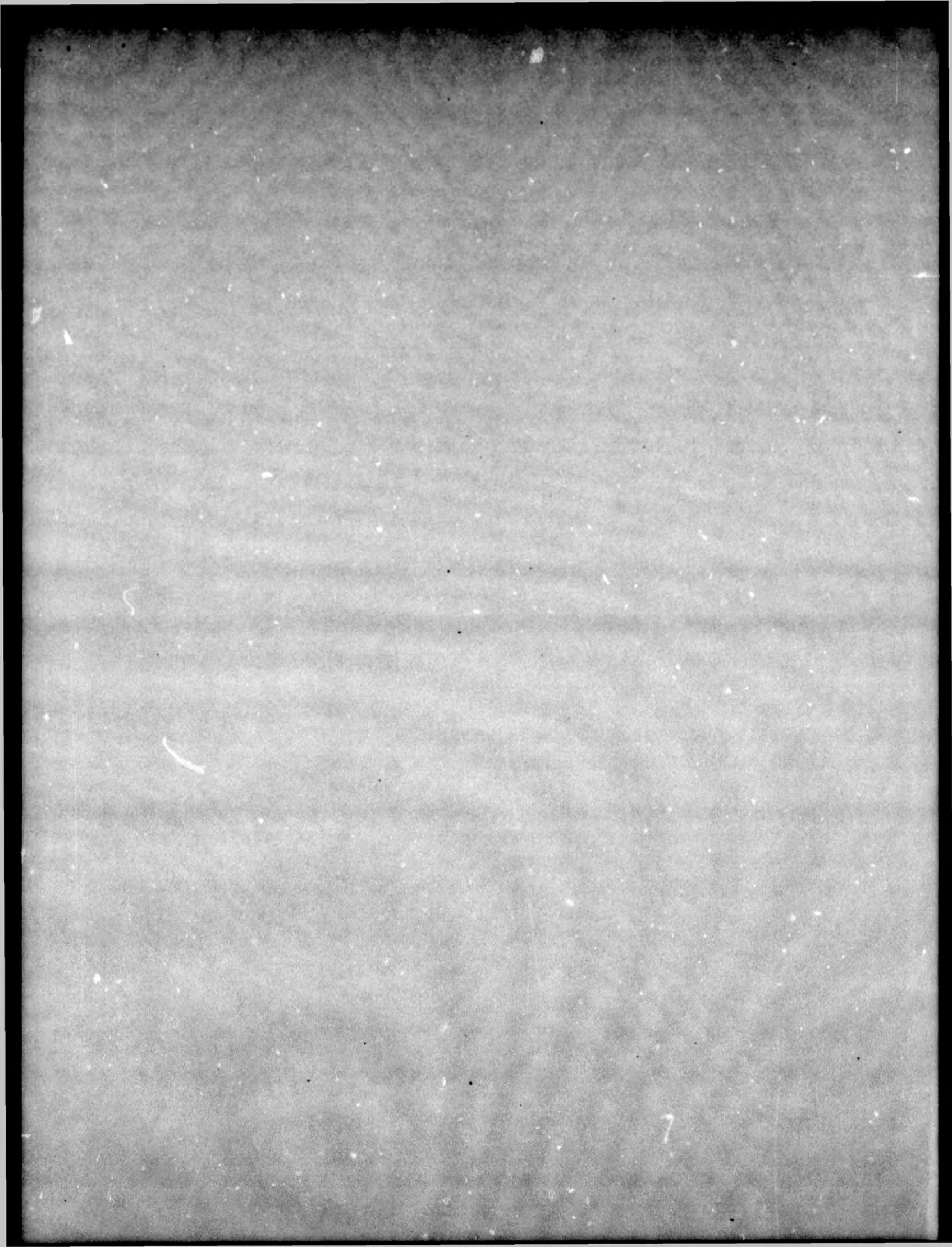
Position Title Clerk Typist III			No. of Positions	Range/Step BA	Barg. Unit GGI	Gen.	Approv.	Disapp.	
Time Status PFT	Staff Months 12	RP Number	Location Anchorage, AK		Election District	Leg.			
Type of Expenditure			Justification						
		Amount	Under SB 341 all the professional staff in the Child Care program would experience an increased workload. This clerk typist would provide the additional clerical support needed to carry-out the program.						
1	2	3							
Salary	19,572								
Benefits	7,045								
Premium Pay									
Other									
Total Personal Services		26,617							
Travel									
Contractual		1,400							
Commodities		600							
Equipment		3,800							
Other									
Total Cost		32,417							
Receipt Code	Funding Source								
	Federal Receipts	1002							
	G. F. Match	1003							
	General Funds	1004							32.4
	I-A Receipts	1005							
	Program Receipts	1028							
	CIP Receipts	1061							
	Other								
For B&M Use Only Key Number									

**Request For
New Position**

Agency Community & Regional Affairs
 BRU Child Assistance
 Component Child Care

Page 1 of 1
 Revised Date

FY 87



DEPARTMENT OF EDUCATION POSITION PAPER
FOURTEENTH ALASKA LEGISLATURE
SECOND SESSION

SB 341

The Department has two concerns with this bill:

1) the Division of Vocational Rehabilitation needs the capacity to purchase equipment and supplies for clients on very short notice. On occasion, these pieces of equipment can be very expensive, as in the cases of specially equipped automobiles, wheelchairs and prosthetic limbs; client equipment and services need to be exempt from the processes established in the bill;

2) we request that on page 8, line 29, the words "or negotiation" be deleted, and on page 9, line 1, change "three" to "five". Senate Bill 104, introduced last session at the request of the Governor, would accomplish the same goal with respect to existing AS 37.05.230. The change needs to be made to permit longer term, hence more cost effective, transportation contracts between school districts and contractors.

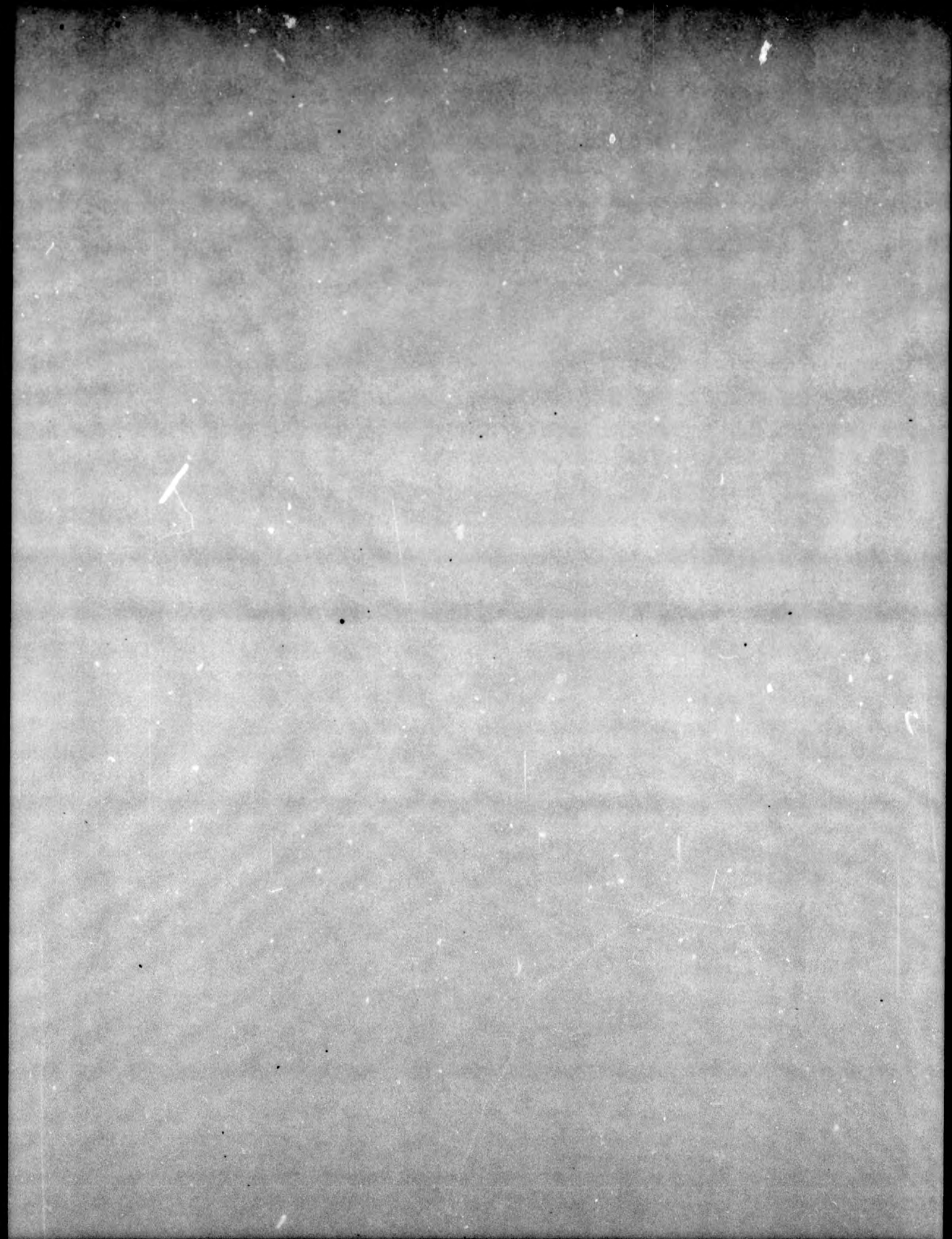
If the above two concerns can be accommodated the department has no particular concerns with the proposed legislation.

Harold Reynolds, Jr.

Harold Reynolds, Jr.

Harold Reynolds, Jr.

Commissioner



STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No. Senate Bill 341
 Title: State Procurement Code

Sponsor: The Rules Committee
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Env. Conservation
 BRU: Administration

Component: Administrative Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		37.9	39.4	41.0	42.6	44.4
TRAVEL		5.0	5.2	5.4	5.6	5.9
CONTRACTUAL		5.0	5.2	5.4	5.6	5.9
SUPPLIES						
EQUIPMENT		1.5	--	--	--	--
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		49.5	49.8	51.8	53.8	56.2

CAPITAL		--	--	--	--	--
----------------	--	----	----	----	----	----

REVENUE		--	--	--	--	--
----------------	--	----	----	----	----	----

FUNDING : (Thousands of Dollars)

GENERAL FUND		49.5	49.8	51.8	53.8	56.2
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME		--				
TEMPORARY		--				

ANALYSIS : Attach a separate page if necessary

This bill codifies many procedures and practices presently addressed in the Administrative Manual, a variety of memo's and procedures and ad hoc decisions. Practices, particularly for professional services contracts,

Prepared by: W.A. Publicover Phone: 465-2676
 Division: Administrative Services Date: 1-30-86

Approved by Commissioner: Bill Kross Date: 1-31-86
 Agency: Environmental Conservation

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. Senate Bill 341

vary from department to department. This bill and implementing regulations will increase fairness and accountability through uniform requirements for all areas of procurement.

Environmental Conservation regularly has over 40 open contracts worth over \$2 million. Presently, we have an Accounting Technician II who works part time on these contracts. He provides technical advice on contract preparation, tracks the contracts through the approval process, processes payments and chairs the contract closing committee. In the past we have had problems with inadequate RFPs, public notices and similar technical flaws. The bill will establish much tighter standards for the technical quality of competitive sealed proposals and will greatly increase the Department's accountability. In particular, the new law will require:

- evidence of Alaska Business Licenses from offerors and subcontractors
- public notice 21 days before opening proposals
- that all contractors on the bidders list must be notified by mail
- that register of offerors must be kept
- determination of responsibility
- notice of intent to award 10 days before the award
- retention of records including each proposal
- that agency procurement officers decide on protested awards and contract controversy

These new responsibilities will increase our workload beyond the present half-time position. New requirements mandate a single source to assist in drafting RFPs and contracts and to act as agency expert in the procedural aspects of professional services contracts.

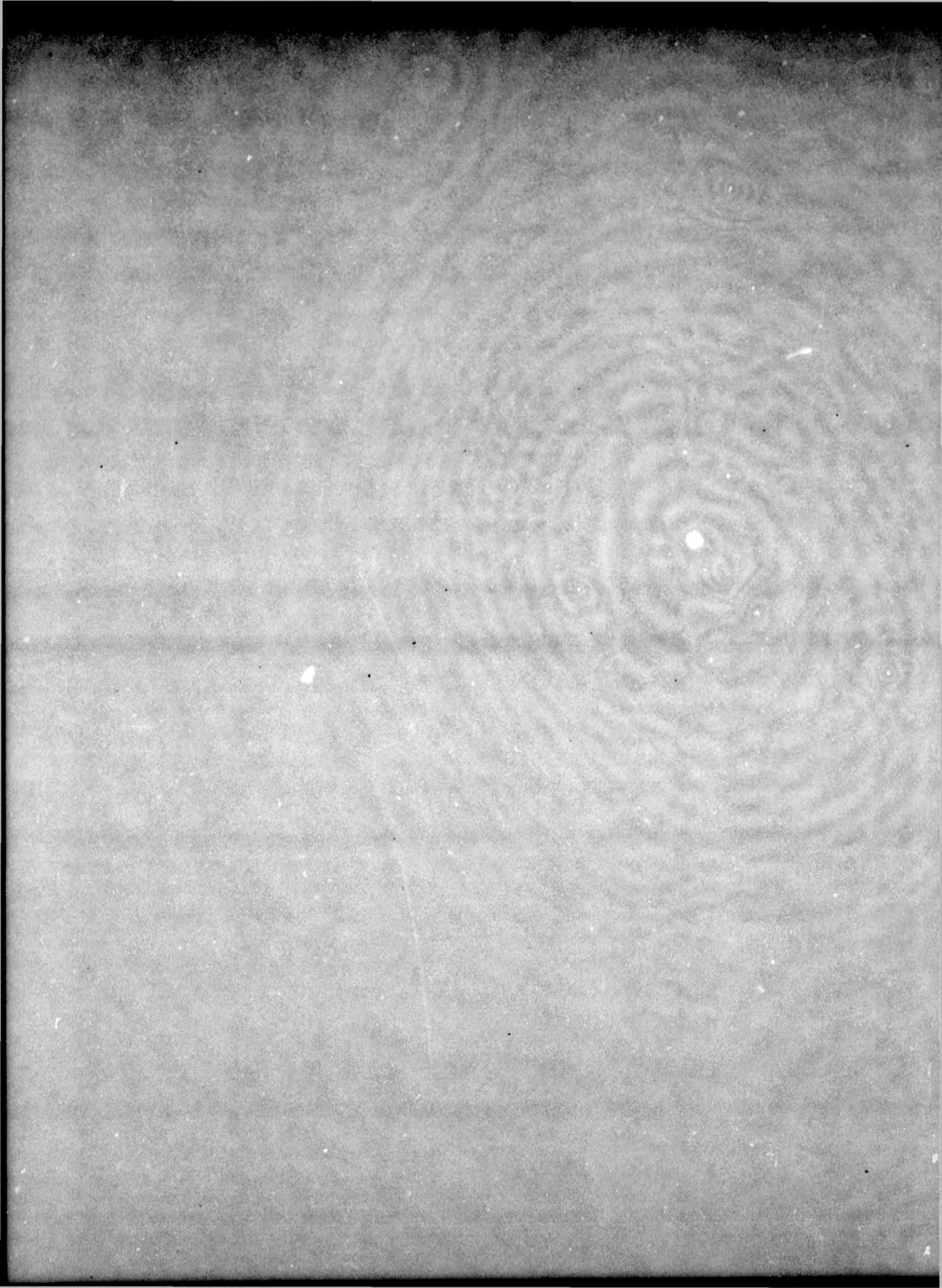
Position Title Administrative Assistant II			No. of Positions	Range/Step 4	Barg. Unit GGU	Class.	Agency	Division																
Time Status Full	Staff Months 12	RP Number	Location Juneau		Election District 4																			
Type of Expenditure			Justification																					
Amount			The new State Procurement Code will place tighter controls on contracts for professional services. The Department typically has over 40 active contracts valued at over \$2 million. While our professional staff defines the project scope and technical details, the procedural aspects of contracting are dispersed among the divisions. This allows inconsistencies, dilutes accountability, and hampers effective communications with the Department of Administration.																					
1	2	3	<p>The Administrative Assistant will be the Department's expert on competitive sealed proposals. The position would be the focus for procedural aspects of RFPs, selection, and contract administration. The position will develop and standardize wording, provide a single point link to Department of Administration, advise on alternate procurement methods, maintain a contract tracking system, process payments, chair the contract closing committee, conduct training sessions or arrange for training, monitor the contract approval process, assist in handling protests, arrange official files and record retention schedules and maintain departmental contract procedures. The costs for this position are:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;"><u>100</u> salary & benefits</td> <td style="width: 33%;">37.9</td> <td style="width: 33%;"><u>300</u> postage for</td> <td style="width: 33%;">5.0</td> </tr> <tr> <td><u>200</u> travel to regional</td> <td>5.0</td> <td>public notices</td> <td></td> </tr> <tr> <td>offices to train</td> <td></td> <td><u>400</u> Calculator,</td> <td>1.5</td> </tr> <tr> <td>field staff</td> <td></td> <td>workstation</td> <td></td> </tr> </table>						<u>100</u> salary & benefits	37.9	<u>300</u> postage for	5.0	<u>200</u> travel to regional	5.0	public notices		offices to train		<u>400</u> Calculator,	1.5	field staff		workstation	
<u>100</u> salary & benefits	37.9	<u>300</u> postage for							5.0															
<u>200</u> travel to regional	5.0	public notices																						
offices to train		<u>400</u> Calculator,							1.5															
field staff		workstation																						
Salary	28.4																							
Benefits	9.5																							
Premium Pay	--																							
Other	--																							
Total Personal Services		37.9																						
Travel		5.0																						
Contractual		5.0																						
Commodities																								
Equipment		1.5																						
Other																								
Total Cost		49.4																						
Receipt Code			Funding Source																					
			Federal Receipts 1002																					
			G. F. Match 1003																					
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			Other																					
For B&M Use Only																								
Key Number																								

