

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 1985 8672
1455 SCOMM 54: SEN. SELECT INTERIM COMM. ON PROCUREMENT PRACTICES 52.

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER POSITION PAPER

BILL SHEFFIELD, GOVERNOR

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RE: SB 341

SPONSOR: Senate Rules Committee

Comments

This bill provides for a major restructuring and revision of the statutes governing the procurement of supplies, services, professional services, and construction by State agencies. Several of the requirements currently existing in statutes concerning procurement would be changed. The bill would affect all of the Department's procurement activities.

Grants Definition

Of greatest concern to the Department of Community and Regional Affairs is the possibility that the definition of "procurement" in the bill may be too broad and could be interpreted as applying to many of the Department's current activities.

At issue is the basic distinction between the definitions of procurements and grants. Under section 36.30.850(b)(1) "grants" are exempted from the provisions of the bill. Sections 36.30.990 (10) and (12) of the bill provide the definitions of "grants" and "procurements", respectively. The Department does not believe that these definitions are adequate to differentiate between the two.

If our existing grants are redefined as procurement contracts, as defined under section 36.30.990 (12), the Department would be required to implement a considerable number of additional administrative activities in order to comply with the provisions of SB 341. This, in turn, would substantially increase the need for additional staff and administrative dollars.

For example, due to the limitations on sole source procurements contained in section 36.30.300 of the bill, this Department would be required to prepare a competitive sealed bid or proposal for each of the Legislative Grants (grants authorized under AS 37.05.316 and AS 37.05.317) administered by the Department. A significant number of these grants are appropriated annually to the Department. These new administrative procedures would increase the amount of time required to develop and obtain a signed contract and due to the solicitation requirements may lead, in this example, to the grant being provided to an entity different than that intended to receive the grant by the Legislature.

The Department also notes that Section 44 and Section 60 of SB 341 subjects the Day Care Assistance program and the Displaced Homemaker's program, respectively, to the provisions of the bill. The Department considers these programs to be grants and not procurements and suggests that these sections should be deleted.

Department Recommendations

The Department of Community and Regional Affairs believes that one of the major problems with the definitions of grants and procurements in the bill, is that neither provide an indication of the main beneficiary of the funds.

The Department suggests that procurements are primarily for the acquisition of services or supplies to enable the agency to conduct its operations and hence, are for the direct benefit of the State agency. Conversely, a grant is primarily to serve or fulfill some needed public purpose within the recipient's community and hence, directly benefits that community. The State or grantor agency only benefits indirectly from the project through the increase in the general welfare of the state.

The Department of Community and Regional Affairs suggests that another major distinction between grants and procurements is that grantees are most typically entities which are organized for a public purpose and/or operate in a manner which does not yield them a profit. Conversely, procurements are most typically made with entities which are organized for profit.

In consideration of this discussion, the Department of Community and Regional Affairs would like to offer the following language as providing a much clearer and better definition of a grant.

GRANT: An agreement between a State agency and an entity which is typically not organized for profit (e.g., municipal corporation, non-profit corporation, tribal organization organized under the Indian Reorganization Act, traditional councils) and which typically represents a public interest group (e.g. community, region). The agreement provides for the performance of a public purpose which is primarily for the direct benefit to the people which the grant recipient represents. The State gains only indirectly through the benefit derived by the community or region.

In certain cases, State grants may be made to individuals and entities organized for profit. Further, grants may be made for purposes which result in some private benefit to an individual or entity. However, those types of grants will also have a significant public purpose as defined by law or legislative intent.

The Department believes that such a definition will help to clarify the differences between grants and procurements. This definition would ensure that grants are not mistakenly classified as procurements and subject to the greater administrative requirements provided in SB 341. This, in turn, would significantly reduce the fiscal impact on this Department expected under the present language of the bill.

Civil Liabilities

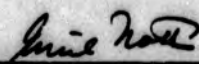
The Department of Community and Regional Affairs is also concerned with the possible effects of section 36.30.930 of the bill which provides for civil and criminal penalties for violations of the provisions of the bill.

The Department believes that individuals who knowingly and willingly violate provisions of the statute should be held personally and financially liable for recovery of the amounts involved.

The Department recognizes an employer should be cognizant of the requirements of the statutes. However, in unusual situations or when procurements are made infrequently by an agency, it is possible for an individual to unknowingly act in a manner contrary to law or regulation. The Department does not believe that individuals should be held liable for fulfilling the requirements of their position, when they have unknowingly violated the provisions of law. The Department believes the State has the responsibility for assuming the liability in such situations.

The Department further believes that in order to assure compliance with the provisions of the bill and avoid such potential individual liability, agencies will be required to establish independent review capabilities comparable to those presently existing within the Department of Administration. This creates a redundancy of effort, and will create a strain on current staffing.

The Department of Community and Regional Affairs does favor the overall intent of the bill. If the above enumerated concerns are properly addressed, the Department will support the measure.



Emil Notti, Commissioner

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 341
 Title : An Act relating to state procurement practices and procedures
 Sponsor : Rules Committee by request
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Community & Regional Affairs
 BRU : Local Government Assistance; Child Assistance, Displaced Homemakers, Administration and Support
 Components : Grants Administration, Child Care, Displaced Homemakers, Administrative Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		202.1	404.1	416.2	428.7	441.6
TRAVEL		9.2	18.4	19.0	19.6	20.2
CONTRACTUAL		11.6	23.2	23.9	24.6	25.3
SUPPLIES		1.8	3.7	3.8	3.9	4.0
EQUIPMENT		18.5				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		243.2	449.4	462.9	476.8	491.1

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		243.2	449.4	462.9	476.8	491.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		10	10	10	10	10
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary This bill provides for a major restructuring and revision of the statutes governing the procurement of supplies, services, professional services, and construction by State agencies. Several of the requirements currently existing in statutes concerning procurement would be changed. The bill would affect all of the Department's procurement activities.

Prepared by : Remond Henderson
 Division : Administrative Services

Phone : 465-4708
 Date : 2/6/86

Approved by Commissioner : Kinzie Bell
 Agency : Community and Regional Affairs

Date : 2/6/86

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 Bill/Resolution No. SB 341

This fiscal note is a combination of the fiscal impact of SB 341 on various BRU's and components within the Department. Following is a summary of the fiscal impact on each Division.

Assumptions

1. The definition of "procurement" in SB 341 is interpreted as applying to projects currently treated as grants creating an increase in time to prepare and review the required documents.
2. Number of grants each staff could effectively administer would be greatly reduced.
3. The Department receives a significant number of new grants each year.
4. Due to sec. 36.30.930, Civil and Criminal Penalties, the Department would need to provide increased oversight of procurement documents in order to reduce the liability exposure for all staff involved in procurement.

Municipal and Regional Assistance Division

- 4 Grants Administrators to more closely monitor grants and meet increased requirements under proposed procurement provisions - \$182.7
- 1 Clerk Typist III and 1 Administrative Assistant to provide additional clerical and technical support for increased professional staff - \$66.6

Community Development Division

- 1 Grants Administrator and 1 Community Development Specialist I/II to more closely monitor grants and meet increased requirements under proposed procurement provisions \$112.5
- 1 Clerk Typist III to provide additional clerical support - \$32.4

Administrative Services Division

One Administrative Officer I position to provide training and technical assistance to departmental staff to assure compliance with the procurement provisions and to serve as final review of all documents to decrease liability exposure of staff involved in procurement - \$47.7

All positions are full-time 12-month positions. However, since SB 341 is effective January 1, 1987, FY 87 costs are for six months.

NOTE: If the definition of procurement is amended to exclude the bulk of grants administered by the Department, the fiscal impact of the bill would be greatly reduced.

Position Title Grants Administrator - Beginning FY 87			No. of Positions 4	Range/Step 17/A	Barg. Unit GEU	Dev.	Approv.	Disapp.																																															
Time Status PFT	Staff Months 12	RP Number	Location Anchorage	Election District		Leg.																																																	
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>1</th> <th>2</th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>34,740 x 4</td> <td>138,960</td> <td></td> </tr> <tr> <td>Benefits</td> <td>10,930 x 4</td> <td>43,720</td> <td></td> </tr> <tr> <td>Premium Pay</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td>182,680</td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Travel</td> <td></td> <td></td> <td>5,000</td> </tr> <tr> <td>Contractual</td> <td></td> <td></td> <td>12,000</td> </tr> <tr> <td>Commodities</td> <td></td> <td></td> <td>1,000</td> </tr> <tr> <td>Equipment</td> <td></td> <td></td> <td>8,000</td> </tr> <tr> <td>Other</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Total Cost</td> <td></td> <td></td> <td>208,680</td> </tr> </tbody> </table>			Type of Expenditure	1	2	3	Salary	34,740 x 4	138,960		Benefits	10,930 x 4	43,720		Premium Pay				Other		182,680		Total Personal Services				Travel			5,000	Contractual			12,000	Commodities			1,000	Equipment			8,000	Other				Total Cost			208,680	Justification Senate Bill 341, as written, would subject virtually all of the Division's grants to unincorporated communities and nonprofit organizations to the provisions of the proposed State procurement practices and procedures. The fiscal impact of this would be significant as virtually all grants would have to be treated as Professional Services Contracts. The procurement practices of the grantee would have to be more closely monitored with corresponding increases in oversight and reporting. The number of grants each administrator could adequately monitor would be greatly reduced. For purposes of this fiscal note it is assumed the average number of grants per administrator would have to be reduced from about 75 per person to 20 grants per person.				
Type of Expenditure	1	2	3																																																				
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Receipt Code	Funding Source																																																						
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For B&M Use Only Key Number _____																																																							

0317F/1

**Request For
New Position**

Agency Community and Regional Affairs
 BRU Local Government Assistance
 Component Grants Administration

FY 87

Page 1 of 1
 Revised Date _____

Position Title Administrative Assistant (Beginning FY87)			No. of Positions 127A	Range/Step 650	Base Unit 650	Gov.	Approp.	Disapp.																										
Time Status PFT	Staff Months 12	RP Number	Location Anchorage	Election District		Leg.																												
			Justification																															
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 30%;">Type of Expenditure</th> <th style="width: 30%;">Amount</th> </tr> <tr> <td>1</td> <td>2</td> </tr> <tr> <td>Salary</td> <td>24,865</td> </tr> <tr> <td>Benefits</td> <td>8,683</td> </tr> <tr> <td>Premium Pay</td> <td></td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td>33,548</td> </tr> <tr> <td>Travel</td> <td>-0-</td> </tr> <tr> <td>Contractual</td> <td>800</td> </tr> <tr> <td>Commodities</td> <td>200</td> </tr> <tr> <td>Equipment</td> <td>2,000</td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Cost</td> <td>36,548</td> </tr> </table>			Type of Expenditure	Amount	1	2	Salary	24,865	Benefits	8,683	Premium Pay		Other		Total Personal Services	33,548	Travel	-0-	Contractual	800	Commodities	200	Equipment	2,000	Other		Total Cost	36,548	This position would be needed to support the activities of the four (4) additional Grants Administrators required in FY 87, the four (4) new Grants Administrators needed in FY 88 and the three (3) new Grants Administrators needed in FY 89 (see attached related Requests for New Positions). The Administrative Assistant would assist in maintaining files, keeping grant balances current, advertising and documentation needed to meet procurement and contract requirements, and other general support staff functions					
Type of Expenditure	Amount																																	
1	2																																	
Salary	24,865																																	
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	Other																																	
For B&M Use Only Key Number _____																																		

**Request For
New Position**

Agency Community & Regional Affairs
Local Government Assistance
BRU
Component Grants Administration

Page _____ of _____
Revised Date _____

FY 87

Position Title Clerk Typist III - Beginning FY 87			No. of Positions 1	Range/Step N/A	Barg. Unit CUU	Class.	Appeal	Disapp.
Time Status PFT	Staff Months 12	RP Number	Location Anchorage		Election District	148		

Type of Expenditure	Amount
1	2
Salary	19,573
Benefits	7,479
Premium Pay	
Other	
Total Personal Services	27,052
Travel	-0-
Contractual	700
Commodities	300
Equipment	2,000
Other	
Total Cost	30,052

Receipt Code	Funding Source	Amount
	Federal Receipts 1002	
	G. F. Match 1003	
	General Funds 1004	30.1
	I-A Receipts 1005	
	Program Receipts 1028	
	CIP Receipts 1061	
	Other	

For B&M Use Only
 Key Number _____

Justification
 This clerical position is needed to support the four (4) additional Grants Administrator positions required in FY 87 to provide increased oversight and monitoring of grants. This Clerk Typist position would type reports and correspondence, file, photocopy, and provide other clerical support to assist the Grants Administrators.

