

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.

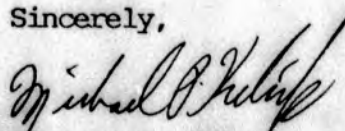
As you point out in your paragraph (12), HUD's policies, procedures and contract provisions, as well as its regulations, do govern the distribution and administration of federal monies designated for public housing projects. Section 36.30.890 of the proposed bill, therefore, provides only a limited exemption 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't
File	EX Sec
	Board

Lead's cc

Dear Ms. Morse-Quinn:

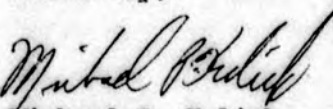
Subject: Senate Bill 8001
Proposed State Procurement Act

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

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

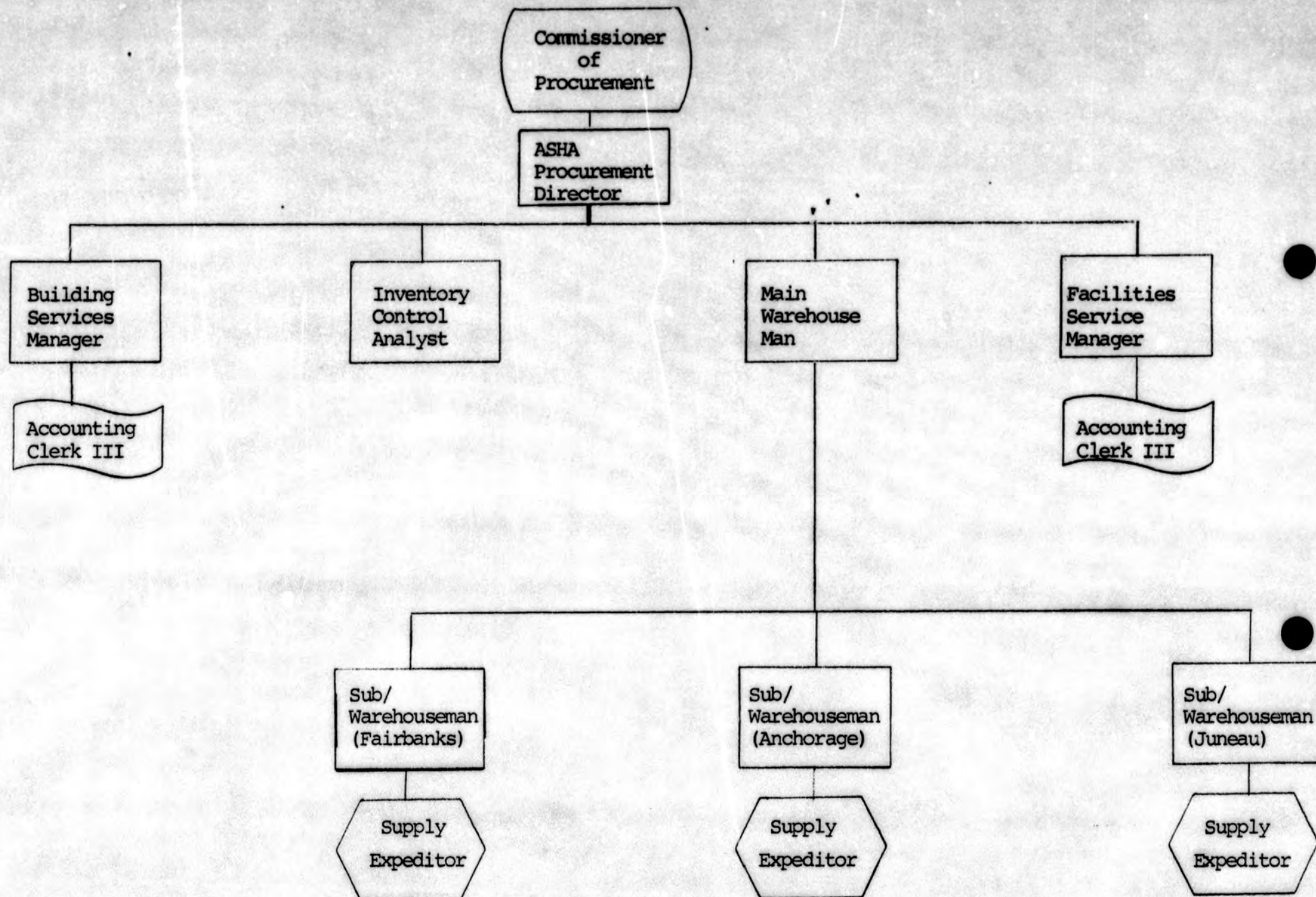
Travel would be required by the Procurement Director, Main Warehouseman, the three sub/warehousemen, the Inventory Control Analyst, Facilities Service Manager, and Building Services Manager. Total travel cost is estimated at \$35,800 for FY87.