**Request For
New Position**

Agency Environmental Conservation
 BRU _____
 Component _____

Page 3 of 3
 Revised Date _____

FY 87



MEMORANDUM

State of Alaska

TO: **Eleanor Andrews**
Commissioner
Department of Administration

DATE: **February 3, 1986**

FILE NO:

TELEPHONE NO: **465-4100**

FROM: **Don W. Collinsworth** *DWC*
Commissioner
Department of Fish and Game

SUBJECT: **SB 341 Procurement**
Bill

Enclosed are our proposed amendments to SB 341. In addition, there were a few areas where we had questions that could result in amendments. If our questions should be addressed in amendments, I would appreciate it if your office would include appropriate language.

Page 4, Sec.36.30.015 (b): Would your proposed amendment, which we have also included, provide for leasing facilities?

Page 8, Sec. 36.30.080, (c): Would this notice be required for renegotiating current leases? It also seems inconsistent that an appropriation for the project would not constitute its approval.

Page 9, Sec. 36.30.110, (a): Will this section eliminate the ability to negotiate altered conditions at the time of award?

Page 9, Sec. 36.30.110, (b): Will an application for an Alaska Business License still be valid?

Thank you for your assistance on this bill.

Enclosure

The Alaska Department of Fish and Game proposes the following technical amendments to Senate Bill No. 341:

Sec. 36.30.015

Page 4

Lines 5,6,7.

PROPOSED AMENDMENT

(b) The commissioner may delegate to an agency the authority to contract for and manage (SUPPLIES) services, professional services and supplies, except property of the state equipment fleet. (SERVICES, AND PROFESSIONAL SERVICES)

REASON: To clarify the intent of the bill.

Sec. 36.30.050.

Page 6

Lines 21,22.

PROPOSED AMENDMENT

(c) The lists shall be used by the chief procurement officer or an agency when issuing invitations to bid, soliciting letters of interest, or issuing requests for proposals under this chapter.

REASON: To clarify the intent of the bill to include informal solicitations.

Sec. 36.30.100.

Page 9

Line 6

PROPOSED AMENDMENT

(6) for professional services; (OR)

(7) for concessions operated on state property;

(8) aircraft charters involving hazardous flying conditions requiring specialized skills and other attributes of the operator and/or specialized aircraft to ensure the safety of agency personnel; or

(9) for purchases of less than \$5,000 as defined under Sec. 36.30.320.

REASON: To clarify intent of proposed amendment to Sec. 36.30.850, page 45, line 27 (Item 8 above) and to bolster the authority under Sec 36.30.320 (item 9 above).

Sec. 36.30.140
Page 11
Lines 21,22.

PROPOSED AMENDMENT

The bids are not open for public inspection until after a (CONTRACT IS AWARDED.) notice of intent to award a contract has been issued.

REASON: This proposed amendment will permit bidders to inspect all of the bid responses at the time a notice of intent to award a contract is issued and to file a protest then, rather than after the contract has been awarded.

Sec. 36.30.320
Page 19
Line 1

PROPOSED AMENDMENT

competition that is practicable under the circumstances (.) except as exempted as follows. Small purchases of less than \$5,000 may be made without competition for;

1. Copyrighted items, such as books, films, video tapes, educational materials, etc. WHERE NO COMPETITION EXISTS;

2. equipment repair as required by a manufacturer to maintain factory warranties, through authorized warranty stations;

3. Advertisements placed in either the printed media (i.e., newspapers, magazines, journals, etc.) or the electronic media (i.e., radio, television, etc.);

4. Aircraft charters involving hazardous flying conditions requiring specialized skills and/or other attributes of the operator and/or specialized aircraft to ensure the safety of agency personnel.

REASON: Under current delegation to agencies, items 1, 2, and 3 are exempted. Item 4 would bolster and recognize modifications requested under 36.30.850, page 45, line 27.

36.30.320
Page 19
Line 2, 3, 4 and 5

PROPOSED AMENDMENT

(d) a

REASON: To allow insertion of a new section "D".

Sec. 36.30.320
Page 19
Line 2

PROPOSED AMENDMENT

(D) An agency shall be exempted from the requirements of Sealed Competitive Bidding under Sec. 36.30.100 et al. when the Commissioner delegates specific authority to exceed the \$5,000 level established under Section 36.30.320 SMALL PROCUREMENTS. Purchases shall be made with competition that is practicable under the circumstances and shall be in writing.

REASON: The Commissioner, through delegation to the department is geared to perform what is known as formal bidding procedures as required under 36.30.100. For agencies to perform this task would require additional personnel to comply with the extra workload that would be generated. This burden should not be passed on to the agencies, if the resources to perform the function are not available within the agency.

Sec. 36.30.430
Page 23
Line 19

PROPOSED AMENDMENT

(2) specified **reasons** (EXCUSES) for delay or nonperformance;

REASON: To clarify intent of the bill.

Sec. 36.30.850
Page 45
Line 27

PROPOSED AMENDMENT

(13) aircraft charters involving hazardous flying conditions requiring specialized skills and other attributes of the operator and/or specialized aircraft to ensure the safety of agency personnel.

REASON: Such charters would be for missions involving search and rescue, fishery patrols, aerial reconnaissance and surveys, fire fighting operations, etc. This recognizes unique and hazardous conditions of low altitude aerial surveys, often in marginal weather conditions, over water and hazardous terrain. Such surveys are often required on very short notice, for example, when fishing closures are anticipated.

Sec. 36.30.930

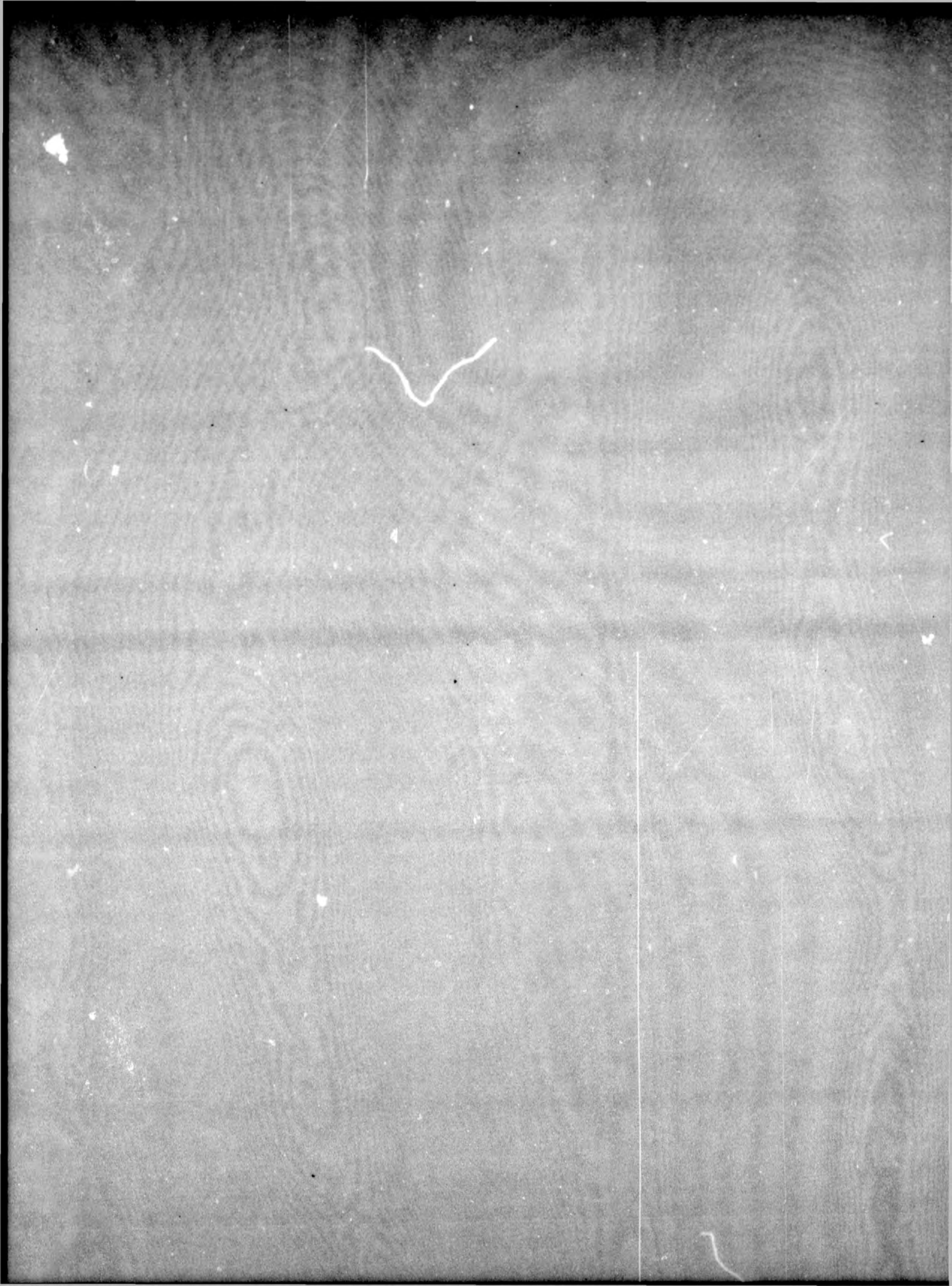
Page 47

Line 15

PROPOSED AMENDMENT

(1) a person who intentionally or knowingly contracts for or purchases supplies, equipment for the state fleet, services, professional services, or construction in a manner contrary to the requirements of this chapter or the regulations adopted under this chapter is personally liable for the recovery of all state money paid plus 20 percent of that amount, legal interest from the date of payment, and all costs and damages arising out of the violation;

REASON: Agencies must work within a system of checks and balances which provide for a process that results in correct performance under this chapter. Individual approvals are given by employees who act in good faith relying that prior actions of other employees followed correct procedures.



Senate Bill 341

"An Act relating to state procurement practices..."

The stated purpose of SB 341 may be summarized to the establishment of a single, uniform, statutory base for all procurement by the executive, legislative and judicial branches of the State of Alaska in order to provide a procurement system that maximizes the purchasing value of State funds, assures full and equitable competition in the market place and engenders the confidence of the public.

AS 36.30.015 of SB 341 would authorize Department of Administration (DOA) and Department of Transportation and Public Facilities (DOT/PF) to delegate any of their respective authorities (except DOT/PF authority to contract for or dispose of elements of the State equipment fleet, DOA authority to promulgate procurement regulations, and DOA Commissioner's authority to make sole source determinations) to another agency after having made a written determination that the agency is capable of implementing the delegation. This represents a major but laudable change from the current statutory procurement base.

AS 36.30.040 of SB 341 would mandate promulgation by DOA of regulations covering stated essential elements of procurement. It is noted that AS 36.30.040(13) requiring regulations for elimination and prevention of discrimination does not include "handicap" or "political belief" among the specific categories in which discrimination is to be prevented.

AS 36.30.240 of SB 341 with respect to discussion with offerors, revision of proposals, and "best and final offers", appears to present potential for problems and appeals. This section infers that some offerors may be screened out at this stage and excluded from the discussion phase. For offerors found to be unresponsive at this juncture, this probably would present no problem. However, the language requiring determination of which proposals are "...reasonably susceptible of being selected for award..." implies that offerors who were found to be responsive might also be eliminated from consideration. To conduct discussions with some but not all of the responsive offerors would seem to necessitate a screening process and that records be maintained sufficient to substantiate reasons for elimination of responsive offerors not "reasonably susceptible of being selected for award" in the event of appeal.

For the Department of Health and Social Services (DHSS), procurement of construction, supplies and services other than professional services under SB 341 would continue substantially as currently prescribed in DOA, DOT/PF and DHSS regulations, policies and procedures.

AS 36.30.850(b)(1) of SB 341 exempts grants from Ch.36. As grants are interpreted under AS 36.30.990(10) of SB 341, most DHSS grant programs would be exempt from Ch.36 and could continue to be administered under extant DHSS regulations.