0317F/3

**Request For
New Position**

Agency Community and Regional Affairs
 BRU Local Government Assistance
 Component Grants Administration

FY 87

Page 1 of 1
 Revised Date

Position Title Community Development Specialist I/II			No. of Positions	Range/Step 16A	Base Unit (RGU)	Gen.	Approv.	Disapp.
Time Status PFT	Staff Months 12	RP Number	Location Anchorage, AK	Election District	Leg.			
Type of Expenditure			Justification					
1	2	Amount	Currently no admin. dollars are associated with this program. SB 341 would impose additional regulations that would need to be addressed by a staff member. Presently the program is being administered by a number of different people who spend a portion of their time on this program and are basically funded by other sources. This was an emergency type response to the exclusion by the Legislature, of admin. dollars for this program. If the administration of this program continued to function in this manner we would be unable to implement the requirements set forth in SB 341 in a timely manner. This new position would centrally locate the administration of this program and would be responsible for the requirements that would be placed on this program as a result of SB 341. Presently the program is handled like a "pass through" grants. SB 341 would require this program to be handled as professional services contracts.					
Salary	32,424							
Benefits	10,403							
Premium Pay								
Other								
Total Personal Services		42,827						
Travel		8,200						
Contractual		2,400						
Commodities		500						
Equipment		500						
Other								
Total Cost								
Receipt Code	Funding Source							
	Federal Receipts	1002						
	G. F. Match	1003						
	General Funds	1004	54.4					
	I-A Receipts	1005						
	Program Receipts	1028						
	CIP Receipts	1061						
	Other							
For B&M Use Only								
Key Number _____								

**Request For
New Position**

Agency Community & Regional Affairs
BRU Job Training Partnership Act
Component Displaced Homemakers

Page 1 of 1
 Revised Date

FY 87

Position Title Clerk Typist III			No. of Positions	Range/Step	Barg. Unit	Gen.	Approved	Disapp.
Time Status PFT	Staff Months 12	RP Number	Location Anchorage, AK		Election District	Leg.		
			Justification Under SB 341 all the professional staff in the Child Care program would experience an increased workload. This clerk typist would provide the additional clerical support needed to carry-out the program.					
Type of Expenditure		Amount						
1	2	3						
Salary	19,572							
Benefits	7,045							
Premium Pay								
Other								
Total Personal Services		26,617						
Travel								
Contractual		1,400						
Commodities		600						
Equipment		3,800						
Other								
Total Cost		32,417						
Receipt Code		Funding Source						
		Federal Receipts 1002						
		G. F. Match 1003						
		General Funds 1004						
		I-A Receipts 1005						
		Program Receipts 1028						
		CIP Receipts 1061						
		Other						
		32.4						
For B&M Use Only Key Number _____								

**Request For
New Position**

Agency Community & Regional Affairs
BRU Child Assistance
Component Child Care

Page 1 of 1
Revised Date _____

FY 87

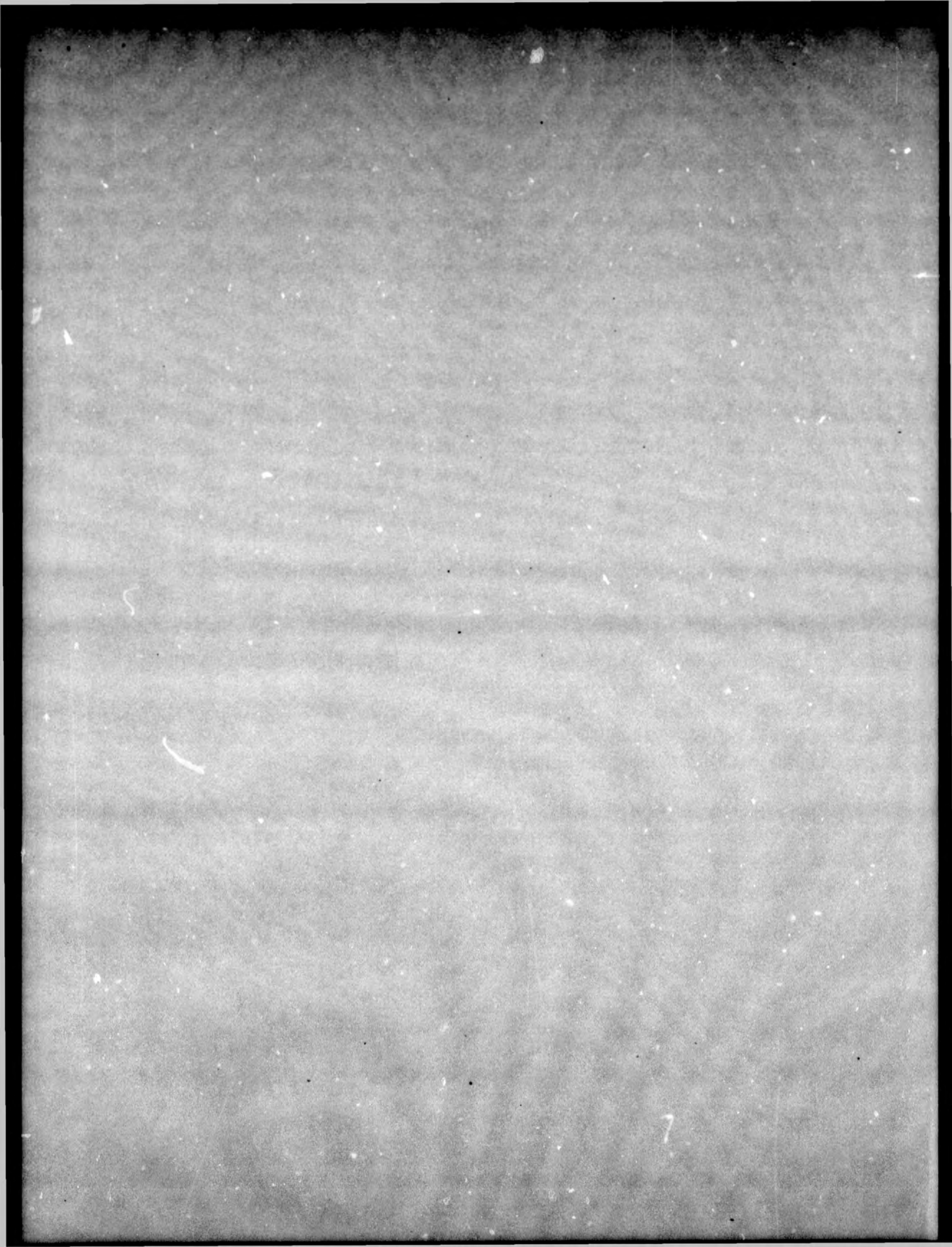
Position Title Administrative Officer I			No. of Positions	Range/Step 17A	Base Unit UGU	Dev.	Appr.	Disapp.
Time Status PFT	Staff Months 12	RP Number	Location Juneau		Election District	LAG		
			Justification The requested Administrative Officer I position is needed to provide an independent review of procurement documents in order to provide some measure of quality control within the Department. In addition, the Administrative Officer would be available to provide technical assistance to departmental staff to assure conformance with SB 341.					
Type of Expenditure		Amount						
1	2	3						
Salary	34,740							
Benefits	10,930							
Premium Pay								
Other								
Total Personal Services		45,670						
Travel								
Contractual								
Commodities		500						
Equipment		1,500						
Other								
Total Cost		47,670						
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 B&M Use Only Key Number _____								

**Request For
New Position**

Agency Community and Regional Affairs
 BRU Administration and Support
 Component Administrative Services

Page 1 of 1
 Revised Date _____

FY 87



DEPARTMENT OF EDUCATION POSITION PAPER
FOURTEENTH ALASKA LEGISLATURE
SECOND SESSION

SB 341

The Department has two concerns with this bill:

1) the Division of Vocational Rehabilitation needs the capacity to purchase equipment and supplies for clients on very short notice. On occasion, these pieces of equipment can be very expensive, as in the cases of specially equipped automobiles, wheelchairs and prosthetic limbs; client equipment and services need to be exempt from the processes established in the bill;

2) we request that on page 8, line 29, the words "or negotiation" be deleted, and on page 9, line 1, change "three" to "five". Senate Bill 104, introduced last session at the request of the Governor, would accomplish the same goal with respect to existing AS 37.05.230. The change needs to be made to permit longer term, hence more cost effective, transportation contracts between school districts and contractors.

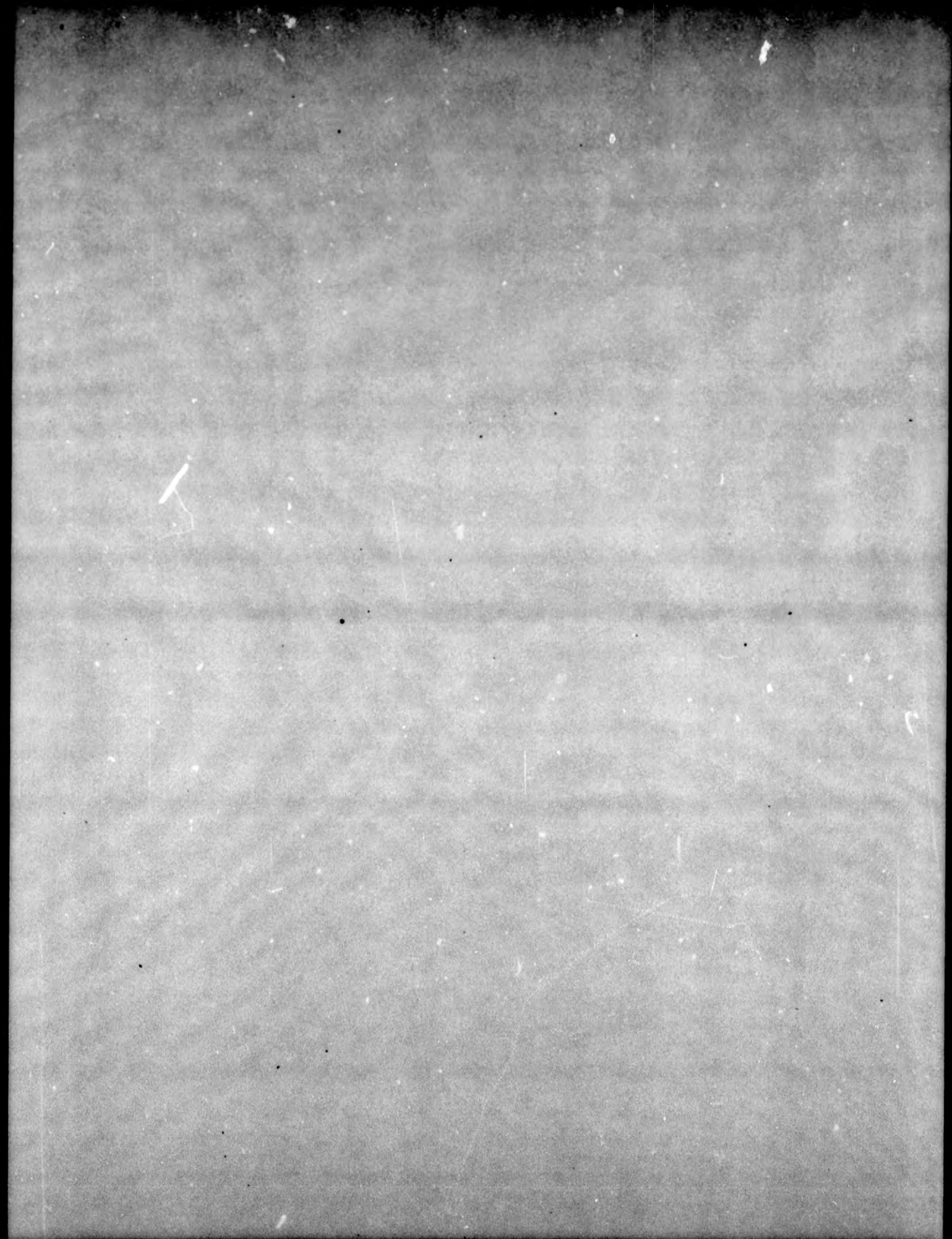
If the above two concerns can be accommodated the department has no particular concerns with the proposed legislation.

January 31, 1981

Harold Reynolds, Jr.

Harold Reynolds, Jr.

Commissioner



STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No. Senate Bill 341
Title: State Procurement Code

Sponsor: The Rules Committee
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Env. Conservation
BRU: Administration

Component: Administrative Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		37.9	39.4	41.0	42.6	44.4
TRAVEL		5.0	5.2	5.4	5.6	5.9
CONTRACTUAL		5.0	5.2	5.4	5.6	5.9
SUPPLIES						
EQUIPMENT		1.5	--	--	--	--
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		49.5	49.8	51.8	53.8	56.2

CAPITAL		--	--	--	--	--
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REVENUE		--	--	--	--	--
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FUNDING : (Thousands of Dollars)

GENERAL FUND		49.5	49.8	51.8	53.8	56.2
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME		--				
TEMPORARY		--				

ANALYSIS : Attach a separate page if necessary

This bill codifies many procedures and practices presently addressed in the Administrative Manual, a variety of memo's and procedures and ad hoc decisions. Practices, particularly for professional services contracts,

Prepared by: W.A. Publicover Phone: 465-2676
Division: Administrative Services Date: 1-30-86
Approved by Commissioner: Bill Ross Date: 1-31-86
Agency: Environmental Conservation

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. Senate Bill 341

vary from department to department. This bill and implementing regulations will increase fairness and accountability through uniform requirements for all areas of procurement.

Environmental Conservation regularly has over 40 open contracts worth over \$2 million. Presently, we have an Accounting Technician II who works part time on these contracts. He provides technical advice on contract preparation, tracks the contracts through the approval process, processes payments and chairs the contract closing committee. In the past we have had problems with inadequate RFPs, public notices and similar technical flaws. The bill will establish much tighter standards for the technical quality of competitive sealed proposals and will greatly increase the Department's accountability. In particular, the new law will require:

- evidence of Alaska Business Licenses from offerors and subcontractors
- public notice 21 days before opening proposals
- that all contractors on the bidders list must be notified by mail
- that register of offerors must be kept
- determination of responsibility
- notice of intent to award 10 days before the award
- retention of records including each proposal
- that agency procurement officers decide on protested awards and contract controversy

These new responsibilities will increase our workload beyond the present half-time position. New requirements mandate a single source to assist in drafting RFPs and contracts and to act as agency expert in the procedural aspects of professional services contracts.

Position Title Administrative Assistant II			No. of Positions 1	Range/Step 14	Barg. Unit GGU	Dep.	Agency	Division																																									
Time Status Full	Staff Months 12	RP Number	Location Juneau		Election District 4	Leg.																																											
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**Request For
New Position**

Agency Environmental Conservation
 BRU _____
 Component _____

Page 3 of 3
 Revised Date _____

FY 87

MEMORANDUM

State of Alaska

TO: Eleanor Andrews
Commissioner
Department of Administration

DATE: February 3, 1986

FILE NO

TELEPHONE NO 465-4100

FROM: Don W. Collinsworth *DWC*
Commissioner
Department of Fish and Game

SUBJECT SB 341 Procurement
Bill

Enclosed are our proposed amendments to SB 341. In addition, there were a few areas where we had questions that could result in amendments. If our questions should be addressed in amendments, I would appreciate it if your office would include appropriate language.