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.



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	

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 Key Number _____

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.

**Request For
New Position**

Agency DEPT OF COMM. & ECON DEVE.
 BRU ALASKA STATE HOUSING AUTHORITY
 Component HOUSING MANAGEMENT

FY 87

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Request For New Position

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Revised Date	

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.																													
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**Request For
New Position**

Agency DEPT. OF COMMERCE & ECON. DEV.
 BRU ALASKA STATE HOUSING AUTHORITY
 Component HOUSING MANAGEMENT

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 Revised Date _____

FY 87

Position Title BUILDING 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.																												
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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.																																														
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	Program Receipts 1028																																																			
	CIP Receipts 1061																																																			
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For B&M Use Only Key Number _____																																																				

(continued)

**Request For
New Position**

Agency DEPT. OF COMMERCE & ECON. DEV.
BRU ALASKA STATE HOUSING AUTHORITY
Component HOUSING MANAGEMENT

FY 87

Page _____ of _____
Revised Date _____

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.																											
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>Amount</th> </tr> <tr> <th>1</th> <th>2</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>35,000</td> </tr> <tr> <td>Benefits</td> <td>10,500</td> </tr> <tr> <td>Premium Pay</td> <td></td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td>45,500</td> </tr> <tr> <td>Travel</td> <td>7,200</td> </tr> <tr> <td>Contractual</td> <td>910</td> </tr> <tr> <td>Commodities</td> <td>500</td> </tr> <tr> <td>Equipment</td> <td>4,150</td> </tr> <tr> <td>Other (Land/Structures)</td> <td>13,500</td> </tr> <tr> <td>Total Cost</td> <td>71,760</td> </tr> </tbody> </table>			Type of Expenditure	Amount	1	2	Salary	35,000	Benefits	10,500	Premium Pay		Other		Total Personal Services	45,500	Travel	7,200	Contractual	910	Commodities	500	Equipment	4,150	Other (Land/Structures)	13,500	Total Cost	71,760	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. <u>SALARY</u>: \$35,000 <u>Benefits</u>: \$10,500 = \$45,500 <u>TRAVEL</u>: 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 <u>CONTRACTUAL</u>: Line to main computer; monthly service fee \$70 x 12 = \$840; telephone install charge \$70 <u>SUPPLIES</u>: Paper and office products: \$500 <u>EQUIPMENT</u>: Terminal-\$500, slave printer-\$1000, modem-\$300, telephone-\$150, desk-\$400, chair-\$250, calculator-\$200, typewriter-\$800, file/records cabinets-\$550 TOTAL: \$4150 <u>LAND/STRUCTURES</u>: 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				
Type of Expenditure	Amount																																
1	2																																
Salary	35,000																																
Benefits	10,500																																
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**Request For
New Position**

Agency DEPT. OF COMM. & ECON DEV.
BRU ALASKA STATE HOUSING AUTHORITY
Component HOUSING MANAGEMENT

FY 87

Page _____ of _____
Revised Date _____

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 03-26-86

REQUEST

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: _____

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
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: $\$100.00/\text{hr} \times 83\text{hr}/\text{month} \times 6 \text{ months} = \$50,000.$

Para-legal Contract for Policy and Procedures Manual: $\$40.00/\text{hr} \times 83\text{hr}/\text{month} \times 6 \text{ months} = \$20,000.$

Instructors Contract: Develop training modules at $\$60/\text{hr} \times 525\text{hrs} = \$31,500$ + train 310 people $\times \$50/\text{person} = \$15,500$ for a total of \$47,000