AS 36.30.850(b)(4) exempts contracts with medical doctors and dentists from Ch. 36. At present, DHSS administers contracts/provider agreements for the following categories of professional services in addition to provider agreements with doctors and dentists under a special DOA delegation of long standing that authorizes DHSS to contract in any amount without DOA involvement:

1. On a DHSS Memorandum of Agreement to obtain the specialized expertise of recognized experts outside State government to conduct seminars/training programs or to serve on Proposal Evaluation Committees for the award of grants or contracts. Such contractors do not sell their services but accept reimbursement for out-of-pocket expenses and, sometimes, a token payment in the form of an honorarium: 30 per year
2. On a DHSS Medical Provider Agreement covering services paid for by the State directly to providers of services to eligible recipients under such programs as Medicaid, General Relief Medical and Catastrophic Illness. Under these agreements, payments are made to hospitals, nursing homes, mental health clinics, home health aides, medical suppliers, ambulance companies, physicians, dentists, optometrists, midwives, physical therapists, rural health clinics and the Indian health Service: 1,500 per year
3. On a DHSS Medical Provider Agreement covering registered nurse and home health aide services under the Home Health program paid for directly by the State to providers of the services to eligible recipients: 70 per year
4. On a DHSS Agreement covering *day care or *foster care for eligible children, foster care or residential care for eligible adults with State payment directly to providers of the services: 1,760 per year

*Note: Child day care and foster care have heretofore been covered under AS 47 and have been administered under DHSS regulations, exclusive of the DOA administered procurement process.

Recommendations:

It is noted that AS 36.30.850(b)(5) of SB 341 exempts purchase of residential child care services under AS 47.40 as though such purchases were made under "contracts". Actually, AS 47.40 specifically mandates the use of "grants" for such purposes. Inasmuch as AS 47.40 and the definition of "grant" under AS 36.30.990 of SB 341 seem consistent to identify AS 47.40 funding activities as "grants", the AS 47.40 residential child care funding program appears to be exempted under AS 36.30.850(b)(1) of SB 341, which exempts "grants". Either AS 36.30.850(b)(5) of SB 341 should be deleted entirely or the words "contracts for the" in (b)(5) should be deleted.

Present procurement act language probably would not clearly authorize DOA to continue the present delegation of authority to DHSS for the 3,360 agreements prepared annually by DHSS without referral to DOA. Inasmuch as the program guidelines and rates of payment are controlled by regulations for the categories of agreements in 2. b and d, it is recommended that the present DOA delegation be carried over into the proposed procurement act by adding language under AS 36.30.850(b) of SB 341 to the following effect:

"agreements, except preferred provider agreements, with providers paid directly by the state for medical care for persons eligible under AS 47.07 [re Medicaid], AS 47.08 [re Catastrophic Illness], AS 47.25.195 [re General Relief-Medical], AS 47.30.530 [re Community Mental Health Services].

"agreements with providers paid directly by the state for child day care or foster care under AS 47.10 [Delinquent Minors and Children in Need of Aid], AS 47.17 [Child Protection] and AS 47.25.310 [Aid to Families with Dependent Children]."

"agreements with providers paid directly by the state for adult day care, foster care and residential care under AS 47.24 [Protection of the Elderly]

If the above changes are not made, DHSS expects significant impacts on two of the previously described categories as follows:

2. AS 36.30.890 of SB 341 entitled "Federal Assistance" would probably allow DHSS to comply with Title XIX of the Social Security Act and 42 CFR 431.51 mandating free choice of providers to Medicaid recipients. This will permit continued use of the present type of DHSS agreement with about 1,500 Medicaid providers annually. As a consequence, there will be no change in workload or cost generated by SB 341 in the Medicaid program area.

Services of medical providers to persons eligible under the General Relief Medical and Catastrophic Illness programs are not federally funded and there is no provision in SB 341 to exempt these services from the proposed procurement code, except for the exclusion, in AS 36.30.850(b)(4), of medical doctors and dentists. Therefore, all other services paid for under these programs would be thrust into the competitive proposal processes of the proposed procurement code. There is long standing philosophy and State policy, now contained in regulations, accepting freedom of choice by recipients of providers under the General Relief Medical and Catastrophic Illness programs. Competitive procurement of such services would entail a wholly new approach of awarding contracts to competitively selected providers of each service category geographically and mandating that only those providers be used by recipients who desire services to be paid for under the subject programs. If SB 341 should pass sans change to remedy this problem, it seems possible that the Attorney General might find that, to avoid jeopardizing the health of eligibles under the programs, continuation of them

under their present regulations would better serve the public interest than to discontinue them. In the interim, if that occurred, statutory change should be sought to exempt the programs from the procurement code.

If SB 341 is not changed to exclude these services from the procurement code, and the Attorney General does not find that continuation of the programs under their present regulations is in the best interests of the public, the subject programs could not be administered after 1/1/87. Funds appropriated and remaining unspent or unencumbered for payment for services rendered prior to 1/1/87 could not be spent because existing provider agreements would have to be cancelled. Based on the Governor's FY87 budget of 5,000.0 for the G.R. Medical and 1,312.0 for the Catastrophic Illness program for a total of 6,312.0, about 3,156.0 would remain unexpended for FY87.

4. Services by DHSS for day care and foster care for children and for foster care and *residential care for adults who have been determined eligible for such services under DHSS regulations have historically been administered under those regulations, not under State procurement and contract processes. However, as SB 341 is currently written, it appears that continuation of the current system for recruitment, training, inspecting, licensing, monitoring, entering into agreements, and paying for the subject care would not be possible. If the procurement code is enacted to mandate contracting for the subject care under the code, there would be additional administrative effort generated without any reduction in the costs of care furnished by providers. Further, it would appear that DHSS staff might be precluded under the procurement code from making the necessary contacts to recruit the entities providing the care, train them and otherwise bring them to a status eligible for licensing etc. before initiating the standard contracting processes beginning with public notice and request for proposals. It appears that the proposed procurement code does not lend itself to obtaining these categories of care. Administration of them under the proposed procurement code would have a derogating effect on these programs by inhibiting some entities which have been coaxed and trained/licensed to provide the care, and would increase administrative requirements without decreasing costs of care. The increased administrative efforts would necessitate establishment of one Social Worker IV position at a salary range 18 to coordinate foster and day care contracting statewide at a cost of 29.4 for the last 6 months of FY87.

*(Child residential care is authorized and operated specifically as a grant program under AS 47.40 and would be exempt under SB 341.)

Recommended by:

Joanne C. Clark
Joanne C. Clark
Director
Division of Budget &
Finance

Date:

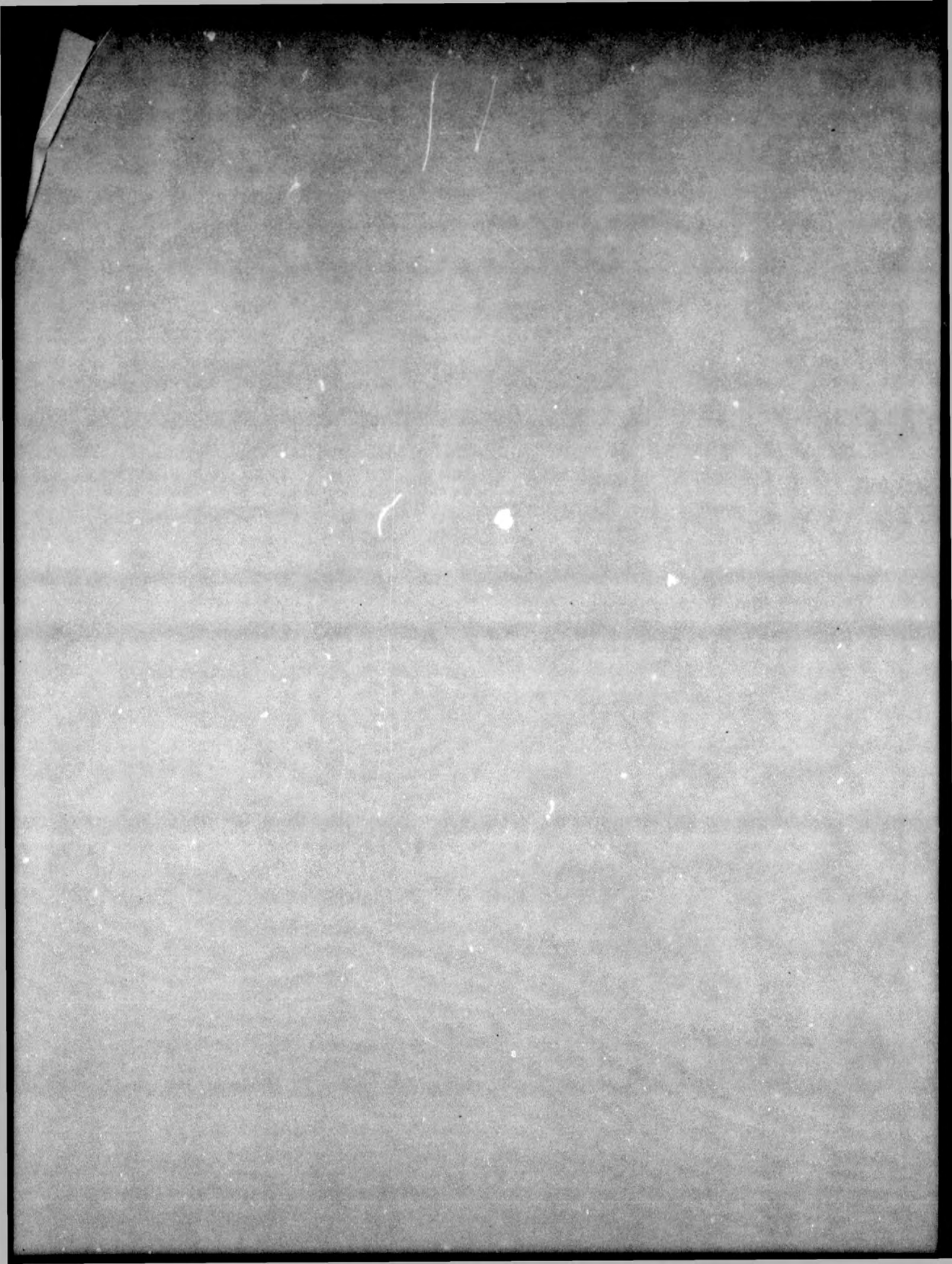
2/3/86

Approved by:

John R. Pugh
John R. Pugh
Commissioner
Dept. of Health &
Social Services

Date:

2/3/86



MEMORANDUM

State of Alaska

TO: The Honorable Eleanor Andrews
Commissioner
Department of Administration

DATE: January 29, 1986

FILE NO:

TELEPHONE NO: 465-2700

Jim Robison
FROM: Jim Robison
Commissioner
Department of Labor

SUBJECT: SB 341 Procurement Bill

I recently received your memo concerning position papers for Senate Bill 341, "An Act relating to state procurement policies and procedures ...". As you may know, my staff has participated in several work sessions with Department of Administration staff and has provided input at various stages of the drafting process. Accordingly, I am comfortable with your Department representing the Department of Labor on this bill, and we will not be submitting a position paper.

I believe also that this will assist in assuring that the executive branch takes a unified position on the bill.

Thank you for giving us the opportunity to comment on this bill.

cc: Jim Ayers, Director of Legislative Relations

JR:JK:mr

MEMORANDUM

State of Alaska

TO: Jim Ayers
Director of Legislative Relations
Office of the Governor

DATE: January 28, 1986

FILE NO:

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Attorney General

SUBJECT: SB 341

As requested by Commissioner Andrews the Department of Law's comments regarding SB 341, relating to state procurement practices and procedures, follow below.

The Department of Law routinely acquires the professional services of outside counsel in accordance with existing AS 36.98. During a typical year, as many as thirty-two professional services agreements are let in this manner. Outside counsel are hired when there is a legal dispute between two or more Executive Branch Agencies causing a conflict of representation; when existing workload and insufficient staff resources combine to require outside assistance; when special expertise not resident in the department is required; and when legal representation is required at a location distant from the jurisdiction of the attorney general. Of the thirty-two professional services agreements typically let, about eighteen are for counsel to represent the state outside Alaska.

Often, outside counsel is required with very little notice. And, occasionally, such notice has been less than twenty-four hours. Obviously, procurement for outside counsel in these cases would fall under Article 4. (Other Procurement Methods) of the proposed legislation. Less clear, however, are those instances where counsel might not be required for two or three months. It appears, from a practical standpoint, that procurement of outside counsel using competitive sealed proposals would take two to three months to accomplish. Additionally, considerable time may sometimes be needed for counsel to get prepared to handle a particular matter. Consequently, there will be many occasions when taking the time necessary to secure competitive sealed proposals for outside counsel will be contrary to the public interest, unless pending legal actions can be delayed for one hundred to one hundred and twenty days. This time requirement is particularly significant when dealing with law firms for services outside the state.

Under certain circumstances, the public notice requirements for competitive sealed proposals may also be contrary to the public interest. This occurs when such notice serves to advertise the state's litigation strategy, or when it serves to prematurely notify potential defendants of impending litigation. In the first instance, our cost for bringing or

Jim Ayers
Page 2

January 28, 1986

defending an action could be increased dramatically. In the second instance, valuable assets can be hidden and critical evidence can be lost due to premature notice. Time permitting, the other requirements for competitive sealed proposals can be met, where confidentiality is required, if the notice requirements for formal publication are waived.

Lastly, we are concerned that the requirements under proposed ARTICLE 3. requiring offerors to list subcontractors, and for both offerors and subcontractors to supply evidence of a valid Alaska business licence may be interpreted to apply also to contractors procured under ARTICLE 4. Because of the nature of emergency procurements, subcontractors may not even be known at the time an initial procurement is made. In the case of professional services performed outside the state it may be impractical to require an Alaska business license. Indeed, such a requirement could defeat the purpose for emergency procurement when time is the determining factor.

cc: Eleanor Andrews, Commissioner
Department of Administration

Marsha Hubbard, Deputy Commissioner
Department of Administration

MEMORANDUM

State of Alaska

TO: Jim Ayers
Director of Legislative Relations
Office of the Governor

DATE: January 29, 1986

FILE NO.:

THRU:

TELEPHONE NO.:

SUBJECT: Procurement Bill

Richard L. Bunker
FROM: MG Edward G. Pagano
The Adjutant General
Department of Military and
Veterans Affairs

RECEIVED
JAN 30 1986

HAND DELIVERED
GOVERNOR'S OFFICE

The Department of Military and Veterans Affairs has participated in the analyzation of the Administration's version of the procurement bill, and concur with the Department of Administration submission.

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES

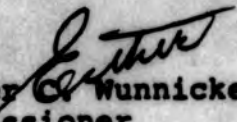
State of Alaska
OFFICE OF THE COMMISSIONER

TO: Jim Ayers
Governor's Legislative Assistant
Office of the Governor

DATE: January 30, 1986

FILE NO: 330

TELEPHONE NO: 465-2400

FROM:  Esther C. Wunnicke
Commissioner

SUBJECT: SB341 Procurement
Department Position
Paper

General

The Department of Natural Resources supports the intent of SB341 the Senate procurement bill. If passed it will:

1. Provide a single reference in statute for all state agencies and the business community with respect to state procurement;
2. More narrowly define the means and methods for state procurement which should result in a more standard way of doing business by all state agencies; and
3. Provide for the establishment of regulations for all aspects of procurement.