Page 4, Sec.36.30.015 (b): Would your proposed amendment, which we have also included, provide for leasing facilities?

Page 8, Sec. 36.30.080, (c): Would this notice be required for renegotiating current leases? It also seems inconsistent that an appropriation for the project would not constitute its approval.

Page 9, Sec. 36.30.110, (a): Will this section eliminate the ability to negotiate altered conditions at the time of award?

Page 9, Sec. 36.30.110, (b): Will an application for an Alaska Business License still be valid?

Thank you for your assistance on this bill.

Enclosure

The Alaska Department of Fish and Game proposes the following technical amendments to Senate Bill No. 341:

Sec. 36.30.015

Page 4

Lines 5,6,7.

PROPOSED AMENDMENT

(b) The commissioner may delegate to an agency the authority to contract for and manage (SUPPLIES) services, professional services and supplies, except property of the state equipment fleet. (SERVICES, AND PROFESSIONAL SERVICES)

REASON: To clarify the intent of the bill.

Sec. 36.30.050.

Page 6

Lines 21,22.

PROPOSED AMENDMENT

(c) The lists shall be used by the chief procurement officer or an agency when issuing invitations to bid, soliciting letters of interest, or issuing requests for proposals under this chapter.

REASON: To clarify the intent of the bill to include informal solicitations.

Sec. 36.30.100.

Page 9

Line 6

PROPOSED AMENDMENT

(6) for professional services; (OR)

(7) for concessions operated on state property;

(8) aircraft charters involving hazardous flying conditions requiring specialized skills and other attributes of the operator and/or specialized aircraft to ensure the safety of agency personnel; or

(9) for purchases of less than \$5,000 as defined under Sec. 36.30.320.

REASON: To clarify intent of proposed amendment to Sec. 36.30.850, page 45, line 27 (Item 8 above) and to bolster the authority under Sec 36.30.320 (item 9 above).

Sec. 36.30.140
Page 11
Lines 21,22.

PROPOSED AMENDMENT

The bids are not open for public inspection until after a (CONTRACT IS AWARDED.) notice of intent to award a contract has been issued.

REASON: This proposed amendment will permit bidders to inspect all of the bid responses at the time a notice of intent to award a contract is issued and to file a protest then, rather than after the contract has been awarded.

Sec. 36.30.320
Page 19
Line 1

PROPOSED AMENDMENT

competition that is practicable under the circumstances (.) except as exempted as follows. Small purchases of less than \$5,000 may be made without competition for;

1. Copyrighted items, such as books, films, video tapes, educational materials, etc. WHERE NO COMPETITION EXISTS;

2. equipment repair as required by a manufacturer to maintain factory warranties, through authorized warranty stations;

3. Advertisements placed in either the printed media (i.e., newspapers, magazines, journals, etc.) or the electronic media (i.e., radio, television, etc.);

4. Aircraft charters involving hazardous flying conditions requiring specialized skills and/or other attributes of the operator and/or specialized aircraft to ensure the safety of agency personnel.

REASON: Under current delegation to agencies, items 1, 2, and 3 are exempted. Item 4 would bolster and recognize modifications requested under 36.30.850, page 45, line 27.

36.30.320
Page 19
Line 2, 3, 4 and 5

PROPOSED AMENDMENT

(d) a

REASON: To allow insertion of a new section "D".

Sec. 36.30.320

Page 19

Line 2

PROPOSED AMENDMENT

(D) An agency shall be exempted from the requirements of Sealed Competitive Bidding under Sec. 36.30.100 et al. when the Commissioner delegates specific authority to exceed the \$5,000 level established under Section 36.30.320 SMALL PROCUREMENTS. Purchases shall be made with competition that is practicable under the circumstances and shall be in writing.

REASON: The Commissioner, through delegation to the department is geared to perform what is known as formal bidding procedures as required under 36.30.100. For agencies to perform this task would require additional personnel to comply with the extra workload that would be generated. This burden should not be passed on to the agencies, if the resources to perform the function are not available within the agency.

Sec. 36.30.430

Page 23

Line 19

PROPOSED AMENDMENT

(2) specified reasons (EXCUSES) for delay or nonperformance;

REASON: To clarify intent of the bill.

Sec. 36.30.850

Page 45

Line 27

PROPOSED AMENDMENT

(13) aircraft charters involving hazardous flying conditions requiring specialized skills and other attributes of the operator and/or specialized aircraft to ensure the safety of agency personnel.

REASON: Such charters would be for missions involving search and rescue, fishery patrols, aerial reconnaissance and surveys, fire fighting operations, etc. This recognizes unique and hazardous conditions of low altitude aerial surveys, often in marginal weather conditions, over water and hazardous terrain. Such surveys are often required on very short notice, for example, when fishing closures are anticipated.

Sec. 36.30.930

Page 47

Line 15

PROPOSED AMENDMENT

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

REASON: Agencies must work within a system of checks and balances which provide for a process that results in correct performance under this chapter. Individual approvals are given by employees who act in good faith relying that prior actions of other employees followed correct procedures.

Senate Bill 341

"An Act relating to state procurement practices..."

The stated purpose of SB 341 may be summarized to the establishment of a single, uniform, statutory base for all procurement by the executive, legislative and judicial branches of the State of Alaska in order to provide a procurement system that maximizes the purchasing value of State funds, assures full and equitable competition in the market place and engenders the confidence of the public.

AS 36.30.015 of SB 341 would authorize Department of Administration (DOA) and Department of Transportation and Public Facilities (DOT/PF) to delegate any of their respective authorities (except DOT/PF authority to contract for or dispose of elements of the State equipment fleet, DOA authority to promulgate procurement regulations, and DOA Commissioner's authority to make sole source determinations) to another agency after having made a written determination that the agency is capable of implementing the delegation. This represents a major but laudable change from the current statutory procurement base.

AS 36.30.040 of SB 341 would mandate promulgation by DOA of regulations covering stated essential elements of procurement. It is noted that AS 36.30.040(13) requiring regulations for elimination and prevention of discrimination does not include "handicap" or "political belief" among the specific categories in which discrimination is to be prevented.

AS 36.30.240 of SB 341 with respect to discussion with offerors, revision of proposals, and "best and final offers", appears to present potential for problems and appeals. This section infers that some offerors may be screened out at this stage and excluded from the discussion phase. For offerors found to be unresponsive at this juncture, this probably would present no problem. However, the language requiring determination of which proposals are "...reasonably susceptible of being selected for award..." implies that offerors who were found to be responsive might also be eliminated from consideration. To conduct discussions with some but not all of the responsive offerors would seem to necessitate a screening process and that records be maintained sufficient to substantiate reasons for elimination of responsive offerors not "reasonably susceptible of being selected for award" in the event of appeal.

For the Department of Health and Social Services (DHSS), procurement of construction, supplies and services other than professional services under SB 341 would continue substantially as currently prescribed in DOA, DOT/PF and DHSS regulations, policies and procedures.

AS 36.30.850(b)(1) of SB 341 exempts grants from Ch.36. As grants are interpreted under AS 36.30.990(10) of SB 341, most DHSS grant programs would be exempt from Ch.36 and could continue to be administered under extant DHSS regulations.

AS 36.30.850(b)(4) exempts contracts with medical doctors and dentists from Ch. 36. At present, DHSS administers contracts/provider agreements for the following categories of professional services in addition to provider agreements with doctors and dentists under a special DOA delegation of long standing that authorizes DHSS to contract in any amount without DOA involvement:

1. On a DHSS Memorandum of Agreement to obtain the specialized expertise of recognized experts outside State government to conduct seminars/training programs or to serve on Proposal Evaluation Committees for the award of grants or contracts. Such contractors do not sell their services but accept reimbursement for out-of-pocket expenses and, sometimes, a token payment in the form of an honorarium: 30 per year
2. On a DHSS Medical Provider Agreement covering services paid for by the State directly to providers of services to eligible recipients under such programs as Medicaid, General Relief Medical and Catastrophic Illness. Under these agreements, payments are made to hospitals, nursing homes, mental health clinics, home health aides, medical suppliers, ambulance companies, physicians, dentists, optometrists, midwives, physical therapists, rural health clinics and the Indian health Service: 1,500 per year
3. On a DHSS Medical Provider Agreement covering registered nurse and home health aide services under the Home Health program paid for directly by the State to providers of the services to eligible recipients: 70 per year
4. On a DHSS Agreement covering *day care or *foster care for eligible children, foster care or residential care for eligible adults with State payment directly to providers of the services: 1,760 per year

*Note: Child day care and foster care have heretofore been covered under AS 47 and have been administered under DHSS regulations, exclusive of the DOA administered procurement process.

Recommendations:

It is noted that AS 36.30.850(b)(5) of SB 341 exempts purchase of residential child care services under AS 47.40 as though such purchases were made under "contracts". Actually, AS 47.40 specifically mandates the use of "grants" for such purposes. Inasmuch as AS 47.40 and the definition of "grant" under AS 36.30.990 of SB 341 seem consistent to identify AS 47.40 funding activities as "grants", the AS 47.40 residential child care funding program appears to be exempted under AS 36.30.850(b)(1) of SB 341, which exempts "grants". Either AS 36.30.850(b)(5) of SB 341 should be deleted entirely or the words "contracts for the" in (b)(5) should be deleted.

Present procurement act language probably would not clearly authorize DOA to continue the present delegation of authority to DHSS for the 3,360 agreements prepared annually by DHSS without referral to DOA. Inasmuch as the program guidelines and rates of payment are controlled by regulations for the categories of agreements in 2. b and d, it is recommended that the present DOA delegation be carried over into the proposed procurement act by adding language under AS 36.30.850(b) of SB 341 to the following effect:

"agreements, except preferred provider agreements, with providers paid directly by the state for medical care for persons eligible under AS 47.07 [re Medicaid], AS 47.08 [re Catastrophic Illness], AS 47.25.195 [re General Relief-Medical], AS 47.30.530 [re Community Mental Health Services].

"agreements with providers paid directly by the state for child day care or foster care under AS 47.10 [Delinquent Minors and Children in Need of Aid], AS 47.17 [Child Protection] and AS 47.25.310 [Aid to Families with Dependent Children]."

"agreements with providers paid directly by the state for adult day care, foster care and residential care under AS 47.24 [Protection of the Elderly]

If the above changes are not made, DHSS expects significant impacts on two of the previously described categories as follows:

2. AS 36.30.890 of SB 341 entitled "Federal Assistance" would probably allow DHSS to comply with Title XIX of the Social Security Act and 42 CFR 431.51 mandating free choice of providers to Medicaid recipients. This will permit continued use of the present type of DHSS agreement with about 1,500 Medicaid providers annually. As a consequence, there will be no change in workload or cost generated by SB 341 in the Medicaid program area.

Services of medical providers to persons eligible under the General Relief Medical and Catastrophic Illness programs are not federally funded and there is no provision in SB 341 to exempt these services from the proposed procurement code, except for the exclusion, in AS 36.30.850(b)(4), of medical doctors and dentists. Therefore, all other services paid for under these programs would be thrust into the competitive proposal processes of the proposed procurement code. There is long standing philosophy and State policy, now contained in regulations, accepting freedom of choice by recipients of providers under the General Relief Medical and Catastrophic Illness programs. Competitive procurement of such services would entail a wholly new approach of awarding contracts to competitively selected providers of each service category geographically and mandating that only those providers be used by recipients who desire services to be paid for under the subject programs. If SB 341 should pass sans change to remedy this problem, it seems possible that the Attorney General might find that, to avoid jeopardizing the health of eligibles under the programs, continuation of them

under their present regulations would better serve the public interest than to discontinue them. In the interim, if that occurred, statutory change should be sought to exempt the programs from the procurement code.

If SB 341 is not changed to exclude these services from the procurement code, and the Attorney General does not find that continuation of the programs under their present regulations is in the best interests of the public, the subject programs could not be administered after 1/1/87. Funds appropriated and remaining unspent or unencumbered for payment for services rendered prior to 1/1/87 could not be spent because existing provider agreements would have to be cancelled. Based on the Governor's FY87 budget of 5,000.0 for the G.R. Medical and 1,312.0 for the Catastrophic Illness program for a total of 6,312.0, about 3,156.0 would remain unexpended for FY87.

4. Services by DHSS for day care and foster care for children and for foster care and *residential care for adults who have been determined eligible for such services under DHSS regulations have historically been administered under those regulations, not under State procurement and contract processes. However, as SB 341 is currently written, it appears that continuation of the current system for recruitment, training, inspecting, licensing, monitoring, entering into agreements, and paying for the subject care would not be possible. If the procurement code is enacted to mandate contracting for the subject care under the code, there would be additional administrative effort generated without any reduction in the costs of care furnished by providers. Further, it would appear that DHSS staff might be precluded under the procurement code from making the necessary contacts to recruit the entities providing the care, train them and otherwise bring them to a status eligible for licensing etc. before initiating the standard contracting processes beginning with public notice and request for proposals. It appears that the proposed procurement code does not lend itself to obtaining these categories of care. Administration of them under the proposed procurement code would have a derogating effect on these programs by inhibiting some entities which have been coaxed and trained/licensed to provide the care, and would increase administrative requirements without decreasing costs of care. The increased administrative efforts would necessitate establishment of one Social Worker IV position at a salary range 18 to coordinate foster and day care contracting statewide at a cost of 29.4 for the last 6 months of FY87.

*(Child residential care is authorized and operated specifically as a grant program under AS 47.40 and would be exempt under SB 341.)