Printing of the Policy and Procedures Manual: 200 manuals $\times \$25 = \$5000$

Printing of the Training Materials: 400 training guides $\times \$7.50 = \$3000$

Travel for public hearings in four locations: 2 people $\times \$385/\text{airfare} + \$240/\text{perdiem} \times 4 \text{ locations} = \$5000$

Travel for training in four locations: 2 people $\times$

\$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					
Amount			Sec. 36.30.300					
1	2	3	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.					
Salary	168,106		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.					
Benefits	54,657		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 ($680 \div 5 = 136$ 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. [$704 \div 136$ ($680 \div 5$) = $840 \div 60 = 14$] Since this data base was compiled the staff has been reduced by one (1) position to a total of 13 purchasing agents.					
Premium Pay			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 ($680 \times .8 = 544$). This amount and the remaining 27.2 Work Units (bid waivers, $136 \div 5 = 27.2$) 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					
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							
For D&M Use Only								
Key Number								

1/101/0210-03/1

**Request For
New Position**

Agency Department of Administration
 DRU General Services & Supply
 Component Purchasing

FY 87

Page 6 of 7
 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 7 of 7

Revised Date _____

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
Bill/Resolution No.: Senate Bill 341
Title: "An act relating to state procurement 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*
Division: Administrative Services

Phone: 465-2277
Date: 2/6/86

Approved by Commissioner: Eleanor Andrews *Eleanor Andrews*
Agency: Department of Administration

Date: 2/7/86

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	4,000
w/word-processing hook-up	

Position Title Administrative Assistant			No. of Positions 1	Range/Step 14B	Barg. Unit 6	Gov.	Approv.	Disapp.																									
Time Status PFT	Staff Months 12	RP Number	Location Juneau		Election District	Leg.																											
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>3</td> </tr> <tr> <td>Salary</td> <td>29,196</td> </tr> <tr> <td>Benefits</td> <td>10,565</td> </tr> <tr> <td>Premium Pay</td> <td>1,685</td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td>41,446</td> </tr> <tr> <td>Travel</td> <td></td> </tr> <tr> <td>Contractual</td> <td>3,511</td> </tr> <tr> <td>Commodities</td> <td>432</td> </tr> <tr> <td>Equipment</td> <td>650</td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Cost</td> <td>46,039</td> </tr> </tbody> </table>			Type of Expenditure	Amount	1	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	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	3																																
Salary	29,196																																
Benefits	10,565																																
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	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 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					
1		2	3					
Salary		91,488	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. SINGLE POSITION COST PER YEAR \$3,812 X 12 = \$45,744.00 Benefits = 14,190.39 Total = 59,934.39					
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	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: 3/27/86

REQUEST

Bill/Resolution No.: CSSB 341 (Jud'y)
 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
 Division: Management

Phone: 465-2424
 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

Agency : DOT&PF

Date : 1-30-86

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.



Dept. of Transportation & Public Facilities

Position Paper

BILL NO: Senate Bill 341

TITLE: Procurement Practices

APPROVED:

W. S. Smith
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.

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
EX 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.

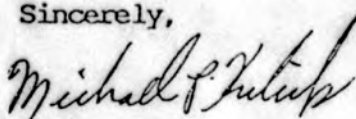
I am not in a position to discuss how HUD's legislation compares with that of other federal agencies. It is my impression, however, that HUD may have more authority, than other agencies, to become directly responsible

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

RECEIVED
ASHA

JAN 24 1986

Barbara Morse-Quinn, Executive Director
Alaska State Housing Authority
Post Office Box 100080
Anchorage, Alaska 99510-0080

JAN 24 '86

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 54H
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.

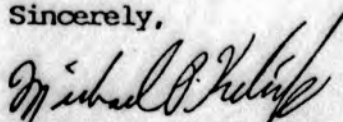
As you point out in your paragraph (12), HUD's policies, procedures and contract provisions, as well as its regulations, do govern the distribution and administration of federal monies designated for public housing projects. Section 36.30.890 of the proposed bill, therefore, provides only a limited exemption 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 thorough 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

Rick 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

Yutzy No Rec
Rick Halford NO REC
Dan Fink No Rec
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

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

1300.17

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.