In addition to the above, it is the goal of this department that passage of the bill will allow the Department of Natural Resources to continue to manage state parks, forests, lands, and other natural resources for which we are responsible without causing undue administrative burdens on our managers and at the same time provide a fair opportunity for the business community to participate in DNR procurements. To this end we support the draft bill and direct our comments.

Issues of Particular Concern to the Department

There are five issues of particular concern to this Department:

1. We are currently authorized under AS 41.21.020 and regulations adopted under that statute, in conjunction with Title 37 and a special delegation from the Commissioner of the Department of Administration to administer construction and concession contracts for state park development. This arrangement has resulted in cost effective expenditure of capital appropriations and has kept management authority and responsibility for State park facilities with DNR as mandated in Title 41. The bill currently provides mechanisms for continuation of this procedure. We would oppose any change in the bill which would diminish or conflict with our authorities under Title 41.

2. We have requested that wording be added under Sec. 36.30.990 to specifically exempt DNR land acquisitions from the provisions of this bill, reference attached letter to Bob Link, dated January 24, 1986. Land acquisition by DNR is currently authorized under AS 38.05.035, AS 27.21.300, AS 41.17.210, AS 41.21.020. Although we are advised that the provisions of the bill would not apply to land acquisitions, a clearly stated exemption would remove any doubt that might arise in the future.
3. It appears that the current draft of this bill does not hinder the Department's ability to react timely to wildfires. However, we would oppose any changes to the draft bill or regulations that would restrict or otherwise complicate procurement during wildfire situations.
4. The proposed changes in statute or subsequent regulations should consider staff time at all levels required for implementation and an appropriate fiscal note must be supported to assure full implementation.
5. The potential success of implementation of improved procurement legislation and regulations is largely contingent on training of staff at all levels involved in procurement. We are concerned that provision is made to provide initial as well as ongoing training.

We have appreciated the opportunity to provide comments during the initial drafting phases of the bill and we are happy to see that many of our initial concerns were addressed. We will continue to participate in the review process through the Department of Administration toward resolution of our remaining concerns.

A list of Department of Natural Resources general concerns and recommended changes, by section, is included in this memo. Some have been raised previously and others are the result of comments we have received from our field persons after reviewing the latest draft. Also attached is a memorandum to Bob Link, dated January 24, 1986, listing some recommended technical changes.

Fiscal Note

Our fiscal note to the current bill is for the addition of one supply tech and travel funds to provide training of department staff in all aspects of procurement. We believe that the success of this legislation is contingent on providing adequate training for all department personnel involved in the procurement process. The necessary funding requirements may change depending on the outcome of the final bill and the plan for implementation by the Department of Administration.

Sectional Recommendations

36.30.110 (b) page 9 line 18 - 25

Recommended Change

The section be modified to read:

"(b) The invitation to bid shall require that prior to contract award and/or subcontracting any portion of the contract, the bidder is required to furnish a list of subcontractors the bidder proposes to use in the performance of the contract. The bidder shall also be required to furnish evidence of the bidder's valid Alaska business license and evidence of a valid Alaska business license for each proposed subcontractor. A bidder and proposed subcontractors for construction contracts shall also submit evidence of registration under AS 08.18."

Concern

We believe that business licenses, subcontractor information, and registration, should be required prior to award but not necessarily at the time of bid. This information is generally gathered after bid receipt and prior to award. Or in the case of subcontracting, provisions are generally included in the contract for notification and approval of use of subcontracting by the issuing agency, since not all subcontractors are known at the time the bids are received.

36.30.210 page 14 line 20 - 27

Recommended Change

The section be modified to read:

"(b) The request shall require that prior to contract award and/or subcontracting any portion of the contract, the offerer must furnish a list of subcontractors.... (an offer for a construction contract shall also submit evidence of the offer's registration under AS 08.18 and evidence of registration for each subcontractor.) When applicable an offerer and proposed subcontractors shall also be required to submit evidence of professional registration that may be required under Title 08."

Concern

There are some instances when subcontractors are not known at the time of award. The contract can provide for approval of subcontractors after award and prior to subcontracting. In addition, evidence of all professional registration required under Title 08, as determined by the nature of the contract, should be required prior to the state doing business with a contractor or subcontractor.

36.30.210 page 15 line 3-4 and 36.30.250 page 16 line 15-16

Recommended Change

36.30.210 line 3-4 "The request must provide a description of the factors that will be considered by the procurement officer when evaluating the proposals received, including the relative importance of (price and other) those factors."

36.30.250 line 15-16 "... the most advantageous to the state taking into consideration (price and) the evaluation factors set in the request for proposals."

Concern

If the word price is left in it appears that price may be thought of as the primary consideration for award. Price is included as factor in most of our RFP's, however it is not a major consideration in most RFP's. All evaluation factors are important and no particular emphasis should be given to price.

36.30.300 page 17 Sole Source Procurements

General Concern

We recommend that the department be allowed to execute contract amendments that are within the scope of the original solicitation without requiring a sole source justification for the following reason:

1. To rebid the project fairly all other bidders would, in most cases, need to have access to all information developed from the existing contract. This could result in considerable time for the State to prepare the bid or RFP and the contractors to prepare their proposals;
2. The dollar amount of the amendment by itself may be too small to create interest in the business community; and
3. Despite efforts of the State to provide for a fair bid, the current contractor has advantage over the

competitors since the current contractor is already familiar with the project and could have intimate knowledge of the Department.

36.30.300 page 17 line 14 - 18, 22-23

Recommended change

Change lines 14-18:

"A contract may be awarded under this section only when the (commissioner) using agency determines in writing that there is only one source for the required supplies, services, professional services, or construction, and the commissioner of administration or, the commissioner of transportation and public facilities, concurs with the determination."

Change lines 22-23:

"the authority to (make) approve the determination required by this subsection may (not be delegated) only be delegated to designees of the commissioner acting in the commissioner's absence, or to the commissioner of the using agency when the value of the supplies, services, or construction is less than \$5000 or professional services is less than \$25,000."

Concern

For the Commissioner of Administration or Transportation & Public Facilities to make the determination would require an enormous amount of research on the part of the commissioner's staff. Since the using agency is the one required to submit "written evidence" in section 36.30.300 (b) it appears that it is the using agency determining that only one source is available. The wording would put the responsibility of making the determination with those who are required to do so and still allow the commissioner to approve/disapprove the determination.

There may be times when the commissioners need to delegate the authority to someone acting on their behalf within their own department. Furthermore, we recommend delegation of authority to approve sole source procurements for small procurements to the commissioner of the using agency.

36.30.365 page 19 line 25-26

Recommended Change

"At least (10) 5 days before the formal award....."

Concern

This additional five day waiting period will slow down our contract award process. In most bids opened by the Department and in most professional services contracts vendors are notified by phone within one to two days after opening bids or evaluating proposals. This is followed up with a written notice of intent to award. We feel that a ten day waiting period may unnecessarily delay award of some contracts.

36.30.500 page 25

General Concern

We are in favor of requiring reporting on sole source and emergency procurements. Our only concern is the amount of staff time that may be required in maintaining a list of this nature. Staff time would be substantially reduced if we were not required to keep records on sole source procurements under \$5000 for services, supplies, and construction, and under \$25,000 on professional services.

36.30.560 to 36.30.590 pages 26 - 30

General Concern

This will formalize the process for protesting an award or contract by allowing the contractor, offerer, or bidder to first submit a written protest to the "procurement officer of the using agency", Sec. 36.30.560. In the past this process was done on an informal basis and the only written grievances were those to the Department of Administration. This process may involve an increase in the amount of staff time within each agency to make written determinations on a protest as required in Sec 36.30.580.

We do support this process as a method of giving the public an opportunity to call to the procurement officer's attention any possible misuses of contracting authority. However, in order for this department to be able to continue to procure services in a timely manner, we have requested a position to assist in other areas of procurement which would allow time for our procurement officer to handle these protests.

The ten days allowed to receive a protest will cause, in most cases, a delay in awarding the contract. This could be remedied by leaving the time at five days as it presently stands.

Moving the time to five days would protect the state from unnecessarily delaying awards due to an unfounded protests. Sec 36.30.565 may provide for the procurement officer to allow an untimely protest to be reviewed which would give us the flexibility to review those that have merit.

36.30.930 page 47 lines 13 - 26

General Concern

We support the inclusion of penalties in this bill as it forces managers and administrators to take seriously their responsibility for expending public funds. We are concerned however, that there be a means of providing a lesser degree of punishment for persons who, out of ignorance or lack of training, may violate this chapter.

We would recommend that a system be provided within regulations that would allow the using agency and the Commissioner of Administration to take other lesser disciplinary action. Such action could be revocation of purchasing authority, suspension, required training courses, or special reviews of procurement documents by the Department of Administration prior to execution.

As mentioned earlier, we believe training is critical to successful implimentation. If the state requires employees to be accountable for their purchasing actions, training must be provided the employees in all aspects of procurement that relate to job functions. It will be difficult to enforce penalties if procurement personel are not taught how to do their jobs.

cc: Eleanor Andrews, Commissioner, Department of
Administration
James Baldwin, Assistant Attorney General
James K. Barnett, Deputy Commissioner, Department of
Natural Resources
Sharon Barton, Director, Division of Management

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

State of Alaska

DIVISION OF MANAGEMENT

TO: Bob Link, Director
General Services & Supply
Department of Administration

DATE: January 24, 1986

FILE NO: 510

TELEPHONE NO: 465-2424

FROM: Sharon Barton
Director

SUBJECT: SB 341 Procurement
Bill

In accordance with the Marsha Hubbard's letter of January 15 I am requesting that you consider recommending the following technical amendments to the SB 341.

1. Sec. 36.30.310 (b) 2. Recommend that it be changed to read:

"with a person under this subsection if the total amount of professional services contracts for like services awarded to that person under sole source solicitation methods from any agency exceeds \$25,000 in a 12 month period."

This would prevent the abuse of the other procurement system with respect to sole source contracting and still provide the agencies with the flexibility to solicit proposals and treat all respondents equally for smaller professional services projects. We understand that this suggestion may be more policy related than technical.

2. Sec. 36.30.850 Since the aquisition of lands is not generally exempted we would recommend the inclusion of the following:

(13) Aquisitions of land relating to abandoned mine areas AS 27.21.300, state forests, AS 41.17.210, and parks and outdoor recreation AS 41.21.020.

This will clearly exempt Department of Natural Resources land aquisitions as well as disposals from this chapter.

3. Sec. 36.30.990 (14) Recommend the word "not" be removed: So that it would read:

"'professional services' does (not) include services performed under an employment contract for services to be performed under direct supervision, regardless of whether there is an

employer/employee relationship, if the person responsible for awarding the contract files with the commissioner of administration a written justification for the contract."

This will clarify the intent of the definition and procedure required when a contractor will be directly supervised.

cc: James R. Barnett
Chris Rutz
James Baldwin

Procurement Services		Rules Committee	
Concur			
PREPARED BY Sid LaFonica	DATE 1/16/86	COMMITTEE'S SIGNATURE <i>[Signature]</i>	DATE 1-24-86

SUMMARY

OTHER AGENCIES AFFECTED BY BILL All Departments	CONSTITUENT GROUPS AFFECTED BY BILL Private Contractors/Vendors
ORGANIZATIONAL SUPPORT FOR BILL None	ORGANIZATIONAL OPPOSITION TO BILL None

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The intent of the Bill is to standardize procurement practices throughout State government.

ANALYSIS OF BILL/PROGRAM EFFECTS

The Bill will accomplish the above intent by clearly indicating what is required of State government and by establishment of a Chief Procurement Officer to oversee the procurement operation.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

MEMORANDUM

State of Alaska

TO: The Honorable Eleanor Andrews
Department of Administration

DATE: February 5, 1986

FILE NO:

TELEPHONE NO:

FROM: Mary A. Nordale, Commissioner
Department of Revenue

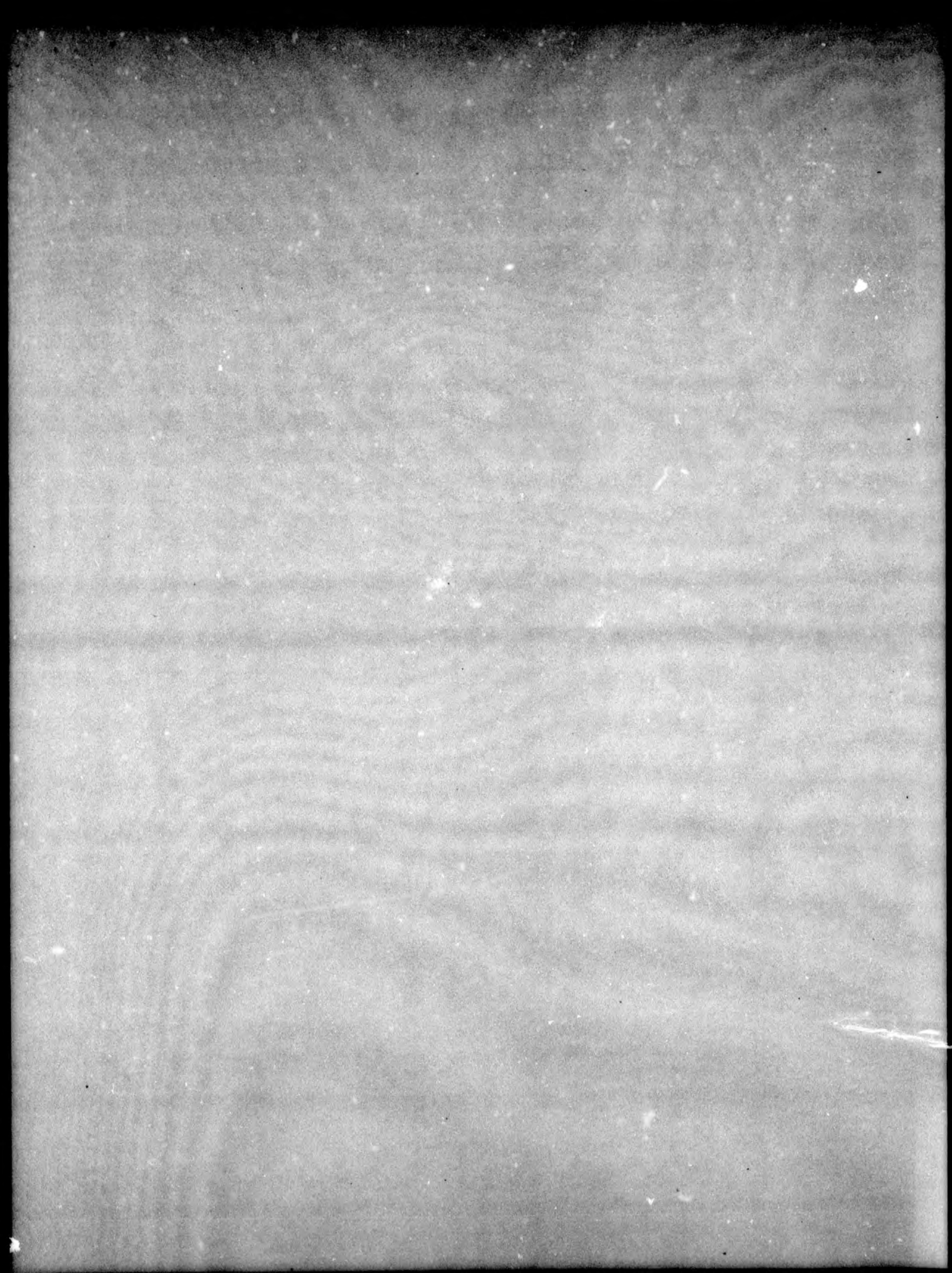
SUBJECT: Alaska Medical Facility
Authority AS 18.26.010
et. seq.