Recommended by:

Joanne C. Clark
Joanne C. Clark
Director
Division of Budget &
Finance

Date:

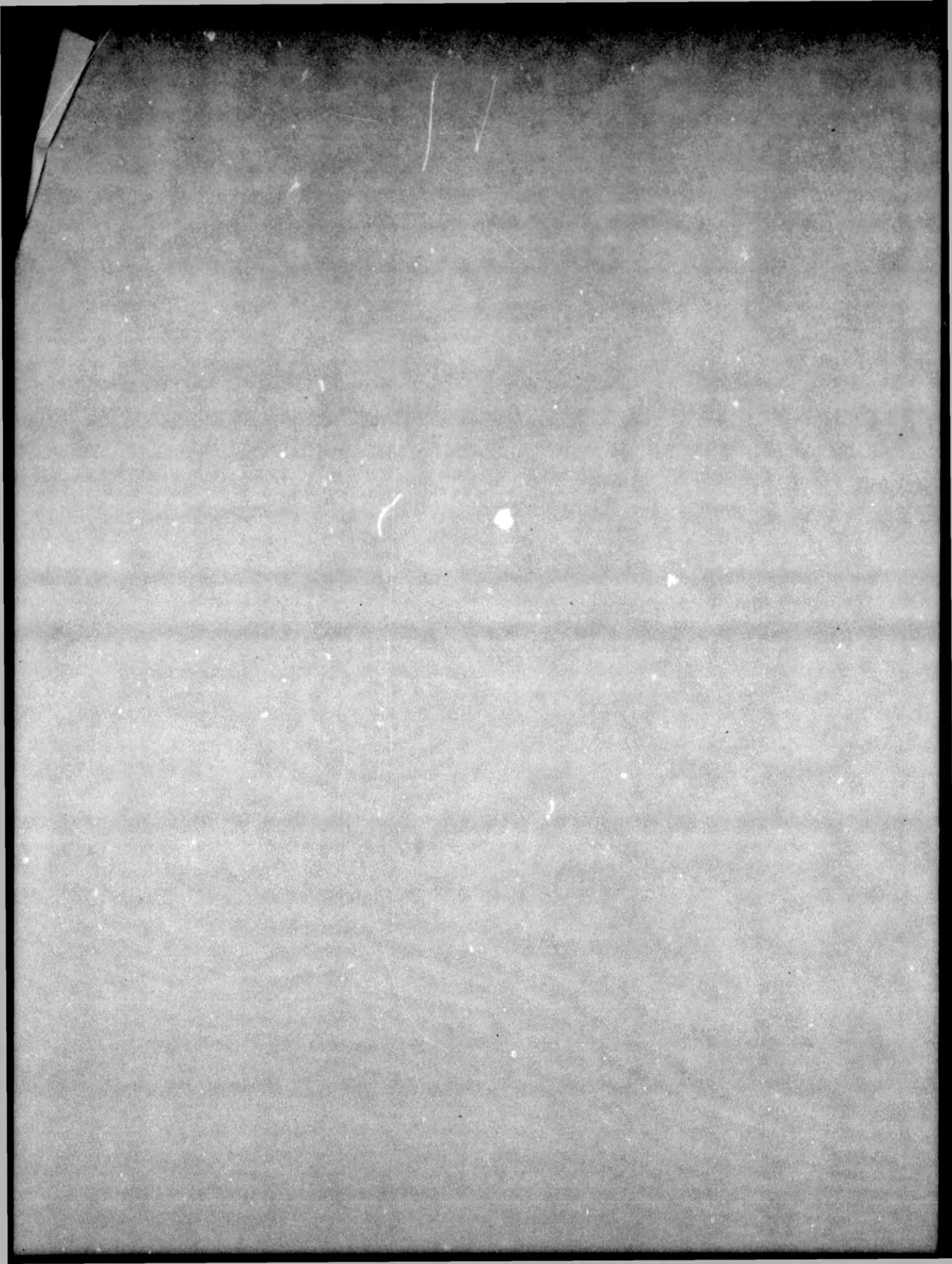
2/3/86

Approved by:

John R. Pugh
John R. Pugh
Commissioner
Dept. of Health &
Social Services

Date:

2/3/86



MEMORANDUM

State of Alaska

TO: The Honorable Eleanor Andrews
Commissioner
Department of Administration

DATE: January 29, 1986

FILE NO:

TELEPHONE NO: 465-2700

FROM: 
Jim Robison
Commissioner
Department of Labor

SUBJECT: SB 341 Procurement Bill

I recently received your memo concerning position papers for Senate Bill 341, "An Act relating to state procurement policies and procedures ...". As you may know, my staff has participated in several work sessions with Department of Administration staff and has provided input at various stages of the drafting process. Accordingly, I am comfortable with your Department representing the Department of Labor on this bill, and we will not be submitting a position paper.

I believe also that this will assist in assuring that the executive branch takes a unified position on the bill.

Thank you for giving us the opportunity to comment on this bill.

cc: Jim Ayers, Director of Legislative Relations

JR:JK:mr

MEMORANDUM

State of Alaska

TO: Jim Ayers
Director of Legislative Relations
Office of the Governor

DATE: January 28, 1986

FILE NO:

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Attorney General

SUBJECT: SB 341

As requested by Commissioner Andrews the Department of Law's comments regarding SB 341, relating to state procurement practices and procedures, follow below.

The Department of Law routinely acquires the professional services of outside counsel in accordance with existing AS 36.98. During a typical year, as many as thirty-two professional services agreements are let in this manner. Outside counsel are hired when there is a legal dispute between two or more Executive Branch Agencies causing a conflict of representation; when existing workload and insufficient staff resources combine to require outside assistance; when special expertise not resident in the department is required; and when legal representation is required at a location distant from the jurisdiction of the attorney general. Of the thirty-two professional services agreements typically let, about eighteen are for counsel to represent the state outside Alaska.

Often, outside counsel is required with very little notice. And, occasionally, such notice has been less than twenty-four hours. Obviously, procurement for outside counsel in these cases would fall under Article 4. (Other Procurement Methods) of the proposed legislation. Less clear, however, are those instances where counsel might not be required for two or three months. It appears, from a practical standpoint, that procurement of outside counsel using competitive sealed proposals would take two to three months to accomplish. Additionally, considerable time may sometimes be needed for counsel to get prepared to handle a particular matter. Consequently, there will be many occasions when taking the time necessary to secure competitive sealed proposals for outside counsel will be contrary to the public interest, unless pending legal actions can be delayed for one hundred to one hundred and twenty days. This time requirement is particularly significant when dealing with law firms for services outside the state.

Under certain circumstances, the public notice requirements for competitive sealed proposals may also be contrary to the public interest. This occurs when such notice serves to advertise the state's litigation strategy, or when it serves to prematurely notify potential defendants of impending litigation. In the first instance, our cost for bringing or

Jim Ayers
Page 2

January 28, 1986

defending an action could be increased dramatically. In the second instance, valuable assets can be hidden and critical evidence can be lost due to premature notice. Time permitting, the other requirements for competitive sealed proposals can be met, where confidentiality is required, if the notice requirements for formal publication are waived.

Lastly, we are concerned that the requirements under proposed ARTICLE 3. requiring offerors to list subcontractors, and for both offerors and subcontractors to supply evidence of a valid Alaska business licence may be interpreted to apply also to contractors procured under ARTICLE 4. Because of the nature of emergency procurements, subcontractors may not even be known at the time an initial procurement is made. In the case of professional services performed outside the state it may be impractical to require an Alaska business license. Indeed, such a requirement could defeat the purpose for emergency procurement when time is the determining factor.

cc: Eleanor Andrews, Commissioner
Department of Administration

Marsha Hubbard, Deputy Commissioner
Department of Administration

MEMORANDUM

State of Alaska

TO: Jim Ayers
Director of Legislative Relations
Office of the Governor

DATE: January 29, 1986

FILE NO.:

THRU:

TELEPHONE NO.:

SUBJECT: Procurement Bill

Richard L. Bounie
FROM: MG Edward G. Pagano
The Adjutant General
Department of Military and
Veterans Affairs

RECEIVED
JAN 30 1986

HAND DELIVERED
GOVERNOR'S OFFICE

The Department of Military and Veterans Affairs has participated in the analyzation of the Administration's version of the procurement bill, and concur with the Department of Administration submission.

MEMORANDUM
DEPARTMENT OF NATURAL RESOURCES

State of Alaska
OFFICE OF THE COMMISSIONER

TO: Jim Ayers
Governor's Legislative Assistant
Office of the Governor

DATE: January 30, 1986

FILE NO: 330

TELEPHONE NO: 465-2400

FROM: Esther C. Wunnicke
Commissioner

SUBJECT: SB341 Procurement
Department Position
Paper

General

The Department of Natural Resources supports the intent of SB341 the Senate procurement bill. If passed it will:

1. Provide a single reference in statute for all state agencies and the business community with respect to state procurement;
2. More narrowly define the means and methods for state procurement which should result in a more standard way of doing business by all state agencies; and
3. Provide for the establishment of regulations for all aspects of procurement.

In addition to the above, it is the goal of this department that passage of the bill will allow the Department of Natural Resources to continue to manage state parks, forests, lands, and other natural resources for which we are responsible without causing undue administrative burdens on our managers and at the same time provide a fair opportunity for the business community to participate in DNR procurements. To this end we support the draft bill and direct our comments.

Issues of Particular Concern to the Department

There are five issues of particular concern to this Department:

1. We are currently authorized under AS 41.21.020 and regulations adopted under that statute, in conjunction with Title 37 and a special delegation from the Commissioner of the Department of Administration to administer construction and concession contracts for state park development. This arrangement has resulted in cost effective expenditure of capital appropriations and has kept management authority and responsibility for State park facilities with DNR as mandated in Title 41. The bill currently provides mechanisms for continuation of this procedure. We would oppose any change in the bill which would diminish or conflict with our authorities under Title 41.

2. We have requested that wording be added under Sec. 36.30.990 to specifically exempt DNR land acquisitions from the provisions of this bill, reference attached letter to Bob Link, dated January 24, 1986. Land acquisition by DNR is currently authorized under AS 38.05.035, AS 27.21.300, AS 41.17.210, AS 41.21.020. Although we are advised that the provisions of the bill would not apply to land acquisitions, a clearly stated exemption would remove any doubt that might arise in the future.
3. It appears that the current draft of this bill does not hinder the Department's ability to react timely to wildfires. However, we would oppose any changes to the draft bill or regulations that would restrict or otherwise complicate procurement during wildfire situations.
4. The proposed changes in statute or subsequent regulations should consider staff time at all levels required for implementation and an appropriate fiscal note must be supported to assure full implementation.
5. The potential success of implementation of improved procurement legislation and regulations is largely contingent on training of staff at all levels involved in procurement. We are concerned that provision is made to provide initial as well as ongoing training.

We have appreciated the opportunity to provide comments during the initial drafting phases of the bill and we are happy to see that many of our initial concerns were addressed. We will continue to participate in the review process through the Department of Administration toward resolution of our remaining concerns.

A list of Department of Natural Resources general concerns and recommended changes, by section, is included in this memo. Some have been raised previously and others are the result of comments we have received from our field persons after reviewing the latest draft. Also attached is a memorandum to Bob Link, dated January 24, 1986, listing some recommended technical changes.

Fiscal Note

Our fiscal note to the current bill is for the addition of one supply tech and travel funds to provide training of department staff in all aspects of procurement. We believe that the success of this legislation is contingent on providing adequate training for all department personnel involved in the procurement process. The necessary funding requirements may change depending on the outcome of the final bill and the plan for implementation by the Department of Administration.

Sectional Recommendations

36.30.110 (b) page 9 line 18 - 25

Recommended Change

The section be modified to read:

"(b) The invitation to bid shall require that prior to contract award and/or subcontracting any portion of the contract, the bidder is required to furnish a list of subcontractors the bidder proposes to use in the performance of the contract. The bidder shall also be required to furnish evidence of the bidder's valid Alaska business license and evidence of a valid Alaska business license for each proposed subcontractor. A bidder and proposed subcontractors for construction contracts shall also submit evidence of registration under AS 08.18."

Concern

We believe that business licenses, subcontractor information, and registration, should be required prior to award but not necessarily at the time of bid. This information is generally gathered after bid receipt and prior to award. Or in the case of subcontracting, provisions are generally included in the contract for notification and approval of use of subcontracting by the issuing agency, since not all subcontractors are known at the time the bids are received.

36.30.210 page 14 line 20 - 27

Recommended Change

The section be modified to read:

"(b) The request shall require that prior to contract award and/or subcontracting any portion of the contract, the offerer must furnish a list of subcontractors.... (an offer for a construction contract shall also submit evidence of the offer's registration under AS 08.18 and evidence of registration for each subcontractor.) When applicable an offerer and proposed subcontractors shall also be required to submit evidence of professional registration that may be required under Title 08."

Concern

There are some instances when subcontractors are not known at the time of award. The contract can provide for approval of subcontractors after award and prior to subcontracting. In addition, evidence of all professional registration required under Title 08, as determined by the nature of the contract, should be required prior to the state doing business with a contractor or subcontractor.

36.30.210 page 15 line 3-4 and 36.30.250 page 16 line 15-16

Recommended Change

36.30.210 line 3-4 "The request must provide a description of the factors that will be considered by the procurement officer when evaluating the proposals received, including the relative importance of (price and other) those factors."

36.30.250 line 15-16 "... the most advantageous to the state taking into consideration (price and) the evaluation factors set in the request for proposals."

Concern

If the word price is left in it appears that price may be thought of as the primary consideration for award. Price is included as factor in most of our RFP's, however it is not a major consideration in most RFP's. All evaluation factors are important and no particular emphasis should be given to price.

36.30.300 page 17 Sole Source Procurements

General Concern

We recommend that the department be allowed to execute contract amendments that are within the scope of the original solicitation without requiring a sole source justification for the following reason:

1. To rebid the project fairly all other bidders would, in most cases, need to have access to all information developed from the existing contract. This could result in considerable time for the State to prepare the bid or RFP and the contractors to prepare their proposals;
2. The dollar amount of the amendment by itself may be too small to create interest in the business community; and
3. Despite efforts of the State to provide for a fair bid, the current contractor has advantage over the

competitors since the current contractor is already familiar with the project and could have intimate knowledge of the Department.

36.30.300 page 17 line 14 - 18, 22-23

Recommended change

Change lines 14-18:

"A contract may be awarded under this section only when the (commissioner) using agency determines in writing that there is only one source for the required supplies, services, professional services, or construction, and the commissioner of administration or, the commissioner of transportation and public facilities, concurs with the determination."

Change lines 22-23:

"the authority to (make) approve the determination required by this subsection may (not be delegated) only be delegated to designees of the commissioner acting in the commissioner's absence, or to the commissioner of the using agency when the value of the supplies, services, or construction is less than \$5000 or professional services is less than \$25,000."

Concern

For the Commissioner of Administration or Transportation & Public Facilities to make the determination would require an enormous amount of research on the part of the commissioner's staff. Since the using agency is the one required to submit "written evidence" in section 36.30.300 (b) it appears that it is the using agency determining that only one source is available. The wording would put the responsibility of making the determination with those who are required to do so and still allow the commissioner to approve/disapprove the determination.

There may be times when the commissioners need to delegate the authority to someone acting on their behalf within their own department. Furthermore, we recommend delegation of authority to approve sole source procurements for small procurements to the commissioner of the using agency.

36.30.365 page 19 line 25-26

Recommended Change

"At least (10) 5 days before the formal award....."

Concern

This additional five day waiting period will slow down our contract award process. In most bids opened by the Department and in most professional services contracts vendors are notified by phone within one to two days after opening bids or evaluating proposals. This is followed up with a written notice of intent to award. We feel that a ten day waiting period may unnecessarily delay award of some contracts.

36.30.500 page 25

General Concern

We are in favor of requiring reporting on sole source and emergency procurements. Our only concern is the amount of staff time that may be required in maintaining a list of this nature. Staff time would be substantially reduced if we were not required to keep records on sole source procurements under \$5000 for services, supplies, and construction, and under \$25,000 on professional services.

36.30.560 to 36.30.590 pages 26 - 30

General Concern

This will formalize the process for protesting an award or contract by allowing the contractor, offerer, or bidder to first submit a written protest to the "procurement officer of the using agency", Sec. 36.30.560. In the past this process was done on an informal basis and the only written grievances were those to the Department of Administration. This process may involve an increase in the amount of staff time within each agency to make written determinations on a protest as required in Sec 36.30.580.

We do support this process as a method of giving the public an opportunity to call to the procurement officer's attention any possible misuses of contracting authority. However, in order for this department to be able to continue to procure services in a timely manner, we have requested a position to assist in other areas of procurement which would allow time for our procurement officer to handle these protests.

The ten days allowed to receive a protest will cause, in most cases, a delay in awarding the contract. This could be remedied by leaving the time at five days as it presently stands.

Moving the time to five days would protect the state from unnecessarily delaying awards due to an unfounded protests. Sec 36.30.565 may provide for the procurement officer to allow an untimely protest to be reviewed which would give us the flexibility to review those that have merit.

36.30.930 page 47 lines 13 - 26

General Concern

We support the inclusion of penalties in this bill as it forces managers and administrators to take seriously their responsibility for expending public funds. We are concerned however, that there be a means of providing a lesser degree of punishment for persons who, out of ignorance or lack of training, may violate this chapter.

We would recommend that a system be provided within regulations that would allow the using agency and the Commissioner of Administration to take other lesser disciplinary action. Such action could be revocation of purchasing authority, suspension, required training courses, or special reviews of procurement documents by the Department of Administration prior to execution.

As mentioned earlier, we believe training is critical to successful implementation. If the state requires employees to be accountable for their purchasing actions, training must be provided the employees in all aspects of procurement that relate to job functions. It will be difficult to enforce penalties if procurement personnel are not taught how to do their jobs.

cc: Eleanor Andrews, Commissioner, Department of
Administration
James Baldwin, Assistant Attorney General
James K. Barnett, Deputy Commissioner, Department of
Natural Resources
Sharon Barton, Director, Division of Management

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

State of Alaska

DIVISION OF MANAGEMENT

TO: Bob Link, Director
General Services & Supply
Department of Administration

DATE: January 24, 1986

FILE NO: 510

TELEPHONE NO: 465-2424

FROM: Sharon Barton
Director

SUBJECT: SB 341 Procurement
Bill

In accordance with the Marsha Hubbard's letter of January 15 I am requesting that you consider recommending the following technical amendments to the SB 341.

1. Sec. 36.30.310 (b) 2. Recommend that it be changed to read:

"with a person under this subsection if the total amount of professional services contracts for like services awarded to that person under sole source solicitation methods from any agency exceeds \$25,000 in a 12 month period."

This would prevent the abuse of the other procurement system with respect to sole source contracting and still provide the agencies with the flexibility to solicit proposals and treat all respondents equally for smaller professional services projects. We understand that this suggestion may be more policy related than technical.

2. Sec. 36.30.850 Since the aquisition of lands is not generally exempted we would recommend the inclusion of the following:

(13) Aquisitions of land relating to abandoned mine areas AS 27.21.300, state forests, AS 41.17.210, and parks and outdoor recreation AS 41.21.020.

This will clearly exempt Department of Natural Resources land aquisitions as well as disposals from this chapter.

3. Sec. 36.30.990 (14) Recommend the word "not" be removed: So that it would read:

"professional services' does (not) include services performed under an employment contract for services to be performed under direct supervision, regardless of whether there is an

employer/employee relationship, if the person responsible for awarding the contract files with the commissioner of administration a written justification for the contract."

This will clarify the intent of the definition and procedure required when a contractor will be directly supervised.

cc: James R. Barnett
Chris Rutz
James Baldwin

GOVERNOR'S OFFICE

Administrative Services		Rules Committee	
Concurrence			
PREPARED BY Sid LaDonica	DATE 1/16/86	COMMITTEE'S SIGNATURE <i>[Signature]</i>	DATE 1-24-86

SUMMARY

OTHER AGENCIES AFFECTED BY BILL All Departments	CONSTITUENT GROUPS AFFECTED BY BILL Private Contractors/Vendors
ORGANIZATIONAL SUPPORT FOR BILL None	ORGANIZATIONAL OPPOSITION TO BILL None

FISCAL IMPACT: ☒ NONE ☐ FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The intent of the Bill is to standardize procurement practices throughout State government.

ANALYSIS OF BILL/PROGRAM EFFECTS

The Bill will accomplish the above intent by clearly indicating what is required of State government and by establishment of a Chief Procurement Officer to oversee the procurement operation.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

MEMORANDUM

State of Alaska

TO: The Honorable Eleanor Andrews
Department of Administration

DATE: February 5, 1986

FILE NO:

TELEPHONE NO:

FROM: Mary A. Nordale, Commissioner
Department of Revenue

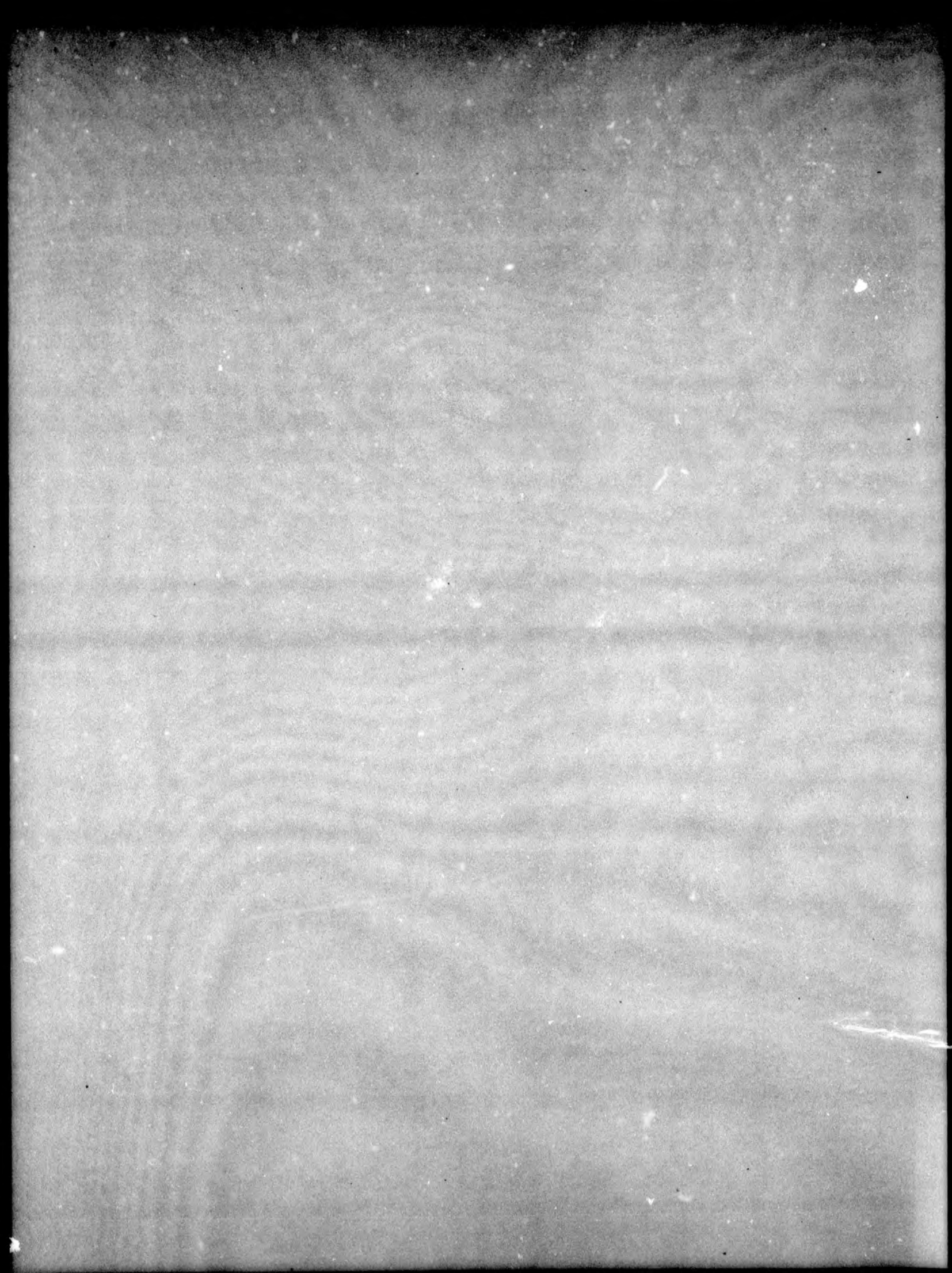
SUBJECT: Alaska Medical Facility
Authority AS 18.26.010
et. seq.

Under the provisions of AS 18.26.210, a medical facility financed by AMFA is subject to the State's procurement laws, regulations and procedures. This provision is pretty onerous and I doubt its enforceability in any practical sense.

It has occurred to personnel of this department that in the revamping of the State's procurement code, it might be appropriate to drop this section. Perhaps it makes sense to make municipal procurement procedures applicable.

AMFA is merely a bonding mechanism. It seldom meets and only comes to life when a medical facility seeks financing assistance. Once the bonds are issued, there really isn't much to do.

Let us have your advice.





Dept. of Transportation & Public Facilities

Position Paper

BILL NO: Senate Bill 341

TITLE: Procurement Practices

APPROVED: *W. S. Spahr*
R. J. Knapp
for Commissioner

DATE: January 30, 1986

The Department of Transportation and Public Facilities has worked closely with the Legislative interim committees in the drafting of Senate Bill 341. Many of the department's concerns of both a technical and policy nature have been addressed in the initial drafting of the bill.

However, while the department supports the Legislature and the administration's effort to revise and update procurement codes, there are a few areas within Senate Bill 341 that the department feels needs further consideration:

1. SB 341 requires the maintenance and use of bidders lists for the request for proposal and bid notification process. This is time consuming, expensive and has proven from department experience to be of limited value. We feel this requirement for DOT&PF construction should be removed from the bill.
2. SB 341 requires the listing of all sub-contractors at time of bid opening. This further complicates the bid opening process and might jeopardize bidder responsiveness ~~the~~ potentially large cost consequences to the state. The department feels that a subcontractor list would be appropriate to require seven days after the bid opening to limit the extent of bid shopping.
3. SB 341 lacks definitive statements on Alaska preference. An Alaska preference clause for all construction even those over \$5,000 should be considered.
4. SB 341 has no provisions for expanding sole-source and small procurement eligibility. There are numerous purchasing needs of the department which fall outside of the strict definitions provided in the bill. Some sort of extension process is highly advisable.
5. SB 341 requires "teeth" for handling of false claims. False claims without penalty would jeopardize the efficiency and credibility of the claims process.

For further information call Susan Fleischhauer at 465-3900.

6. SB 341's small procurement procedures limit consultants to a total of \$25,000 in small contracts within a twelve (12) month period. The department feels this is an unreasonable restriction and would seriously jeopardize the ability of many firms to continue providing critical services to the department.
7. There are numerous areas within the SB 341, particularly in Articles 5 and 6, where the statute is overly specific and those items might be best addressed in regulations.

The Department of Transportation and Public Facilities supports the current effort underway to update procurement procedure along the lines of the model procurement code with modifications to minimize the adverse impact on the state and private sector contracting community. The department is presently assisting in the development of Regulation to implement the bill.

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : Senate Bill No. 341
 Title : Procurement Practices and Procedures
 Sponsor : Rules Committee
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : DOT&PF
 BRU : _____
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		50.0	55.0	60.0	65.0	70.0
TRAVEL		10.0				
CONTRACTUAL		100.0	55.0	60.0	65.0	70.0
SUPPLIES		40.0	20.0	25.0	27.0	30.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		200.0	130.0	145.0	157.0	170.0

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

GENERAL FUND		200.0	130.0	145.0	157.0	170.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Based on the following figures: 1) delegations to other agencies - \$30.0 for the start up year; 2) procedures updates - \$30.0 for start up year; 3) development of standards and forms - \$10.0 for start up year; 4) one officer plus expenses to administer hearings and claims - \$100.0; 5) list maintenance and mailing - \$10.0; and 6) subcontractor list checking and bid opening administration - \$10.0; 7) travel

Prepared by : Daniel F. Malick, Director Phone : 465-3911
 Division : Management and Finance Date : 1-30-86

Approved by Commissioner : R. J. Knapp by *Wm S. Sprague* Date : 1-30-86
 Agency : DOT&PF

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Fiscal Note
Procurement Practices and Procedures
Page 2

to the hearings for the Regulations.