Under the provisions of AS 18.26.210, a medical facility financed by AMFA is subject to the State's procurement laws, regulations and procedures. This provision is pretty onerous and I doubt its enforceability in any practical sense.

It has occurred to personnel of this department that in the revamping of the State's procurement code, it might be appropriate to drop this section. Perhaps it makes sense to make municipal procurement procedures applicable.

AMFA is merely a bonding mechanism. It seldom meets and only comes to life when a medical facility seeks financing assistance. Once the bonds are issued, there really isn't much to do.

Let us have your advice.





Dept. of Transportation & Public Facilities

Position Paper

BILL NO: Senate Bill 341
TITLE: Procurement Practices

APPROVED: *W. S. Spurr*
R. J. Knapp
for Commissioner
DATE: January 30, 1986

The Department of Transportation and Public Facilities has worked closely with the Legislative interim committees in the drafting of Senate Bill 341. Many of the department's concerns of both a technical and policy nature have been addressed in the initial drafting of the bill.

However, while the department supports the Legislature and the administration's effort to revise and update procurement codes, there are a few areas within Senate Bill 341 that the department feels needs further consideration:

1. SB 341 requires the maintenance and use of bidders lists for the request for proposal and bid notification process. This is time consuming, expensive and has proven from department experience to be of limited value. We feel this requirement for DOT&PF construction should be removed from the bill.
2. SB 341 requires the listing of all sub-contractors at time of bid opening. This further complicates the bid opening process and might jeopardize bidder responsiveness ~~the~~ potentially large cost consequences to the state. The department feels that a subcontractor list would be appropriate to require seven days after the bid opening to limit the extent of bid shopping.
3. SB 341 lacks definitive statements on Alaska preference. An Alaska preference clause for all construction even those over \$5,000 should be considered.
4. SB 341 has no provisions for expanding sole-source and small procurement eligibility. There are numerous purchasing needs of the department which fall outside of the strict definitions provided in the bill. Some sort of extension process is highly advisable.
5. SB 341 requires "teeth" for handling of false claims. False claims without penalty would jeopardize the efficiency and credibility of the claims process.

For further information call Susan Fleischhauer at 465-3900.

6. SB 341's small procurement procedures limit consultants to a total of \$25,000 in small contracts within a twelve (12) month period. The department feels this is an unreasonable restriction and would seriously jeopardize the ability of many firms to continue providing critical services to the department.
7. There are numerous areas within the SB 341, particularly in Articles 5 and 6, where the statute is overly specific and those items might be best addressed in regulations.

The Department of Transportation and Public Facilities supports the current effort underway to update procurement procedure along the lines of the model procurement code with modifications to minimize the adverse impact on the state and private sector contracting community. The department is presently assisting in the development of Regulation to implement the bill.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : Senate Bill No. 341
 Title : Procurement Practices and Procedures

 Sponsor : Rules Committee
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : DOT&PF
 BRU : _____

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		50.0	55.0	60.0	65.0	70.0
TRAVEL		10.0				
CONTRACTUAL		100.0	55.0	60.0	65.0	70.0
SUPPLIES		40.0	20.0	25.0	27.0	30.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		200.0	130.0	145.0	157.0	170.0

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

GENERAL FUND		200.0	130.0	145.0	157.0	170.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Based on the following figures: 1) delegations to other agencies - \$30.0 for the start up year; 2) procedures updates - \$30.0 for start up year; 3) development of standards and forms - \$10.0 for start up year; 4) one officer plus expenses to administer hearings and claims - \$100.0; 5) list maintenance and mailing - \$10.0; and 6) subcontractor list checking and bid opening administration - \$10.0; 7) travel

Prepared by: Daniel F. Malick, Director Phone: 465-3911
 Division: Management and Finance Date: 1-30-86

Approved by Commissioner: R. J. Knapp by Wm S. Spurr Date: 1-30-86
 Agency: DOT&PF

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

to the hearings for the Regulations.



Sherman Carter
Executive Vice President
(907) 474-7448

University of Alaska
Fairbanks, Alaska 99775-5280
January 28, 1986

Mr. Ray Gillespie, Chief of Staff
Office of the Governor
Pouch A
Juneau, AK 99811

Re: Position Paper
SB 341 Procurement Bill

Dear Mr. Gillespie:

This letter represents the University of Alaska's position regarding the SB 341 Procurement Bill and is being sent to you in response to a request from the Commissioner of Administration.

The university's overriding concern continues to be that the bill represents an unprecedented restriction on the authority of the Board of Regents to establish policies and effectively manage the fiscal affairs of the university. Inclusion within the larger bureaucratic procurement and construction management structures of the state would be a step backwards from the present quality and timeliness of services provided under university policies and procedures which were originally designed to meet the more stringent federal procurement requirements. It is the university's position that it is in the best interests of the state and the university to have the university exempted from the legislation in a manner similar to that provided the Alaska Railroad.

I have attached for inclusion in the document that will be provided to the Senate Judiciary Committee, copies of previous correspondence that the university has written objecting to inclusion in this bill.

Thank you for the opportunity to provide this information to the committee.

Sincerely,

Sherman Carter

Sherman Carter

SFC/BAP/pe
Attachments

cc: Mr. Roy Huhndorf, President and Members of the Board of Regents
President Donald O'Dowd
Chancellors Looney, Lyon, O'Rourke, Outcalt, Paradise
Commissioner of Administration.



Sherman Carter
Executive Vice President
(907) 474-7448

University of Alaska
Fairbanks, Alaska 99775-5200

February 3, 1986

Mr. Jim Baldwin, Assistant Attorney General
State of Alaska
Pouch K - MS/0300
Juneau, AK 99811

Dear Mr. Baldwin:

On 8 January, I sent you information regarding the university's position on draft procurement legislation. With that letter, as Attachment 1, was a list of technical comments with respect to the draft legislation. Those comments pertain to the overall purchasing and procurement functions of the university.

With this letter I am now writing to you, I am sending a second listing of technical points in the draft legislation as pertain to the university's facilities planning and construction activities.

However, my primary purpose now in writing to you is to summarize the university's primary suggestions with respect to the draft legislation. The following four changes would, by themselves, satisfy our primary concerns with respect to the draft legislation, whether or not all of the other technical suggestions which I sent to you on 8 January and which are attached do or do not get changed in the proposed bill. The reasons the university is requesting the following changes are summarized in papers which I sent to you on 8 January. Essentially, these changes would, for procurement purposes, give the university, under its Board of Regents, the same status and authority as the draft legislation gives the Alaska Railroad Corporation under its governing board.

1. Section 36.30.015 - Page 4, Line 22. Add a new subsection (f) to read:

(f) The Board of Regents of the University of Alaska shall adopt procedures to govern the procurement of supplies, services, professional services, and construction by the university. The procedures will satisfy the requirements of state statutes relating to procurement.

RATIONALE: This change will continue the regents' procurement authority but also requires the university to develop regulations consistent with state procedures.

University of Alaska

Jim Baldwin
Page 2
February 3, 1986

2. Section 36.30.050 - Page 6, Line 23. Amend to read:

The lists shall be used by the legislative council and the court system. The Alaska Railroad Corporation and the University of Alaska will be required to maintain their own bid lists.

RATIONALE: This will eliminate unnecessary procurement delays and the need for added equipment to access the DOA's system.

3. Section 36.30.070 - Page 7, Line 24. Add a new subsection to read:

(b) The Board of Regents for the University of Alaska shall adopt regulations that will satisfy the requirements of this section.

RATIONALE: This change will allow the Board of Regents to retain control of university property.

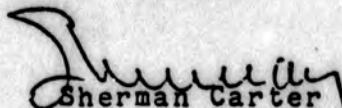
4. Section 36.30.990 - Page 48, Lines 5 & 6. Amend to read:

". . . "government; it does not include the Alaska Railroad Corporation nor the University of Alaska;" . . .

RATIONALE: This change will remove the university from the bill's definition of what or who is a state agency. Lines 16 and 17 on page 4 state that an agency may not contract for the services of legal counsel without the approval of the attorney general.

Thank you for your consideration.

Sincerely,


Sherman Carter

SFC.pe

Attachment

cc: Senator Jan Faiks

Mr. Roy Huhndorf, President and Members of the Board of Regents

President Donald O'Dowd

Chancellors Looney, Lyon, O'Rourke, Outcalt, Paradise

UNIVERSITY OF ALASKA
Facilities Planning & Construction
Comments On

SB 341
Proposed State Procurement Code
January 29, 1986

Article 1 Organization of State Procurement

36-30-060 Specifications

In paragraph (c), line 5, page 7, between.. "development of" and "specifications" .. add the words.. "regulations for".. to make consistent with paragraph (a), i.e. "adopt regulations governing".

36-30-080 Leases (paragraph (a))

If UA is named as a purchasing agency then paragraph is okay. If not, then exception should be made here that UA has authority to lease space subject to procedures substantially equivalent to this chapter.

Article 2 Competitive Sealed Bidding

36-30-110 Invitation to Bid

In paragraph (b) there are certain disadvantages to the General Contractor in listing subcontractors at time of bid; i.e. Contractor may not be able to compare inclusions and exclusions of work at time of bid; Contractor may not be able to thoroughly research a strange or new subcontractor; the State, other than requiring the General Contractor to subcontract with a legal business as defined, has no interest in how the Contractor conducts its business. Subcontractors of the General can be provided within 10 days of award to satisfy the Department of Labor's requirements.

Pursuant to the above, the General Contractor can supply evidence at time of bid of his registration as a business and contractor; and he then can supply subcontractor's registration within 10 days of award.

36-30-120 Bid Security

Paragraph (c), do not believe wording.. "comply in a nonsubstantial manner".. is a problem. Criteria would be defined in regulations.

36-30-170 Contract Award After Bids

Suggest adding paragraph (d) permitting negotiations with low responsive bidder when bid is not more than approximately 5% in excess of available funds.. "where time or economic considerations preclude resolicitation of bids".

Article 3 Competitive Sealed Proposals

36-30-270 Review and Approval By Department of Law

This paragraph would be extremely cumbersome if UA is not given its own purchasing authority. We often change terms of contracts to reflect project requirements. If these terms are in conflict with state terms I can see a lengthy delay.

Article 4 Other Procurement Methods

36-30-300 Sole Source Procurements

Paragraph (a), last sentence. If UA is not given its own purchasing authority, then strike the word "not" or make UA an exception.

36-30-320 Small Procurements

Paragraph (b) (1), if UA is given its own purchasing authority then presume this condition would not apply, i.e. outside legal counsel to have Attorney Generals approval. Otherwise UA should be named as an exception for reasons stated in Carter letter of 11/11/85.

Article 5 Contract Formation and Modification

36-30-365 Notice of Intent to Award Contract

The "Notice of Intent to Award Contract" appears to be written in coordination with 36-30-560 Filing of a Protest, paragraphs (a) and (b). It does not seem practical or wise for the State to issue an "intent to award" routinely as the bill now reads. If one can issue an "intent to award", one can also issue an award and begin to put the contract in motion. If the 10 day intent is predicated on an award protest under 36-30-365 (b), I believe it is an unnecessary delay since there are few protests compared to the number of nonprotested awards. The law, if this is where it should be written instead of the regulations, can read that a protest must be filed within 10 days of award. Normally, most agencies give the Contractor 10 to 14 days to provide a bond and sign the agreement before a Notice-to-Proceed is issued, which is time enough to consider the merits of the protest and issue or not issue a Notice-to-Proceed. In addition, this procedure of 10 day Notice of Intent to Award appears to violate the spirit of paragraph 36-30-170 (a), page 12, where it is stated that an award shall be made with "reasonable promptness" after bid.

36-30-400 Cost or Pricing Data

This section was intended to apply to awards not made by competitive sealed bidding and only on change orders or modifications over an amount established by regulations. Paragraph (a) is not written with this intent accurately stated and tends to be confusing.

Paragraph (b).. "when contractor becomes aware of a situation forming the basis of a claim".. is completely out of place here and properly should be covered under 36-30-620 Contract Controversies.

36-30-430 Standard Modification Clauses for Contracts

Paragraph (a), suggest leaving out the word "Modification" in the title to this paragraph. In addition, paragraph (a) beginning on line 12, page 23 is incomplete as written and does not make sense. It was adopted from the "Model Code" and was intact in the "Lauterbach 10-02-85" version; but in the current version, the last part of the sentence was changed and the rest of (a) left out. After "or other contract provisions as appropriate", the sentence should continue "covering the following subjects:"; which in the "10-02-85" version goes on to say: "(1) the unilateral right of the State to order in writing" (with subparagraphs), "(2) Variations in estimated quantities, etc.", "(3) Suspension of Work, etc.", and so on. Refer to 10-02-85 version. In addition, I would like to stress that this section is incompletely addressed. This section should provide how price adjustments are arrived at in contracts.

36-30-460 Modification of Standard Clauses

This section should be a subparagraph of the preceeding section 36-30-430.

36-30-480 Cost Principle Regulations

The last sentence (lines 27, 28, 29, page 24) in this section is not clear as to what is being addressed.

Article 7 Legal and Contractual Remedies

36-30-560 Filing of a Protest

Paragraph (a), line 19.. "the proposed award of a contract".. see previous comments under 36-30-365.

36-30-565 Time for Filing a Protest

Paragraph (b), see previous comments under 36-30-365 and 36-30-560.

36-30-620 Contract Controversies

Our previous comments regarding 36-30-400 paragraph (b), should be noted and reiterated that paragraph .400 (b) should be located in this section under paragraph (a).

In addition to the above, suggest under same paragraph (a) that wording be added to the effect that the contractor be required to specifically include the following on his claim:

- 1) The factual background of the claim.
- 2) The contract provisions which apply.
- 3) The bid items, quantities and/or specifications upon which the claim is made.
- 4) The specific relief requested.

Paragraph (b), lines 25 and 26, seems to contain a problem about who decides, and when, an informal agreement cannot be reached. Coupled with the foregoing, paragraph (b) tends to be confusing and backward. Suggest that 30 days be given to informally solving a contract controversy after first receiving all necessary information. If an agreement cannot be arrived at mutually within 30 days, the procurement officer then has 30 days in which to render a written decision. 90 days seems to long.

Paragraph (c) is alright, but there need not be a price break (\$50,000.00) because of only time.