Sherman Carter
Executive Vice President
(907) 474-7448

University of Alaska
Fairbanks, Alaska 99775-5280
January 28, 1986

Mr. Ray Gillespie, Chief of Staff
Office of the Governor
Pouch A
Juneau, AK 99811

Re: Position Paper
SB 341 Procurement Bill

Dear Mr. Gillespie:

This letter represents the University of Alaska's position regarding the SB 341 Procurement Bill and is being sent to you in response to a request from the Commissioner of Administration.

The university's overriding concern continues to be that the bill represents an unprecedented restriction on the authority of the Board of Regents to establish policies and effectively manage the fiscal affairs of the university. Inclusion within the larger bureaucratic procurement and construction management structures of the state would be a step backwards from the present quality and timeliness of services provided under university policies and procedures which were originally designed to meet the more stringent federal procurement requirements. It is the university's position that it is in the best interests of the state and the university to have the university exempted from the legislation in a manner similar to that provided the Alaska Railroad.

I have attached for inclusion in the document that will be provided to the Senate Judiciary Committee, copies of previous correspondence that the university has written objecting to inclusion in this bill.

Thank you for the opportunity to provide this information to the committee.

Sincerely,

Sherman Carter

Sherman Carter

SFC/BAP/pe
Attachments

cc: Mr. Roy Huhndorf, President and Members of the Board of Regents
President Donald O'Dowd
Chancellors Looney, Lyon, O'Rourke, Outcalt, Paradise
Commissioner of Administration.



Sherman Carter
Executive Vice President
(907) 474-7448

University of Alaska
Fairbanks, Alaska 99775-5200

February 3, 1986

Mr. Jim Baldwin, Assistant Attorney General
State of Alaska
Pouch K - MS/0300
Juneau, AK 99811

Dear Mr. Baldwin:

On 8 January, I sent you information regarding the university's position on draft procurement legislation. With that letter, as Attachment 1, was a list of technical comments with respect to the draft legislation. Those comments pertain to the overall purchasing and procurement functions of the university.

With this letter I am now writing to you, I am sending a second listing of technical points in the draft legislation as pertain to the university's facilities planning and construction activities.

However, my primary purpose now in writing to you is to summarize the university's primary suggestions with respect to the draft legislation. The following four changes would, by themselves, satisfy our primary concerns with respect to the draft legislation, whether or not all of the other technical suggestions which I sent to you on 8 January and which are attached do or do not get changed in the proposed bill. The reasons the university is requesting the following changes are summarized in papers which I sent to you on 8 January. Essentially, these changes would, for procurement purposes, give the university, under its Board of Regents, the same status and authority as the draft legislation gives the Alaska Railroad Corporation under its governing board.

1. Section 36.30.015 - Page 4, Line 22. Add a new subsection (f) to read:

(f) The Board of Regents of the University of Alaska shall adopt procedures to govern the procurement of supplies, services, professional services, and construction by the university. The procedures will satisfy the requirements of state statutes relating to procurement.

RATIONALE: This change will continue the regents' procurement authority but also requires the university to develop regulations consistent with state procedures.

University of Alaska

Jim Baldwin

Page 2

February 3, 1986

2. Section 36.30.050 - Page 6, Line 23. Amend to read:

The lists shall be used by the legislative council and the court system. The Alaska Railroad Corporation and the University of Alaska will be required to maintain their own bid lists.

RATIONALE: This will eliminate unnecessary procurement delays and the need for added equipment to access the DOA's system.

3. Section 36.30.070 - Page 7, Line 24. Add a new subsection to read:

(b) The Board of Regents for the University of Alaska shall adopt regulations that will satisfy the requirements of this section.

RATIONALE: This change will allow the Board of Regents to retain control of university property.

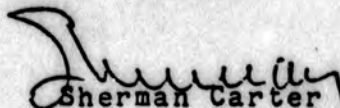
4. Section 36.30.990 - Page 48, Lines 5 & 6. Amend to read:

". . . "government; it does not include the Alaska Railroad Corporation nor the University of Alaska;" . . .

RATIONALE: This change will remove the university from the bill's definition of what or who is a state agency. Lines 16 and 17 on page 4 state that an agency may not contract for the services of legal counsel without the approval of the attorney general.

Thank you for your consideration.

Sincerely,


Sherman Carter

SFC.pe

Attachment

cc: Senator Jan Faiks

Mr. Roy Huhndorf, President and Members of the Board of Regents

President Donald O'Dowd

Chancellors Looney, Lyon, O'Rourke, Outcalt, Paradise

UNIVERSITY OF ALASKA
Facilities Planning & Construction
Comments On

SB 341
Proposed State Procurement Code
January 29, 1986

Article 1 Organization of State Procurement

36-30-060 Specifications

In paragraph (c), line 5, page 7, between.. "development of" and "specifications" .. add the words.. "regulations for".. to make consistent with paragraph (a), i.e. "adopt regulations governing".

36-30-080 Leases (paragraph (a))

If UA is named as a purchasing agency then paragraph is okay. If not, then exception should be made here that UA has authority to lease space subject to procedures substantially equivalent to this chapter.

Article 2 Competitive Sealed Bidding

36-30-110 Invitation to Bid

In paragraph (b) there are certain disadvantages to the General Contractor in listing subcontractors at time of bid; i.e. Contractor may not be able to compare inclusions and exclusions of work at time of bid; Contractor may not be able to thoroughly research a strange or new subcontractor; the State, other than requiring the General Contractor to subcontract with a legal business as defined, has no interest in how the Contractor conducts its business. Subcontractors of the General can be provided within 10 days of award to satisfy the Department of Labor's requirements.

Pursuant to the above, the General Contractor can supply evidence at time of bid of his registration as a business and contractor; and he then can supply subcontractor's registration within 10 days of award.

36-30-120 Bid Security

Paragraph (c), do not believe wording.. "comply in a nonsubstantial manner".. is a problem. Criteria would be defined in regulations.

36-30-170 Contract Award After Bids

Suggest adding paragraph (d) permitting negotiations with low responsive bidder when bid is not more than approximately 5% in excess of available funds.. "where time or economic considerations preclude resolicitation of bids".

Article 3 Competitive Sealed Proposals

36-30-270 Review and Approval By Department of Law

This paragraph would be extremely cumbersome if UA is not given its own purchasing authority. We often change terms of contracts to reflect project requirements. If these terms are in conflict with state terms I can see a lengthy delay.

Article 4 Other Procurement Methods

36-30-300 Sole Source Procurements

Paragraph (a), last sentence. If UA is not given its own purchasing authority, then strike the word "not" or make UA an exception.

36-30-320 Small Procurements

Paragraph (b) (1), if UA is given its own purchasing authority then presume this condition would not apply, i.e. outside legal counsel to have Attorney Generals approval. Otherwise UA should be named as an exception for reasons stated in Carter letter of 11/11/85.

Article 5 Contract Formation and Modification

36-30-365 Notice of Intent to Award Contract

The "Notice of Intent to Award Contract" appears to be written in coordination with 36-30-560 Filing of a Protest, paragraphs (a) and (b). It does not seem practical or wise for the State to issue an "intent to award" routinely as the bill now reads. If one can issue an "intent to award", one can also issue an award and begin to put the contract in motion. If the 10 day intent is predicated on an award protest under 36-30-365 (b), I believe it is an unnecessary delay since there are few protests compared to the number of nonprotested awards. The law, if this is where it should be written instead of the regulations, can read that a protest must be filed within 10 days of award. Normally, most agencies give the Contractor 10 to 14 days to provide a bond and sign the agreement before a Notice-to-Proceed is issued, which is time enough to consider the merits of the protest and issue or not issue a Notice-to-Proceed. In addition, this procedure of 10 day Notice of Intent to Award appears to violate the spirit of paragraph 36-30-170 (a), page 12, where it is stated that an award shall be made with "reasonable promptness" after bid.

36-30-400 Cost or Pricing Data

This section was intended to apply to awards not made by competitive sealed bidding and only on change orders or modifications over an amount established by regulations. Paragraph (a) is not written with this intent accurately stated and tends to be confusing.

Paragraph (b).. "when contractor becomes aware of a situation forming the basis of a claim".. is completely out of place here and properly should be covered under 36-30-620 Contract Controversies.

36-30-430 Standard Modification Clauses for Contracts

Paragraph (a), suggest leaving out the word "Modification" in the title to this paragraph. In addition, paragraph (a) beginning on line 12, page 23 is incomplete as written and does not make sense. It was adopted from the "Model Code" and was intact in the "Lauterbach 10-02-85" version; but in the current version, the last part of the sentence was changed and the rest of (a) left out. After "or other contract provisions as appropriate", the sentence should continue "covering the following subjects:"; which in the "10-02-85" version goes on to say: "(1) the unilateral right of the State to order in writing" (with subparagraphs), "(2) Variations in estimated quantities, etc.", "(3) Suspension of Work, etc.", and so on. Refer to 10-02-85 version. In addition, I would like to stress that this section is incompletely addressed. This section should provide how price adjustments are arrived at in contracts.

36-30-460 Modification of Standard Clauses

This section should be a subparagraph of the preceeding section 36-30-430.

36-30-480 Cost Principle Regulations

The last sentence (lines 27, 28, 29, page 24) in this section is not clear as to what is being addressed.

Article 7 Legal and Contractual Remedies

36-30-560 Filing of a Protest

Paragraph (a), line 19.. "the proposed award of a contract".. see previous comments under 36-30-365.

36-30-565 Time for Filing a Protest

Paragraph (b), see previous comments under 36-30-365 and 36-30-560.

36-30-620 Contract Controversies

Our previous comments regarding 36-30-400 paragraph (b), should be noted and reiterated that paragraph .400 (b) should be located in this section under paragraph (a).

In addition to the above, suggest under same paragraph (a) that wording be added to the effect that the contractor be required to specifically include the following on his claim:

- 1) The factual background of the claim.
- 2) The contract provisions which apply.
- 3) The bid items, quantities and/or specifications upon which the claim is made.
- 4) The specific relief requested.

Paragraph (b), lines 25 and 26, seems to contain a problem about who decides, and when, an informal agreement cannot be reached. Coupled with the foregoing, paragraph (b) tends to be confusing and backward. Suggest that 30 days be given to informally solving a contract controversy after first receiving all necessary information. If an agreement cannot be arrived at mutually within 30 days, the procurement officer then has 30 days in which to render a written decision. 90 days seems to long.

Paragraph (c) is alright, but there need not be a price break (\$50,000.00) because of only time.

Paragraph (d), believe the statement under (5) is getting into the regulations. The statute should leave more flexibility.

Paragraph (f), the wording appears to be vague and should be addressed such that it can have more thought given to processing a claim asserted by the state. Suggest wording to the effect that "the C.O.A. and C.O.D.O.T.P.F. on construction contracts shall implement regulations governing the procedures to be followed on controversies asserted by the state concerning a contract awarded under this chapter".

36-30-630 Hearing on a Contract Controversy

Paragraph (b), add last sentence.. "Refer to section 36-30-670 for conduct of hearing".

Article 8 Intergovernmental Relations

36-30-735 Restrictions on Contracting with or Employing Experts on Radiation Hazards

Paragraph (c) should exclude radiographic testing of welding under construction contracts (for DOT's benefit if not the UA).



Peters

Sherman Carter
Executive Vice President
(907) 474-7448

University of Alaska

Fairbanks, Alaska 99775-5200

January 28, 1986

Mr. Ray Gillespie, Chief of Staff
Office of the Governor
Pouch A
Juneau, AK 99811

Re: Position Paper
SB 341 Procurement Bill

Dear Mr. Gillespie:

This letter represents the University of Alaska's position regarding the SB 341 Procurement Bill and is being sent to you in response to a request from the Commissioner of Administration.

The university's overriding concern continues to be that the bill represents an unprecedented restriction on the authority of the Board of Regents to establish policies and effectively manage the fiscal affairs of the university. Inclusion within the larger bureaucratic procurement and construction management structures of the state would be a step backwards from the present quality and timeliness of services provided under university policies and procedures which were originally designed to meet the more stringent federal procurement requirements. It is the university's position that it is in the best interests of the state and the university to have the university exempted from the legislation in a manner similar to that provided the Alaska Railroad.

I have attached for inclusion in the document that will be provided to the Senate Judiciary Committee, copies of previous correspondence that the university has written objecting to inclusion in this bill.

Thank you for the opportunity to provide this information to the committee.

Sincerely,
Sherman Carter
Sherman Carter

SFC/BAP/pe
Attachments

cc: Mr. Roy Huhndorf, President and Members of the Board of Regents
President Donald O'Dowd
Chancellors Looney, Lyon, O'Rourke, Outcalt, Paradise
Commissioner of Administration



172
Sherman Carter
Executive Vice President
(907) 474-7468

January 8, 1986

University of Alaska
Fairbanks, Alaska 99775-5260

Mr. Jim Baldwin, Assistant Attorney General
State of Alaska
Pouch K - MS/0300
Juneau, AK 99811

Dear Mr. Baldwin:

In accordance with your request during the teleconference of December 18, 1985, enclosed please find, as Attachment 1, the University of Alaska's technical comments with respect to the draft legislation on procurement.

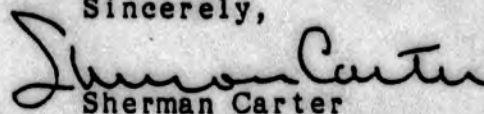
You may also be interested in the last seven pages of the attached papers, Attachments 2, 3 and 4. They are, respectively, (1) the university's position on the legislation which I sent to Senator Faiks on 11 November, (2) President O'Dowd's comments to Senator Faiks dated 7 January, and (3) a draft agenda item to be considered by regents during a meeting in Juneau on 6 February.