Paragraph (d), believe the statement under (5) is getting into the regulations. The statute should leave more flexibility.

Paragraph (f), the wording appears to be vague and should be addressed such that it can have more thought given to processing a claim asserted by the state. Suggest wording to the effect that "the C.O.A. and C.O.D.O.T.P.F. on construction contracts shall implement regulations governing the procedures to be followed on controversies asserted by the state concerning a contract awarded under this chapter".

36-30-630 Hearing on a Contract Controversy

Paragraph (b), add last sentence.. "Refer to section 36-30-670 for conduct of hearing".

Article 8 Intergovernmental Relations

36-30-735 Restrictions on Contracting with or Employing Experts on Radiation Hazards

Paragraph (c) should exclude radiographic testing of welding under construction contracts (for DOT's benefit if not the UA).



Peters

Sherman Carter
Executive Vice President
(907) 474-7448

University of Alaska
Fairbanks, Alaska 99775-5200
January 28, 1986

Mr. Ray Gillespie, Chief of Staff
Office of the Governor
Pouch A
Juneau, AK 99811

Re: Position Paper
SB 341 Procurement Bill

Dear Mr. Gillespie:

This letter represents the University of Alaska's position regarding the SB 341 Procurement Bill and is being sent to you in response to a request from the Commissioner of Administration.

The university's overriding concern continues to be that the bill represents an unprecedented restriction on the authority of the Board of Regents to establish policies and effectively manage the fiscal affairs of the university. Inclusion within the larger bureaucratic procurement and construction management structures of the state would be a step backwards from the present quality and timeliness of services provided under university policies and procedures which were originally designed to meet the more stringent federal procurement requirements. It is the university's position that it is in the best interests of the state and the university to have the university exempted from the legislation in a manner similar to that provided the Alaska Railroad.

I have attached for inclusion in the document that will be provided to the Senate Judiciary Committee, copies of previous correspondence that the university has written objecting to inclusion in this bill.

Thank you for the opportunity to provide this information to the committee.

Sincerely,
Sherman Carter
Sherman Carter

SFC/BAP/pe
Attachments

cc: Mr. Roy Huhndorf, President and Members of the Board of Regents
President Donald O'Dowd
Chancellors Looney, Lyon, O'Rourke, Outcalt, Paradise
Commissioner of Administration



122
Sherman Carter
Executive Vice President
1537 474-7468

January 8, 1986

University of Alaska
Fairbanks, Alaska 99775-5260

Mr. Jim Baldwin, Assistant Attorney General
State of Alaska
Pouch K - MS/0300
Juneau, AK 99811

Dear Mr. Baldwin:

In accordance with your request during the teleconference of December 18, 1985, enclosed please find, as Attachment 1, the University of Alaska's technical comments with respect to the draft legislation on procurement.

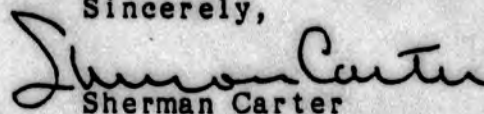
You may also be interested in the last seven pages of the attached papers, Attachments 2, 3 and 4. They are, respectively, (1) the university's position on the legislation which I sent to Senator Faiks on 11 November, (2) President O'Dowd's comments to Senator Faiks dated 7 January, and (3) a draft agenda item to be considered by regents during a meeting in Juneau on 6 February.

The university's opposition to parts of the proposed procurement legislation is essentially this: for the same reasons as those that the Alaska Railroad contends can make it more efficient, save the state money and protect the state's interests, by being excluded from provisions in the proposed legislation for state agencies, the university also can, as indeed it has demonstrated, perform its purchasing functions more efficiently as a constitutionally created corporation under governance by its Board of Regents by being excluded from provisions in the proposed legislation.

The university wishes to conduct its purchasing functions by assuring fair competition while protecting the state's interest. But, the primary problem with university purchasing at the present time is that it takes too long and too much administration in many cases to buy items, increasing costs and delaying or inhibiting operations. This problem would be greatly exacerbated if the university were to be included with state agencies under the proposed legislation.

If you have questions about Attachment 1, please contact Barbara Peters at 474-7468. If you have concerns about points made in Attachments 2, 3 or 4, please contact me.

Sincerely,


Sherman Carter

SFC/pe

Attachments

cc: Senator Jan Faiks
Mr. Roy Huhndorf, President and Members of the Board of Regents
President Donald O'Dowd
Chancellors Looney, Lyon, O'Rourke, Outcalt, Paradise

Page 2, Section 36.30.005(a) - States that on January 1, 1987 the authority for the procurement of all supplies and services shall be transferred to the Commissioner of Administration and the Chief Procurement Officer.

The university objects to this provision for many reasons, most of which have previously been provided. In addition, the university views this change as inefficient, costly, and nonresponsive to the needs of the university.

Page 2, Section 36.30.005(b) - States that on January 1, 1987 the authority for all construction and procurements to or disposals from the state equipment fleet shall be transferred to the Commissioner of Transportation and Public Facilities, subject to regulations adopted by the Commissioner of Administration.

With respect to construction, see university comments immediately above. With respect to the equipment fleet the university believes this could lead to confusion in determining who is responsible for procuring different types of equipment. Who would be responsible for procuring specialized research type farm implements, DOA or DOT&PF?

Page 2, Line 26. - States that the Chief Procurement Officer (CPO) must have 5 years public procurement experience.

The university believes that 5 years is insufficient experience. Procurement is one of the few professions where competency can only be achieved by experience. Persons holding positions of this nature would normally have at least 10 years of progressive public procurement experience.

Page 2, Line 28. - States that the CPO term of office will expire when the term of the governor expires.

The university believes that this provision effectively makes the CPO a political appointee and precludes the CPO being free from possible improper influence.

Page 3, Line 6. - States that the CPO shall supervise and control all inventories of supplies and prescribe the manner in which supplies shall be purchased, delivered, stored, and distributed.

The university can't imagine how this could possibly work. What about the supplies in the university book stores; supplies maintained in central stores warehouses; and supplies procured with federal money for research institutes upon which, federal regulations control?

Page 3, Line 11. - States that the CPO may sell, trade, transfer, or otherwise dispose of surplus, obsolete, or unused supplies.

As a corporate entity, the university holds title to its real and personal property separate from the state. The Board of Regents

has the responsibility to determine what will be sold, when, to whom, and at what price.

Page 3, Section 36.30.015. - States that the Commissioners of Transportation and Administration MAY delegate procurement authority for their respective commodities to agencies that possess the expertise.

The university requests that this section be amended to state that the commissioners SHALL delegate this authority to the university because the university does possess that expertise.

Page 4, Line 16. - States that an agency may not contract for the services of legal counsel without the approval of the attorney general.

The university takes exception to this provision. Even if the university was successful in receiving procurement authority from the DOA and the CPO, the university would still be required to seek approval from the attorney general to contract for legal services. The university maintains its own legal staff who is in a better position to select and engage legal assistance for the Board of Regents. Also, we cannot quite envision the proposed procedure if the Board of Regents again decided to sue the state.

Page 4, Line 18, 23 and 28. - States that the Board of Directors of the Alaska Railroad Corporation, the Legislative Council and the Court System shall adopt procedures substantially equivalent to those procedures prescribed by the DOA.

The university fails to see the difference in our status. Like the Alaska Railroad, the university is a separate corporation and, the legislature, according to Senator Faiks, has been one of the biggest offenders of proper procurement practices. As Senator Halford has stated, the legislature has a difficult time in agreeing to regulations that are not even written yet and so does the university. The university must also have the ability to include in university regulations, certain procurement requirements mandated by the federal government.

Page 5, Line 23. - States that the DOA shall adopt regulations pertaining to the confidentiality of technical data and trade secrets.

The university believes that this provision may conflict with the open records statutes.

Page 6, Line 11 and 20. - States that the commissioner shall establish and maintain all bid lists and that all agencies must use those lists for bid solicitations.

This has been tried in the past with no success. The university does not have on-line access to that information and without access, the system would not be responsive to our needs. To

obtain access, would require the university to purchase additional equipment, for which funds are not available. In addition, the DOA would surely require additional staff to administer this massive project.

Page 6, Line 16. - States that anyone desiring to be placed on the bid list must submit evidence of a valid Alaska business license along with a biennial fee in an amount established by regulation.

The university does not understand this requirement. Is the biennial fee to cover costs of maintaining the bid lists or is the DOA going to start issuing business licenses? What happens if an agency receives a valid bid from a company who has not paid the fee but possesses a valid business license?

Page 6, Line 25, Sec. 36.30.060 - States that the DOA will be responsible for adopting regulations governing ALL specifications.

The university agrees that specifications should not be unduly restrictive. However, the university cannot envision how this program would be managed. Again, the DOA would surely require staff to administer this program. If an agency has a unique requirement for which DOA does not have approved specifications, what then? Would the procurement be stopped pending DOA approval? This provision has a tremendous potential for resulting in unduly long lag-times in the execution of construction appropriations and a high opportunity for incorrect specifications, improper facilities and as a result, lengthy litigations.

Page 7, Line 16, Sec. 36.30.070 -States that the DOA shall adopt regulations governing the management, sale, disposal or transfer of supplies.

See previous comments.

Page 7, Line 25, Sec. 36.30.080 - States that DOA shall lease space for the use of the state and its agencies.

The university believes that management of its leasing program by DOA will result in higher costs and facilities that are less useful for university programs and less responsive to student needs. Many of the university leases are below-market-price leases from local public and private school districts, the federal government, church groups, and other entities who hold space appropriate for instruction or who have special interest in university programs. Procurement of university space is best arranged by people who understand university programs and needs and who are actively concerned with marketing the idea that the university is an important component of a community, worthy of special consideration for low-cost space.

Page 8, Line 21 - States that even though certain items are exempt from competitive bidding, the commissioner must make that

determination in writing.

The university believes that if the statutes are going to exempt certain procurements from competitive bidding, a written determination from the commissioner should not be necessary. The agency procuring officer should be responsible for adherence to the provisions. This requirement will not only delay the procurement process but will surely require additional staff in the DOA.

Page 9, Lines 19 - 23. - States that the invitation to bid shall require the bidder to list all subcontractors and supply a valid Alaska business license for the bidder and all subcontractors.

The university believes that these requirements are unrealistic and probably unenforceable. Often times when bids are submitted, the bidder does not know who the subcontractors are going to be simply because of the lack of qualified or available subcontractors. In addition, a general contractor does not have adequate time to evaluate subcontractor bids prior to bid opening. Bids can realistically be prepared without subcontractor prices by using publications which are written for that very purpose. What about the bidder from outside the state who refuses to buy an Alaskan license and who is the only source for the supply or service you are attempting to buy? In some cases, scientific or highly technical research equipment or services are only available from one source with a considerable demand. In this case, the source really doesn't care about an Alaskan business license. Finally, the state agency responsible for the issuance of business licenses would be required to increase their staff. One of the most frequent complaints that we hear is that it takes months to obtain a business license from the state.

Page 10, Line 14. - States that a bid shall be rejected if the bid does not comply with the bid security requirement unless, it is determined that the bid fails to comply in a nonsubstantial manner with the security requirements.

The university does not understand the "nonsubstantial manner" provision. All bidders must receive fair and impartial treatment. If a bid security is required and is not received, the bid should be rejected.

Page 10, Line 24. - States that the CPO must determine in writing that less than 21 days public notice is necessary.

The university does not agree that the CPO should make that determination. If an agency does not have the time to provide 21 days public notice, they certainly don't have the time to seek the approval required by this provision. This provision may also conflict with Sec. 36.30.310 which allows the procurement officer to make the determination.

Page 10, Line 25. - States that notice shall be mailed to all

active prospective contractors on the appropriate list maintained under 36.30.050.

The university does not agree with this provision because of the costs involved. Some commodities have over 100 potential sources. The mailing, duplicating and staff costs to prepare that many notices would cost more than any potential savings. The university suggests instead that notice be provided to a sufficient number of sources to generate competition. If necessary, a rotation of prospective bidders could be utilized.

Page 11, Lines 19 - 24. - States that bids are open for public inspection after contract award except to the extent the bidder designates and the procurement officer concurs, trade secrets and other proprietary data contained in a bid document are confidential.

The university believes that this provision is contrary to the existing open records statutes. If the procurement officer disagrees with the bidder and discloses information identified as proprietary etc., what liabilities, if any, does the procurement officer assume?

Page 13, Line 11. - States that an Alaskan bidder must have maintained a place of business within the state for a period of six months immediately preceding the date of the bid.

The university believes that a definition of "a place of business" is needed. The university suggests that at least a definition of what is NOT considered a place of business should be provided. Does an Alaskan post office box with forwarding services qualify? Does a telephone answering service qualify? Does a construction trailer set on a job site qualify?

Page 14, Lines 1 - 14. - States that the commissioner may provide by regulation the use of competitive sealed proposals but then states that prior to utilizing this method of procurement, approval must be obtained from the CPO or DOT&PF.

The university believes that if the regulations are appropriately written additional approval should not be necessary. This additional requirement will impede the procurement process and will no doubt require additional staff at DOA.

Page 17, Lines 9 - 23. - States that sole source procurements require the approval of the commissioner of administration or the commissioner of transportation and public facilities and that this requirement may NOT be delegated.

The university believes that if the regulations are appropriately written additional approval should not be required. This additional requirement will impede the procurement process and will no doubt require additional staff at DOA and DOT&PF.

Page 18, Line 18. - States that procurements less than \$5000.00 may be made in accordance with small procurement regulations adopted by the commissioner.

The university believes that this dollar threshold should be increased to \$10,000.00. Inflation and administrative costs makes current dollar thresholds very expensive with little savings realized. The Senate's consultant from the University of Arizona stated that the dollar threshold at Arizona is \$10,000.00.

Page 18, Line 20. - States that professional services not exceeding \$25,000.00 shall be made in accordance with small procurement regulations adopted by DOA.

The university believes that professional services under \$25,000.00 should remain exempt from any competition. Specifications for professional services are difficult and time consuming to develop, again, offsetting any possible savings realized thru any sort of competitive process. The university continues to believe that attorneys and physicians should be exempt from competitive processes. The university maintains that over 95% of the services procured from these professionals are being procured through negotiations/sole source. Including these professions in the statutes subject to any sort of competition simply places an additional administrative burden on the requesting agency, the Department of Law, and the DOA.

Page 18, Line 23. - See previous comments.

Page 19, Line 26. - States that an agency must provide notice of intent to award a contract at least 10 days before the formal award can be made.

The university believes that this requirement will again unnecessarily slow down the procurement process. If the intent is to allow time for protests against the award, the current five day from notification of award should be sufficient. A prospective bidder must assume some responsibility in this process. If the bidder is that interested, a telephone call would appear to be in order.

Page 21, Line 15. - The university suggests that paragraph (b) beginning on line 23, page 21 be omitted in its entirety since it has no place here (see 36.30.260). Instead, make the following insertion in line 16, page 21 as follows: between the words: "contract modification," and "...the Contractor or..." insert "or in the event the Contractor is claiming work in addition to its contract".