The university's opposition to parts of the proposed procurement legislation is essentially this: for the same reasons as those that the Alaska Railroad contends can make it more efficient, save the state money and protect the state's interests, by being excluded from provisions in the proposed legislation for state agencies, the university also can, as indeed it has demonstrated, perform its purchasing functions more efficiently as a constitutionally created corporation under governance by its Board of Regents by being excluded from provisions in the proposed legislation.

The university wishes to conduct its purchasing functions by assuring fair competition while protecting the state's interest. But, the primary problem with university purchasing at the present time is that it takes too long and too much administration in many cases to buy items, increasing costs and delaying or inhibiting operations. This problem would be greatly exacerbated if the university were to be included with state agencies under the proposed legislation.

If you have questions about Attachment 1, please contact Barbara Peters at 474-7468. If you have concerns about points made in Attachments 2, 3 or 4, please contact me.

Sincerely,


Sherman Carter

SFC/pe

Attachments

cc: Senator Jan Faiks

Mr. Roy Huhndorf, President and Members of the Board of Regents
President Donald O'Dowd

Chancellors Looney, Lyon, O'Rourke, Outcalt, Paradise

Page 2, Section 36.30.005(a) - States that on January 1, 1987 the authority for the procurement of all supplies and services shall be transferred to the Commissioner of Administration and the Chief Procurement Officer.

The university objects to this provision for many reasons, most of which have previously been provided. In addition, the university views this change as inefficient, costly, and nonresponsive to the needs of the university.

Page 2, Section 36.30.005(b) - States that on January 1, 1987 the authority for all construction and procurements to or disposals from the state equipment fleet shall be transferred to the Commissioner of Transportation and Public Facilities, subject to regulations adopted by the Commissioner of Administration.

With respect to construction, see university comments immediately above. With respect to the equipment fleet the university believes this could lead to confusion in determining who is responsible for procuring different types of equipment. Who would be responsible for procuring specialized research type farm implements, DOA or DOT&PF?

Page 2, Line 26. - States that the Chief Procurement Officer (CPO) must have 5 years public procurement experience.

The university believes that 5 years is insufficient experience. Procurement is one of the few professions where competency can only be achieved by experience. Persons holding positions of this nature would normally have at least 10 years of progressive public procurement experience.

Page 2, Line 28. - States that the CPO term of office will expire when the term of the governor expires.

The university believes that this provision effectively makes the CPO a political appointee and precludes the CPO being free from possible improper influence.

Page 3, Line 6. - States that the CPO shall supervise and control all inventories of supplies and prescribe the manner in which supplies shall be purchased, delivered, stored, and distributed.

The university can't imagine how this could possibly work. What about the supplies in the university book stores; supplies maintained in central stores warehouses; and supplies procured with federal money for research institutes upon which, federal regulations control?

Page 3, Line 11. - States that the CPO may sell, trade, transfer, or otherwise dispose of surplus, obsolete, or unused supplies.

As a corporate entity, the university holds title to its real and personal property separate from the state. The Board of Regents

has the responsibility to determine what will be sold, when, to whom, and at what price.

Page 3, Section 36.30.015. - States that the Commissioners of Transportation and Administration MAY delegate procurement authority for their respective commodities to agencies that possess the expertise.

The university requests that this section be amended to state that the commissioners SHALL delegate this authority to the university because the university does possess that expertise.

Page 4, Line 16. - States that an agency may not contract for the services of legal counsel without the approval of the attorney general.

The university takes exception to this provision. Even if the university was successful in receiving procurement authority from the DOA and the CPO, the university would still be required to seek approval from the attorney general to contract for legal services. The university maintains its own legal staff who is in a better position to select and engage legal assistance for the Board of Regents. Also, we cannot quite envision the proposed procedure if the Board of Regents again decided to sue the state.

Page 4, Line 18, 23 and 28. - States that the Board of Directors of the Alaska Railroad Corporation, the Legislative Council and the Court System shall adopt procedures substantially equivalent to those procedures prescribed by the DOA.

The university fails to see the difference in our status. Like the Alaska Railroad, the university is a separate corporation and, the legislature, according to Senator Faiks, has been one of the biggest offenders of proper procurement practices. As Senator Halford has stated, the legislature has a difficult time in agreeing to regulations that are not even written yet and so does the university. The university must also have the ability to include in university regulations, certain procurement requirements mandated by the federal government.

Page 5, Line 23. - States that the DOA shall adopt regulations pertaining to the confidentiality of technical data and trade secrets.

The university believes that this provision may conflict with the open records statutes.

Page 6, Line 11 and 20. - States that the commissioner shall establish and maintain all bid lists and that all agencies must use those lists for bid solicitations.

This has been tried in the past with no success. The university does not have on-line access to that information and without access, the system would not be responsive to our needs. To

obtain access, would require the university to purchase additional equipment, for which funds are not available. In addition, the DOA would surely require additional staff to administer this massive project.

Page 6, Line 16. - States that anyone desiring to be placed on the bid list must submit evidence of a valid Alaska business license along with a biennial fee in an amount established by regulation.

The university does not understand this requirement. Is the biennial fee to cover costs of maintaining the bid lists or is the DOA going to start issuing business licenses? What happens if an agency receives a valid bid from a company who has not paid the fee but possesses a valid business license?

Page 6, Line 25, Sec. 36.30.060 - States that the DOA will be responsible for adopting regulations governing ALL specifications.

The university agrees that specifications should not be unduly restrictive. However, the university cannot envision how this program would be managed. Again, the DOA would surely require staff to administer this program. If an agency has a unique requirement for which DOA does not have approved specifications, what then? Would the procurement be stopped pending DOA approval? This provision has a tremendous potential for resulting in unduly long lag-times in the execution of construction appropriations and a high opportunity for incorrect specifications, improper facilities and as a result, lengthy litigations.

Page 7, Line 16, Sec. 36.30.070 -States that the DOA shall adopt regulations governing the management, sale, disposal or transfer of supplies.

See previous comments.

Page 7, Line 25, Sec. 36.30.080 - States that DOA shall lease space for the use of the state and its agencies.

The university believes that management of its leasing program by DOA will result in higher costs and facilities that are less useful for university programs and less responsive to student needs. Many of the university leases are below-market-price leases from local public and private school districts, the federal government, church groups, and other entities who hold space appropriate for instruction or who have special interest in university programs. Procurement of university space is best arranged by people who understand university programs and needs and who are actively concerned with marketing the idea that the university is an important component of a community, worthy of special consideration for low-cost space.

Page 8, Line 21 - States that even though certain items are exempt from competitive bidding, the commissioner must make that

determination in writing.

The university believes that if the statutes are going to exempt certain procurements from competitive bidding, a written determination from the commissioner should not be necessary. The agency procuring officer should be responsible for adherence to the provisions. This requirement will not only delay the procurement process but will surely require additional staff in the DOA.

Page 9, Lines 19 - 23. - States that the invitation to bid shall require the bidder to list all subcontractors and supply a valid Alaska business license for the bidder and all subcontractors.

The university believes that these requirements are unrealistic and probably unenforceable. Often times when bids are submitted, the bidder does not know who the subcontractors are going to be simply because of the lack of qualified or available subcontractors. In addition, a general contractor does not have adequate time to evaluate subcontractor bids prior to bid opening. Bids can realistically be prepared without subcontractor prices by using publications which are written for that very purpose. What about the bidder from outside the state who refuses to buy an Alaskan license and who is the only source for the supply or service you are attempting to buy? In some cases, scientific or highly technical research equipment or services are only available from one source with a considerable demand. In this case, the source really doesn't care about an Alaskan business license. Finally, the state agency responsible for the issuance of business licenses would be required to increase their staff. One of the most frequent complaints that we hear is that it takes months to obtain a business license from the state.

Page 10, Line 14. - States that a bid shall be rejected if the bid does not comply with the bid security requirement unless, it is determined that the bid fails to comply in a nonsubstantial manner with the security requirements.

The university does not understand the "nonsubstantial manner" provision. All bidders must receive fair and impartial treatment. If a bid security is required and is not received, the bid should be rejected.

Page 10, Line 24. - States that the CPO must determine in writing that less than 21 days public notice is necessary.

The university does not agree that the CPO should make that determination. If an agency does not have the time to provide 21 days public notice, they certainly don't have the time to seek the approval required by this provision. This provision may also conflict with Sec. 36.30.310 which allows the procurement officer to make the determination.

Page 10, Line 25. - States that notice shall be mailed to all

active prospective contractors on the appropriate list maintained under 36.30.050.

The university does not agree with this provision because of the costs involved. Some commodities have over 100 potential sources. The mailing, duplicating and staff costs to prepare that many notices would cost more than any potential savings. The university suggests instead that notice be provided to a sufficient number of sources to generate competition. If necessary, a rotation of prospective bidders could be utilized.

Page 11, Lines 19 - 24. - States that bids are open for public inspection after contract award except to the extent the bidder designates and the procurement officer concurs, trade secrets and other proprietary data contained in a bid document are confidential.

The university believes that this provision is contrary to the existing open records statutes. If the procurement officer disagrees with the bidder and discloses information identified as proprietary etc., what liabilities, if any, does the procurement officer assume?

Page 13, Line 11. - States that an Alaskan bidder must have maintained a place of business within the state for a period of six months immediately preceding the date of the bid.

The university believes that a definition of "a place of business" is needed. The university suggests that at least a definition of what is NOT considered a place of business should be provided. Does an Alaskan post office box with forwarding services qualify? Does a telephone answering service qualify? Does a construction trailer set on a job site qualify?

Page 14, Lines 1 - 14. - States that the commissioner may provide by regulation the use of competitive sealed proposals but then states that prior to utilizing this method of procurement, approval must be obtained from the CPO or DOT&PF.

The university believes that if the regulations are appropriately written additional approval should not be necessary. This additional requirement will impede the procurement process and will no doubt require additional staff at DOA.

Page 17, Lines 9 - 23. - States that sole source procurements require the approval of the commissioner of administration or the commissioner of transportation and public facilities and that this requirement may NOT be delegated.

The university believes that if the regulations are appropriately written additional approval should not be required. This additional requirement will impede the procurement process and will no doubt require additional staff at DOA and DOT&PF.

Page 18, Line 18. - States that procurements less than \$5000.00 may be made in accordance with small procurement regulations adopted by the commissioner.

The university believes that this dollar threshold should be increased to \$10,000.00. Inflation and administrative costs makes current dollar thresholds very expensive with little savings realized. The Senate's consultant from the University of Arizona stated that the dollar threshold at Arizona is \$10,000.00.

Page 18, Line 20. - States that professional services not exceeding \$25,000.00 shall be made in accordance with small procurement regulations adopted by DOA.

The university believes that professional services under \$25,000.00 should remain exempt from any competition. Specifications for professional services are difficult and time consuming to develop, again, offsetting any possible savings realized thru any sort of competitive process. The university continues to believe that attorneys and physicians should be exempt from competitive processes. The university maintains that over 95% of the services procured from these professionals are being procured through negotiations/sole source. Including these professions in the statutes subject to any sort of competition simply places an additional administrative burden on the requesting agency, the Department of Law, and the DOA.

Page 18, Line 23. - See previous comments.

Page 19, Line 26. - States that an agency must provide notice of intent to award a contract at least 10 days before the formal award can be made.

The university believes that this requirement will again unnecessarily slow down the procurement process. If the intent is to allow time for protests against the award, the current five day from notification of award should be sufficient. A prospective bidder must assume some responsibility in this process. If the bidder is that interested, a telephone call would appear to be in order.

Page 21, Line 15. - The university suggests that paragraph (b) beginning on line 23, page 21 be omitted in its entirety since it has no place here (see 36.30.260). Instead, make the following insertion in line 16, page 21 as follows: between the words: "contract modification," and "...the Contractor or..." insert "or in the event the Contractor is claiming work in addition to its contract".

Page 23, Line 11. - The university suggests leaving out the word "Modification" in the title to this paragraph. In addition, paragraph (a) beginning on Line 12, page 23 is incomplete as written and does not make sense. It was adopted from the "Model

Code" and was in tact in the "Lauterbach 10-02-85" version; but in the current version, the last part of the sentence was changed and the rest of (a) left out. After "or other contract provisions as appropriate", the sentence should continue "covering the following subject:"; which in the 10-02-85 version goes on to say: "(1) the unilateral right of the state to order in writing...", "(2) variations in estimated quantities, etc.", "(3) suspension of work, etc."

Page 25, Line 4. - States that procurement records shall be retained and disposed of in accordance with guidelines and schedules approved by the state archivist.

The university agrees to furnish a copy of records retirement information to the state archivist but must be allowed to set schedules and retain possession of the records. The university is frequently audited by the federal government and the Board of Regents external auditors. The records must be retained in accordance with federal requirements and must be readily available for review.

Page 25, Line 9. - States that the contract file must be kept by the commissioner AND the contracting agency for each contract awarded under competitive sealed proposals.

The university does not agree that the file should be maintained in both locations. This requirement results in the duplication of records and creates an unnecessary administrative burden on both agencies.

Page 25, Line 18, Section 36.30.520. - States that the commissioner shall maintain for a minimum of five years a record listing of all sole source and emergency procurements.

The university does not have the staff or equipment to accomplish this reporting requirement. It would seem that DOA would also require additional staff to gather and maintain this information.

Page 27, Line 15. - See previous comments.

Page 31, Line 16, Section 36.30.620. - States what a contractor has to do in filing a claim but omits specific information that is to be provided the procurement officer.

The university suggests the contractor be required under paragraph (a) to specifically include at least the following: 1) factual background of the claim. 2) contract provisions which apply. 3) bid items or quantities upon which claim is made and 4) specific relief requested.

Page 47, Line 15. - States that a person who contracts in a manner contrary to the requirements of this chapter or the regulations adopted under this chapter is personally liable for the recovery of all state money paid plus 20 percent of that amount, legal

interest from the date of payment, and all costs and damages arising out of the violation.