Page 23, Line 11. - The university suggests leaving out the word "Modification" in the title to this paragraph. In addition, paragraph (a) beginning on Line 12, page 23 is incomplete as written and does not make sense. It was adopted from the "Model

Code" and was in tact in the "Lauterbach 10-02-85" version; but in the current version, the last part of the sentence was changed and the rest of (a) left out. After "or other contract provisions as appropriate", the sentence should continue "covering the following subject:"; which in the 10-02-85 version goes on to say: "(1) the unilateral right of the state to order in writing...", "(2) variations in estimated quantities, etc.", "(3) suspension of work, etc."

Page 25, Line 4. - States that procurement records shall be retained and disposed of in accordance with guidelines and schedules approved by the state archivist.

The university agrees to furnish a copy of records retirement information to the state archivist but must be allowed to set schedules and retain possession of the records. The university is frequently audited by the federal government and the Board of Regents external auditors. The records must be retained in accordance with federal requirements and must be readily available for review.

Page 25, Line 9. - States that the contract file must be kept by the commissioner AND the contracting agency for each contract awarded under competitive sealed proposals.

The university does not agree that the file should be maintained in both locations. This requirement results in the duplication of records and creates an unnecessary administrative burden on both agencies.

Page 25, Line 18, Section 36.30.520. - States that the commissioner shall maintain for a minimum of five years a record listing of all sole source and emergency procurements.

The university does not have the staff or equipment to accomplish this reporting requirement. It would seem that DOA would also require additional staff to gather and maintain this information.

Page 27, Line 15. - See previous comments.

Page 31, Line 16, Section 36.30.620. - States what a contractor has to do in filing a claim but omits specific information that is to be provided the procurement officer.

The university suggests the contractor be required under paragraph (a) to specifically include at least the following: 1) factual background of the claim. 2) contract provisions which apply. 3) bid items or quantities upon which claim is made and 4) specific relief requested.

Page 47, Line 15. - States that a person who contracts in a manner contrary to the requirements of this chapter or the regulations adopted under this chapter is personally liable for the recovery of all state money paid plus 20 percent of that amount, legal

interest from the date of payment, and all costs and damages arising out of the violation.

The university takes exception to this provision because it does not allow for human error. Any purchasing agent who makes an honest mistake would be subject to the above penalties.

Page 48, Lines 21 and 22. - The university believes these lines are garbled and suggests the use of the language in the 10-02-85 version of the bill.



University of Alaska
Fairbanks, Alaska 99775-5280

November 11, 1985

The Honorable Jan Faiks, Senator
Alaska State Senate
1024 W. 6th Avenue
Anchorage, AK 99501

Dear Senator Faiks:

President O'Dowd is off campus this week on university business, and so I am replying to the letter you sent to him dated 8 November inviting the university's comments on proposed legislation governing procurement practices and procedures.

Before commenting on the proposed bill, I want to thank you for providing the University of Alaska the opportunity to comment on this proposed legislation and for your efforts to improve procurement statutes. I also thank you because this last draft legislation has been changed to correct some problems in current procurement legislation which changes we requested during hearings you recently conducted here in Fairbanks on the proposed bill. The university fully supports the spirit, the intent, and in most cases, provisions contained in the draft bill. We do, however, have serious concerns regarding parts of the bill as noted below:

Objectional provision -- The bill as currently drafted makes the Department of Administration responsible for all university procurement. It does provide that the commissioner may delegate to the Board of Regents the authority to procure construction services.

University comment -- There are no assurances that the delegation for construction services will be provided and there are no provisions that would allow the university to continue procuring promptly and efficiently its other needs, i.e., supplies, services, professional services and leases. Overall, the university has done a commendable job in its procurement actions, as you have acknowledged on at least two occasions. The Ombudsman reported to your committee recently that in the last five years only 28 procurement (including construction and architects) related complaints had been lodged against the university. Although the Ombudsman did not report how many of

Senator Jan Fairis

Page 2

November 11, 1985

the 28 were unfounded, that figure does not appear to be excessive when one considers the tens of thousands of procurement transactions processed during that time. To my knowledge, there has only been one procurement related lawsuit during the same time period.

With that in mind, it is perplexing to think that legislation will be changed to remove the university's procurement authority since doing so would surely slow purchasing activities to the detriment of faculty, staff and students. The university has no objection to developing regulations substantially equivalent to those developed by the Department of Administration or having independent procurement audits. We have done so. However, Jan, frankly, the university's major problem in purchasing now is that university departments get impatient, since it already takes too long in many cases to purchase needed items. This causes employees to circumvent established procedures. The bill does not seem to concern itself with efficiency and economy in purchasing and would exacerbate existing problems mentioned above.

Objectional provision -- The bill as currently drafted allows the Department of Administration to sell, trade or otherwise dispose of university supplies/equipment.

University comment -- As a corporate entity, the university holds title to its real and personal property separate from the state. The Board of Regents has the responsibility to determine what will be sold, when, to whom, and at what price. The university, of course, has no objection to following reasonable guidelines for disposing of its property.

Objectional provision -- The bill as currently drafted will not allow the university to contract for legal services without the approval of the attorney general.

University comment -- Apparently, the university would first have to obtain the attorney general's approval to obtain the service and then proceed to the Department of Administration who would contract for the service. Apart from whether or not this is constitutional in the case of the university, the procedure will not work. In many legal matters, one simply does not have the time to incur the delays this method would create. Regents will want to select their own legal counsel, rather than to have the commissioner of administration do that on a competitive or other basis, since regents cannot avoid their responsibility for living with the outcome of university litigation. Also, I cannot quite envision the proposed procedure if the Board of Regents again decides to sue the state.

The university maintains its own legal counsel on staff, and as a corporation can sue or be sued in its own name. As a practical matter, university in-house counsel is in the best position to select and engage legal assistance for the Board of Regents and the university.

Objectional provision -- The bill as currently drafted requires that the commissioner of administration approve all sole source and emergency procurements. The bill does provide for delegation authority to make emergency procurements but not sole source procurements.

University comment -- Complying with this requirement would unnecessarily impede and delay university operations. For example, researchers involved in many programs at the university are often confronted with circumstances beyond their control which require prompt responses from our procurement staff.

Objectional provision -- The bill as currently drafted would require the university to use bid lists which are created and maintained by the Department of Administration.

University comment -- This has been tried in the past with no success. The university does not have on-line access to that information and without access, the system would not be responsive to our needs. To obtain access would require the university to purchase additional equipment. The regents' external auditors have recommended that university purchasing offices keep records on suppliers who do not perform adequately, rather than automatically to continue to do business with firms regardless of how they perform. The university currently publicizes widely its requests for bids but wants to avoid the expense of doing such things as mailing out dozens and dozens of unnecessary requests for bids.

The above-listed objections are not the only ones which the university has with the proposed bill. However, first must be decided whether or not the legislature is going to take away the purchasing authority which the Board of Regents now has. I shall have the university's purchasing staff submit to your staff more detailed, technical comments.

During a hearing you had here in Fairbanks recently, I provided you current regents' policy and university regulations governing conflicts of interests. These have served the university extremely well. The university has not had the type of problems that some others paid by the state seem to have had and

November 11, 1985

to be having in these respects. If the legislature does enact an ethics code to govern university employees and operations, related rulings and administration should continue to be held under the Board of Regents as permitted presently, to expedite administration, promote efficiency and since the constitution makes the board responsible for "governing" the university.

As you know, several of us from the university testified at length and provided massive amounts of documentation during a recent hearing on the bill which you held in Fairbanks. Then, university representatives later appeared at a hearing you held on the bill in Anchorage. Since the cost of attending numerous meetings in Anchorage and elsewhere is quite high, I do not now plan to send a university representative to the three hearings on the bill you now have scheduled in Anchorage unless you indicate that you want them there. However, regents may want to talk with you about these matters. The Board of Regents discussed that possibility during meetings in Bethel on 7 November.

Sincerely,


Sherman Carter

SFC/pe

Attachment

cc: Mr. Roy Huhndorf, President and Members of the Board of Regents
President Donald O'Dowd
Chancellors Looney, Lyon, O'Rourke, Outcalt, Paradise

Donald D. O'Dowd
President

UNIVERSITY OF ALASKA STATEWIDE SYSTEM

FAIRBANKS, ALASKA 99775-5560

January 7, 1986

The Honorable Jan Faiks
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Faiks:

Thank you for sharing with us the completed draft legislation formulated by the Senate Select Interim Committee on Procurement Practices and Procedures. Our staff is currently studying the terms of the bill and we look forward to continuing discussion on this important issue during the upcoming session.

As you know, the University has strong objections to several provisions of the bill as they apply to the University of Alaska. Sherman Carter's memorandum to you of November 11, 1985, details many of our specific concerns but I think you know that the overriding issue from the Board of Regents' perspective is the bill's unprecedented restriction on the authority of the Board to establish policies and effectively manage the fiscal affairs of the University. It is our firm contention that including the University in the larger bureaucratic procurement structure of the State would jeopardize the current procedures being followed by the University which already meet the highest standards and would, furthermore, substantially slow down our ability to obtain necessary materials and services in a timely manner. We believe the State is benefited by the current high level of efficiency and effectiveness attained by the University in its procurement practices and a change of procedure would not benefit the citizens of Alaska.

Sincerely,

Donald D. O'Dowd
President

DDO:dm
cc: Sherman Carter
Nancy Keenan

premiums, steps are being taken to extract money from throughout the university so that illegal deficits will not occur.

For FY87, priority #1 of 55 increments in the regents' operating budget request was an increased \$1.7 million for risk management; and priority #1 of the regents' capital budget request was an additional \$2.5 million to provide a risk management stabilization fund. Neither the \$1.7 million or \$2.5 million were included in the governor's budget requests, although items of lower priority to the Board of Regents were so included.

Baring unforeseen calamities, the university will get through FY86 as explained above. But, the \$1.7 million and \$2.5 million indeed remain top priority needs in FY87. These costs will have to be covered. If not funded directly, the funds will have to be provided by cutting from other university programs, or by increasing charges, i.e., tuition.

For example, to distribute the \$1.7 million cost to the major administrative units, based on exposure and loss experience would mean assessing each unit approximately as follows: statewide -- \$185,199; UAB -- \$827,130; UAA -- \$221,833; UAJ -- 110,531; CCREE 217,478; ACC -- \$145,929.

Plans are to review these situations with the Committee of the Whole on 6 February and at that time to request that regents talk personally with the Governor and legislators to get the Board's top priority operating and capital budget requests for FY87 funded, namely, the aforementioned \$1.7 million and \$2.5 million.

10. Proposed Procurement Legislation

Reference 10
Information Only

The university's situation with respect to proposed procurement legislation has been reviewed with regents in the past.

At the November meeting in Bethel, regents were advised that Senator Jan Faiks and the Senate Select Committee on Procurement Practices and Procedures have drafted procurement legislation that virtually removes the university's purchasing authority. On November 11, 1985 the university wrote to Senator Faiks and objected to many of the provisions contained in the draft legislation. All regents were provided a copy of that letter.

The current situation is that the third and presumably the final draft of the legislation has been issued and, according to Senator Faiks, will be introduced in the Senate on the first day of the upcoming legislative session.

A review of the draft reveals that none of the university's objections have been resolved. In fact, the previous statement contained in the draft that allowed for the Commissioner of Administration to delegate construction services to the Board of Regents has been removed. It now provides that all construction will be under the auspices of the Commissioner of Transportation and Public Facilities. This would change or eliminate, in ways which cannot now be foreseen, functions now performed by the university's facilities and construction division and the university administration's ability to provide regents with the type of staff work it now receives with respect to capital projects.

On December 18, 1985 university personnel participated via teleconference in a meeting called by the Department of Administration. The meeting was called to appoint committees to write the regulations which would implement this legislation and to seek objections which were technical in nature. Attached for your information are the comments that the university provided to the Department of Law. Also attached is a copy of a letter which President O'Dowd sent to Senator Faiks on 7 January.

11. Selection of External Auditors

Past Reference:

Pgs. 6-7, Unofficial Minutes - Finance Committee,
11/7/85

This matter is being referred to the Committee of the Whole rather than to the Finance and Business Management Committee since, as shown in the reference, the chairman of the Finance Committee asked that all regents be closely involved in the auditor selection and since, as explained below, making the final selection in February, rather than holding this action until the Board meeting in March, will be advantageous.

The reference describes steps which were scheduled to be taken to select the regents' external auditors. In accordance with regents' instructions, the university goes through a process to select an auditor at least once every five years.

Copies of the university's request for proposals to provide audit services were distributed to fourteen major audit firms and to the regents on December 2, 1985. Six firms submitted proposals in response to the request. A review committee chaired by Barbara Joy, the university's director of internal audit, is currently evaluating the proposals. Copies of the committee's report on the evaluation and related recommendations will be provided to Board members prior to the committee meetings in Juneau if possible.

Proposed amendments to SB 341:

1. Page 45, after line 26, insert new subsection (12), *renumber existing section*
(12) disposes of real or personal property of the University of Alaska under AS 14.40.170^(a)(4).
2. Page 48, line 5, delete ", including the University of Alaska"
Page 48, line 6 after "Corporation," insert "or the University of Alaska"

3. OPTION ONE

Page 4, after line 22, insert new subsections (f) and (g)

(f) The Board of Regents of the University of Alaska

(1) may contract for the procurement of construction, supplies, services, and professional services for the university; and

(2) shall adopt procedures to govern the procurement of supplies, services, professional services, and construction by the university which are substantially equivalent to the procedures prescribed in this chapter.

(g) The President of the University of Alaska is the chief procurement officer for the university.

3. OPTION TWO

Page 53, line 7, insert new *Sec. 7, *renumber existing section*

* Sec. 7. AS 14.40.170 is amended to read:

*Sec. 14.40.170. DUTIES OF BOARD OF REGENTS. (a) The Board of Regents shall

(1) appoint the president of the university by a majority vote of the whole board, and the president may attend meetings of the board;

(2) fix the compensation of the president of the university, all heads of departments, professors, teachers, instructors and other officers;

(3) confer such appropriate degrees as it may determine and prescribe;

(4) have the care, control and management of

(A) all the real and personal property of the university; and

(B) land conveyed to the Board of Regents by the commissioner of natural resources in the settlement of the claim of the University of Alaska to land granted to the state in accordance with the Act of March 4, 1915 (38 Stat. 1214), as amended and in accordance with the Act of January 21, 1929 (45 Stat. 1091) as amended;

(5) keep a correct and easily understood record of the minutes of every meeting and all acts done by it in pursuance of its duties;

(6) under procedures to be established by the commissioner of administration, and in accordance with existing procedures for other state agencies, have the care, control, and management of all money of the university and keep a complete record of all money received and disbursed;

(7) adopt reasonable rules for the prudent trust management and the long-term financial benefit to the university of the land of the university;

(8) provide public notice of sales, leases, exchanges and transfers of the land of the university or of interests in land of the university;

(9) report each year within the first 10 days of the convening of a regular session of the legislature on the expenditures made during the preceding fiscal year from the funds of the University of Alaska that are derived from sales, leases, exchanges, or transfers of the land of the university or of interests in land of the university that were conveyed to the University of Alaska in settlement of the claim of the University of Alaska to land granted to the state in accordance with the Act of March 4, 1915 (38 Stat. 1214), as amended, and in accordance with the Act of January 21, 1929 (45 Stat. 1091) as amended;

(10) adopt procedures to govern the procurement of supplies, services, professional services, and construction by the University which are substantially equivalent to the procedures prescribed in AS 36.30 (State Procurement Code).