The university takes exception to this provision because it does not allow for human error. Any purchasing agent who makes an honest mistake would be subject to the above penalties.

Page 48, Lines 21 and 22. - The university believes these lines are garbled and suggests the use of the language in the 10-02-85 version of the bill.

[illegible]

University of Alaska

Fairbanks, Alaska 99775-5260

November 11, 1985

The Honorable Jan Faiks, Senator
Alaska State Senate
1024 W. 6th Avenue
Anchorage, AK 99501

Dear Senator Faiks:

President O'Dowd is off campus this week on university business, and so I am replying to the letter you sent to him dated 8 November inviting the university's comments on proposed legislation governing procurement practices and procedures.

Before commenting on the proposed bill, I want to thank you for providing the University of Alaska the opportunity to comment on this proposed legislation and for your efforts to improve procurement statutes. I also thank you because this last draft legislation has been changed to correct some problems in current procurement legislation which changes we requested during hearings you recently conducted here in Fairbanks on the proposed bill. The university fully supports the spirit, the intent, and in most cases, provisions contained in the draft bill. We do, however, have serious concerns regarding parts of the bill as noted below:

Objectional provision -- The bill as currently drafted makes the Department of Administration responsible for all university procurement. It does provide that the commissioner may delegate to the Board of Regents the authority to procure construction services.

University comment -- There are no assurances that the delegation for construction services will be provided and there are no provisions that would allow the university to continue procuring promptly and efficiently its other needs, i.e., supplies, services, professional services and leases. Overall, the university has done a commendable job in its procurement actions, as you have acknowledged on at least two occasions. The Ombudsman reported to your committee recently that in the last five years only 28 procurement (including construction and architects) related complaints had been lodged against the university. Although the Ombudsman did not report how many of

Senator Jan Fain

Page 2

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the 28 were unfounded, that figure does not appear to be excessive when one considers the tens of thousands of procurement transactions processed during that time. To my knowledge, there has only been one procurement related lawsuit during the same time period.

With that in mind, it is perplexing to think that legislation will be changed to remove the university's procurement authority since doing so would surely slow purchasing activities to the detriment of faculty, staff and students. The university has no objection to developing regulations substantially equivalent to those developed by the Department of Administration or having independent procurement audits. We have done so. However, Jan, frankly, the university's major problem in purchasing now is that university departments get impatient, since it already takes too long in many cases to purchase needed items. This causes employees to circumvent established procedures. The bill does not seem to concern itself with efficiency and economy in purchasing and would exacerbate existing problems mentioned above.

Objectional provision -- The bill as currently drafted allows the Department of Administration to sell, trade or otherwise dispose of university supplies/equipment.

University comment -- As a corporate entity, the university holds title to its real and personal property separate from the state. The Board of Regents has the responsibility to determine what will be sold, when, to whom, and at what price. The university, of course, has no objection to following reasonable guidelines for disposing of its property.

Objectional provision -- The bill as currently drafted will not allow the university to contract for legal services without the approval of the attorney general.

University comment -- Apparently, the university would first have to obtain the attorney general's approval to obtain the service and then proceed to the Department of Administration who would contract for the service. Apart from whether or not this is constitutional in the case of the university, the procedure will not work. In many legal matters, one simply does not have the time to incur the delays this method would create. Regents will want to select their own legal counsel, rather than to have the commissioner of administration do that on a competitive or other basis, since regents cannot avoid their responsibility for living with the outcome of university litigation. Also, I cannot quite envision the proposed procedure if the Board of Regents again decides to sue the state.

The university maintains its own legal counsel on staff, and as a corporation can sue or be sued in its own name. As a practical matter, university in-house counsel is in the best position to select and engage legal assistance for the Board of Regents and the university.

Objectional provision -- The bill as currently drafted requires that the commissioner of administration approve all sole source and emergency procurements. The bill does provide for delegation authority to make emergency procurements but not sole source procurements.

University comment -- Complying with this requirement would unnecessarily impede and delay university operations. For example, researchers involved in many programs at the university are often confronted with circumstances beyond their control which require prompt responses from our procurement staff.

Objectional provision -- The bill as currently drafted would require the university to use bid lists which are created and maintained by the Department of Administration.

University comment -- This has been tried in the past with no success. The university does not have on-line access to that information and without access, the system would not be responsive to our needs. To obtain access would require the university to purchase additional equipment. The regents' external auditors have recommended that university purchasing offices keep records on suppliers who do not perform adequately, rather than automatically to continue to do business with firms regardless of how they perform. The university currently publicizes widely its requests for bids but wants to avoid the expense of doing such things as mailing out dozens and dozens of unnecessary requests for bids.

The above-listed objections are not the only ones which the university has with the proposed bill. However, first must be decided whether or not the legislature is going to take away the purchasing authority which the Board of Regents now has. I shall have the university's purchasing staff submit to your staff more detailed, technical comments.

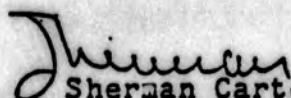
During a hearing you had here in Fairbanks recently, I provided you current regents' policy and university regulations governing conflicts of interests. These have served the university extremely well. The university has not had the type of problems that some others paid by the state seem to have had and

November 11, 1985

to be having in these respects. If the legislature does enact an ethics code to govern university employees and operations, related rulings and administration should continue to be held under the Board of Regents as permitted presently, to expedite administration, promote efficiency and since the constitution makes the board responsible for "governing" the university.

As you know, several of us from the university testified at length and provided massive amounts of documentation during a recent hearing on the bill which you held in Fairbanks. Then, university representatives later appeared at a hearing you held on the bill in Anchorage. Since the cost of attending numerous meetings in Anchorage and elsewhere is quite high, I do not now plan to send a university representative to the three hearings on the bill you now have scheduled in Anchorage unless you indicate that you want them there. However, regents may want to talk with you about these matters. The Board of Regents discussed that possibility during meetings in Bethel on 7 November.

Sincerely,


Sherman Carter

SFC/pe

Attachment

cc: Mr. Roy Huhndorf, President and Members of the Board of
Regents
President Donald O'Dowd
Chancellors Looney, Lyon, O'Rourke, Outcalt, Paradise

Donald D. O'Dowd
President

UNIVERSITY OF ALASKA STATEWIDE SYSTEM

FAIRBANKS, ALASKA 99775-5560

January 7, 1986

The Honorable Jan Faiks
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Faiks:

Thank you for sharing with us the completed draft legislation formulated by the Senate Select Interim Committee on Procurement Practices and Procedures. Our staff is currently studying the terms of the bill and we look forward to continuing discussion on this important issue during the upcoming session.

As you know, the University has strong objections to several provisions of the bill as they apply to the University of Alaska. Sherman Carter's memorandum to you of November 11, 1985, details many of our specific concerns but I think you know that the overriding issue from the Board of Regents' perspective is the bill's unprecedented restriction on the authority of the Board to establish policies and effectively manage the fiscal affairs of the University. It is our firm contention that including the University in the larger bureaucratic procurement structure of the State would jeopardize the current procedures being followed by the University which already meet the highest standards and would, furthermore, substantially slow down our ability to obtain necessary materials and services in a timely manner. We believe the State is benefited by the current high level of efficiency and effectiveness attained by the University in its procurement practices and a change of procedure would not benefit the citizens of Alaska.

Sincerely,

Donald D. O'Dowd
President

DDO:dm
cc: Sherman Carter
Nancy Neenan

premiums, steps are being taken to extract money from throughout the university so that illegal deficits will not occur.

For FY87, priority #1 of 55 increments in the regents' operating budget request was an increased \$1.7 million for risk management; and priority #1 of the regents' capital budget request was an additional \$2.5 million to provide a risk management stabilization fund. Neither the \$1.7 million or \$2.5 million were included in the governor's budget requests, although items of lower priority to the Board of Regents were so included.

Baring unforeseen calamities, the university will get through FY86 as explained above. But, the \$1.7 million and \$2.5 million indeed remain top priority needs in FY87. These costs will have to be covered. If not funded directly, the funds will have to be provided by cutting from other university programs, or by increasing charges, i.e., tuition.

For example, to distribute the \$1.7 million cost to the major administrative units, based on exposure and loss experience would mean assessing each unit approximately as follows: statewide -- \$185,199; UAB -- \$827,130; UAA -- \$221,833; UAJ -- \$110,531; CCREE 217,478; ACC -- \$145,929.

Plans are to review these situations with the Committee of the Whole on 6 February and at that time to request that regents talk personally with the Governor and legislators to get the Board's top priority operating and capital budget requests for FY87 funded, namely, the aforementioned \$1.7 million and \$2.5 million.

10. Proposed Procurement Legislation

Reference 10
Information Only

The university's situation with respect to proposed procurement legislation has been reviewed with regents in the past.

At the November meeting in Bethel, regents were advised that Senator Jan Faiks and the Senate Select Committee on Procurement Practices and Procedures have drafted procurement legislation that virtually removes the university's purchasing authority. On November 11, 1985 the university wrote to Senator Faiks and objected to many of the provisions contained in the draft legislation. All regents were provided a copy of that letter.

The current situation is that the third and presumably the final draft of the legislation has been issued and, according to Senator Faiks, will be introduced in the Senate on the first day of the upcoming legislative session.

A review of the draft reveals that none of the university's objections have been resolved. In fact, the previous statement contained in the draft that allowed for the Commissioner of Administration to delegate construction services to the Board of Regents has been removed. It now provides that all construction will be under the auspices of the Commissioner of Transportation and Public Facilities. This would change or eliminate, in ways which cannot now be foreseen, functions now performed by the university's facilities and construction division and the university administration's ability to provide regents with the type of staff work it now receives with respect to capital projects.

On December 18, 1985 university personnel participated via teleconference in a meeting called by the Department of Administration. The meeting was called to appoint committees to write the regulations which would implement this legislation and to seek objections which were technical in nature. Attached for your information are the comments that the university provided to the Department of Law. Also attached is a copy of a letter which President O'Dowd sent to Senator Faiks on 7 January.

11. Selection of External Auditors

Past Reference:

Pgs. 6-7, Unofficial Minutes - Finance Committee,
11/7/85

This matter is being referred to the Committee of the Whole rather than to the Finance and Business Management Committee since, as shown in the reference, the chairman of the Finance Committee asked that all regents be closely involved in the auditor selection and since, as explained below, making the final selection in February, rather than holding this action until the Board meeting in March, will be advantageous.

The reference describes steps which were scheduled to be taken to select the regents' external auditors. In accordance with regents' instructions, the university goes through a process to select an auditor at least once every five years.

Copies of the university's request for proposals to provide audit services were distributed to fourteen major audit firms and to the regents on December 2, 1985. Six firms submitted proposals in response to the request. A review committee chaired by Barbara Joy, the university's director of internal audit, is currently evaluating the proposals. Copies of the committee's report on the evaluation and related recommendations will be provided to Board members prior to the committee meetings in Juneau if possible.

Proposed amendments to SB 341:

1. Page 45, after line 26, insert new subsection (12), *renumber existing section*
(12) disposals of real or personal property of the University of
Alaska under AS 14.40.170^(a)(4).

2. Page 48, line 5, delete ", including the University of Alaska"

Page 48, line 6 after "Corporation," insert "or the University of Alaska"

3. OPTION ONE

Page 4, after line 22, insert new subsections (f) and (g)

(f) The Board of Regents of the University of Alaska

(1) may contract for the procurement of construction, supplies,
services, and professional services for the university; and

(2) shall adopt procedures to govern the procurement of supplies,
services, professional services, and construction by the university
which are substantially equivalent to the procedures prescribed in this
chapter.

(g) The President of the University of Alaska is the chief
procurement officer for the university.

3. OPTION TWO

Page 53, line 7, insert new *Sec. 7, *renumber existing section*

* Sec. 7. AS 14.40.170 is amended to read:

*Sec. 14.40.170. DUTIES OF BOARD OF REGENTS. (a) The Board of Regents
shall

(1) appoint the president of the university by a majority vote of
the whole board, and the president may attend meetings of the board;

(2) fix the compensation of the president of the university, all
heads of departments, professors, teachers, instructors and other
officers;

(3) confer such appropriate degrees as it may determine and
prescribe;

(4) have the care, control and management of

(A) all the real and personal property of the university; and

(B) land conveyed to the Board of Regents by the commissioner of natural resources in the settlement of the claim of the University of Alaska to land granted to the state in accordance with the Act of March 4, 1915 (38 Stat. 1214), as amended and in accordance with the Act of January 21, 1929 (45 Stat. 1091) as amended;

(5) keep a correct and easily understood record of the minutes of every meeting and all acts done by it in pursuance of its duties;

(6) under procedures to be established by the commissioner of administration, and in accordance with existing procedures for other state agencies, have the care, control, and management of all money of the university and keep a complete record of all money received and disbursed;

(7) adopt reasonable rules for the prudent trust management and the long-term financial benefit to the university of the land of the university;

(8) provide public notice of sales, leases, exchanges and transfers of the land of the university or of interests in land of the university;

(9) report each year within the first 10 days of the convening of a regular session of the legislature on the expenditures made during the preceding fiscal year from the funds of the University of Alaska that are derived from sales, leases, exchanges, or transfers of the land of the university or of interests in land of the university that were conveyed to the University of Alaska in settlement of the claim of the University of Alaska to land granted to the state in accordance with the Act of March 4, 1915 (38 Stat. 1214), as amended, and in accordance with the Act of January 21, 1929 (45 Stat. 1091) as amended;

(10) adopt procedures to govern the procurement of supplies, services, professional services, and construction by the University which are substantially equivalent to the procedures prescribed in AS 36.30 (State Procurement Code).

(b) The Board of Regents may

(1) adopt reasonable rules, orders and plans with reasonable penalties for the good government of the university and for the regulation of the Board of Regents;

(2) determine and regulate the course of instruction in the university with the advice of the president;

(3) contract for the procurement of construction, supplies, services, and professional services for the university.