(b) The Board of Regents may

(1) adopt reasonable rules, orders and plans with reasonable penalties for the good government of the university and for the regulation of the Board of Regents;

(2) determine and regulate the course of instruction in the university with the advice of the president;

(3) contract for the procurement of construction, supplies, services, and professional services for the university.

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 1985 8672
1456 SCOMM 54: SEN. SELECT INTERIM COMM. ON PROCUREMENT PRACTICES 253

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

ABA

Model Procurement
Code

Gene Fuhs

The
Model Procurement Code
for
State and Local Governments

RECOMMENDED REGULATIONS

Section of Urban, State and
Local Government Law

AMERICAN BAR ASSOCIATION

Section of Public
Contract Law



ABA



Jan Fairs

The
Model Procurement Code
for
State and Local Governments

OFFICE OF THE ATTORNEY GENERAL
STATE OF CALIFORNIA

AMERICAN BAR ASSOCIATION

OFFICE OF THE ATTORNEY GENERAL
STATE OF CALIFORNIA



ABA



Tape Logs

Senate Select Interim Committee on Procurement Practices and Procedures, 1985 - tapes

- 8/29/85 (3 tapes) (see tape log)
- 9/5/85 (3 tapes) Questions answered on case law, Seward prison - tape 1. DOT Presentation; AK State Housing presentation; Jim Baldwin, Dept of Law; Health Care providers; SOH10; Anchorage municipality (Henry Hickey)
- 9/17/85 (3 tapes) (see tape log) Anchorage Court system presentation; Larry Wood, Alaska Railroad
- 10/10/85 (4 tapes) U of A, Fbks presentation
- 10/15/85 (2 tapes) Anchorage AK Power Authority presentation
 tape # 1 - only half of side 1 of 2 recorded
 tape # 2 - mtg concludes first part
- 10/23/85 (4 tapes) ^{Rob Walton,} Anchorage Ombudsman office (re: complaints on issue); Wayne Kessler, Chief Procurement Officer in Arizona, Spec. Consultant - section by section on legislation
- 11/6/85 (2 tapes) Barrow mtg.
 tape 1 - Tam Cook on draft 2 of bill

- 11/15/85 (4 tapes) Anchorage
tape # 1 - Draft of bill (ethics portion for spec branch)
Susan Cox, AG Office; Terry Cramer, LAA
- 11/22/85 (4 tapes) (see tape log) Anchorage teleconference

COMMITTEE TALK LOG

COMMITTEE: PROCUREMENT
SUBCOMTEE

DATE: 11-22-85

TIME: _____

SUBJECT: ANCH MTG. (ALSO TELECONFERENCE)

WITNESSES:
MEMBERS PRESENT: SENATOR FAIRS, SENATOR HALFORD

BILL	TAPE #	SIGNIFICANT INFORMATION
	Tape 1 Side 1	
		PUBLIC TESTIMONY
		LEWIS OVERSTREET, AK. BLACK COUNCIL
		DALLAND or (?)
		STEVE NEELAND - "ALASKAN FIRST"
		NELSON FRANKLIN
		MAURIE HALLIWELL - Yukon Equip. Inc. Vice Pres
	Tape 1 Side 2	HALLIWELL TESTIMONY CONCLUDES
		DIXIE HUDISH, I.B.E.W.
		HARVEY LIVINGSTON (?) AK. BUILDING TRADE
		BILL PLEBANTS, GEN. CONTRACTOR
	Tape 2 Side 1	(?) TAYLOR Equip. Co.
		Gene TENNY - McDONALD Industries
	Side 2	NOT RECORDED ON
	Tape 3 Side 1	Gene TENNY continues (Lunch break)
		UNIDENTIFIED PARTICIPANT

COMMITTEE: Procurement
SUBJECT: ANCHORAGE MTG.

DATE: 9-17-95

TIME: ?

WITNESSES: ART SNOWDEN, CT. SYSTEM; LARRY WOOD, AK RAILROAD; EVAN McFINNEY
MILES COLLINS, LAG; KATHLEEN WARE, AK RAILROAD
MEMBERS PRESENT: SENATOR FRIKS, SENATOR JOSEPHSON, MAZ BROWN,
ALSO PRESENT: BOB LINK, DEPT. OF ADMIN; MARSHALL HUBBARD

BILL	TAPE #	SIGNIFICANT INFORMATION
Tape 1 SIDE 1	001	MTG. OPENED BY Sen. FRIKS
	014	ELIZ. HICKERSON; UPDATE ON PREV. MTGS. + ACTIVITY.
	188	TERRI LAUTENBACH, Leg. Legal Counsel Addresses Questions raised by Josephson at previous mtg. on case law.
	292	LARRY WOOD, Chief Counsel, AK RAILROAD PRESENTATION w/PROJECTOR - ^{INTRODUCTORY} REMARKS EVAN McFINNEY - DETAILED EXPLANATION HISTORY of Development of THE RAILROAD'S PROCUREMENT POLICIES + PRACTICES.
Tape 1 SIDE 2	001	RAILROAD TESTIMONY CONTINUES Questions posed by Sen. Josephson + Sen. FRIKS.
	474	RAILROAD TESTIMONY CONCLUDES
	488	ART SNOWDEN, AK CT. SYSTEM, & KARLA FOLSYTHE OUTLINES CT. SYSTEM PROCUREMENT PRACTICES.

9-17-88

Page 2

BILL	TAPE #	SIGNIFICANT INFORMATION
TAP 2 SIDE 1	001	ART SNOWDEN TESTIMONY CONTINUES
	010	KARLA FORSYTHE TESTIFIES
	144	CONCLUSION OF CT. SYSTEM TESTIMONY
	150	MILES COLLINS, Supply Officer, LAA, PURCHASING PRACTICES OF LEGISLATURE.
	470	CONCLUSION OF PRESENTATION BY COLLINS
	474	KATHLEEN WAKEFIELD, Office of Governor PRESENTATION ON PURCHASING PRACTICES.
	633	WAKEFIELD CONCLUDES [PUBLIC TESTIMONY BEGINS]
	638	KENT OUTOUR (?), Representing SELF. VENDOR WHO HAS HAD CONTRACTS WITH STATE & MUNICIPALITY. SPEAKS TO PROBLEMS W/ RFPs he HAS ENCOUNTERED.
TAP 2 SIDE 2	001	OUTOUR CONTINUES
	155	" CONCLUDES
	160	SHIRLEY RILLS (?), Representing Substance Abuse Treatment Program.
	492	BOB NESTEL (?) MEMBER OF CORRECTION CMTE. OF ANCHORAGE CRIME Commission

BILL	TAPE #	SIGNIFICANT INFORMATION
	522	SHIRLEY (?) Former Contracting Officer w/ Federal Government Testifying on own behalf.
TAPE 3 SIDE 1	001	ABOVE WITNESS CONTINUES, ANSWERING QUESTIONS FROM CMTE. MEMBERS
	234	CONCLUSION OF ABOVE TESTIMONY
	238	HARLEY HIGHTOWER, Representing A.K. CHARTER OF AMERICAN INSTITUTE OF ARCHITECTS.
	498	HIGHTOWER TESTIMONY CONCLUDES.
	502	^{CANCELLED} BERYL PROWLOW (?) HEAD OF CONTRACTING POLITICAL ACTION CMTE. ARCH. PAINTER.
TAPE 3 SIDE 2	001	ABOVE TESTIMONY CONTINUES
		HAL BROWN, A.M. ANSWERS QUESTIONS
	143	JOHN DIRKHAM (?) SPEAKS TO SEWARD PRISON; CODE OF CONDUCT; CODE OF ETHICS
	302	ABOVE TESTIMONY CONCLUDES

COMMITTEE: Leg. Council Procurement Subcomte DATE: 8-29-85 TIME: 9:00 a.m.
 SUBJECT: Special Procurement Page: 1
 WITNESSES: Bob Link, Gen Svcs & Supply

MEMBERS: Jan Faiks, Ch.; Jalmar Kentulla, V-Ch.; Rick Halford, Joe Josephson, Edna DeVries, Fred Zharoff; Hal Brown (A.G.) as ex-officio member

BILL	TAPE #	SIGNIFICANT INFORMATION
	001-006	Indiscernable Absent: ?
	006	Sen Faiks - copies of material available to public and general discussion; Opening Comments
	022	Recommendation #2 (Grand Jury): Exe. Branch Code of Ethics worked on by Legislature
	026	Recommendation #3: Adoption of Revised Procurement Procedures
	027	Recommendation #4: State Employee Awareness of Ethical Obligation
	035	Discussion of Elizabeth Hickerson's background; hand-outs, outline of work session, Div. of Legal Svcs.
	066	Overview of Model Procurement Code & Commentary
	085	Schedule of Subcomte. Activities & Hearings
	128	Attorney General - ^{Hal Brown} no questions
	139	Unidentified person re: Mr. Hickey's testimony and Munic. of Anchorage actions re: ^{adoption of} Model Code - indiscernible discussion
	171	Regulations in statute as necessary - general (no action); continuation of hearing schedule
	250	^{Senator} Mitch Abood & ^{Representative} Pat Pouchot in attendance
	255	Bob Link, Director, Div. of Gen. Svcs & Supply - D&A
	259	RFP (Request for Proposal) work by Division
	275	Statutory authority re: procurement

BILL	TAPE #	SIGNIFICANT INFORMATION
—	295	Authority of Division; DoT exception
	305	Reference to chart detailing process and departmental authority as it exists now
	320	Sen. Faik's question: bid waivers; Link: allowed in enabling legislation—reviewed process
	378	Sen. Zharoff's question: dollar amount necessary for projects (commodities) to go out to bid; Link: \$5,000+ (excluding professional services
	417	Sen. Faik's question: overuse of bid waiver due to time demands of projects; Link: could be not sure
	448	Sen. Zharoff's question: heard it is not uncommon for DoA to use Dept. of Law to block process; Link: not aware of situation—would be unusual to do it except where very complex issue at hand— not used as block but to evaluate
	473	^{unidentified} (male) comments & question: any written
	499	criteria that guides Dept. on bid waivers; Link: no; general discussion of broad views of process and policy-makers role; examples of bid waivers and reasoning behind decisions
Tape 2	001	Bob Link—continued.
	035	Sen. Faik's example of DoL mistake—APOC—quick phone response (wrong info) 4 phone calls requesting written response; written response rec'd 4 1/2 mths. later with correct info
	067	Rep. Pat Pourchot's question: Did Grand Jury recommend market studies be done when reviewing criteria; Link: in some circumstances they are done but not called 'market study.'

BILL	TAPE #	SIGNIFICANT INFORMATION
	085	Dept of Law involvement; general discussion
	109	Sen. Faik's question: planning a briefing session-?
	120-	Indiscernable discussion
	189	recess?
	190	Scheduled audits of departments ^{Audits} not on a regular schedule; discussion of protests -
	240	process of handling protests
	245	Question: any regulations or guidelines? ^{Link:} Not specifically - passed on to hearing officers.
	278	Purchasing on statewide basis - how Alaska compares with other states;
	293	railroad procurement policy in statutes (Sen. Faik's)
	310	legislator's concerns in response to constituents inquiry (Link); nature of calls to legislators expressing dissatisfaction with system
	380	What are specifics of problem - Dept. needs to know to correct deficiencies
	400	Questions regarding established policy - many are political considerations for legislature to decide.
	445	Review justifications of policy (Link).
	467	Break for lunch; note presence of Hickey (Munic. of Anch.). DelVries will be present for afternoon session.
	TAPE 3 003	Bob Link continued; purchasing can halt the process of the state.
	015	Sen. Faik's question: ^{Governor's proposal to} consolidate office space. Link: ^{d. don't know if letter} did not rec'd anything on that. Letter went to Commissioner.

BILL	TAPE #	SIGNIFICANT INFORMATION
	049	Sen. Faiks: stats & regs ^{should be} in place so we all know what's going on.
	056	Warren Holbran? V.P. Gen. Mgr. Yukon Eq pmt, 2020 E 3 rd Ave, Anch - co. incorporated under laws of territory - 1945; rec's changes in dept. policy; lack of coordination between purchasing dept. and user agencies; problems with bidding and bonding - cost \$100,000+ to correct. ^{1) of Dist PF} "more spec writing to Anch, many problems would be eliminated before they start." ²⁾ purchasing dept. look at policy/procedures. Company blackballed.*
	132	Sen. Faiks: Comsnr. justified in writing - situation?
	166	Sen. DeVries: back to bid → W.H. machinery met requirements (snow removal); W.H. co. not rec'd bond back - still blackballed in essence;
	198	Bob Link - working with Dept. of Law; <u>non-responsive bidder</u> (not blackballed); detailed process of bypassing bidder (if dept. had problems with them before, i.e., equipment did not work.) W.H. system too rigid - dept. needs flexibility: all *
	265	railroad purchase - state should be under same guidelines as state purchases. - open process.
	270	Sen. Faiks - process (re: r.r.) is open. LB+A is able to come in and review (audit); bids are open
	300	Testimony that bids should be open in response to Sen. Faiks comments that r.r. under fed & state laws and has some protective measures.
	319	procurement code: make awarded bid <u>only</u> , public.

BILL	TAPE #	SIGNIFICANT INFORMATION
	328	^{Gen. Mgr. Taylor} Jack Richardson ^{Equipment Construction Co.} Craig Taylor read Hr. for consideration; / overall purchasing dept.; procedures should include 5% preference for state business.
	366	Jack Richardson continued - proposal for open bidding; bid submission to Anchorage office to be created under DoTPF; local preference; conflict w/ DoTPF Commissioner.
	430	Separate purchasing dept. of railroad - why?
	445	Sen. Josephson - rfp procedure, ^{Richardson:} purchasing proc. vague; r.r. should be considered same as state as state ^(partially) funded.
	485	status of preferential bid for residents ^{local} (hire) ^{local} Link - Senate changed House version. ^{Sen. Faiks} Admin. Proc. Act exempts r.r. from stat. regmt; ^{Richardson:} r.r. does not pay taxes - neg. impact on truckers.
	500	James Tunney, — Industries, 7216 — Drive, ^{overall} DoA system is fair; when attending bid opening, in-Tnu - difficult due to time frame.
Tape 3-Side 2	001	Mr. Tunney continued; expand on preference (currently 5%) - volume too low to hear —
	022	John Reynolds; AK. Railroad; Mgr., Procurements; referred to stats; do not have % preference for AK. vendors; does not receive state funding; do not pay taxes but maintain own roadway.
	062	Sen. Josephson - should regmt be made for local the preference - process of bid selection.
	099	- volume too low - not state employees or Co.
	135	Hallaway? - problems when r.r. has monetary problems.

