Report:

SB 341:

POSITION PAPERS & FISCAL NOTES

SB 341

POSITION PAPERS

AND

FISCAL NOTES

Those submitting:

Office of the Governor
Department of Administration
Department of Commerce
Department of Community and Regional Affairs
Department of Education
Department of Environmental Conservation
Department of Fish & Game
Department of Health and Social Services
Department of Labor
Department of Law
Department of Military & Veterans Affairs
Department of Natural Resources
Department of Public Safety
Department of Revenue
Department of Transportation and Public Facilities
University of Alaska

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

MEMORANDUM

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

DATE: February 4, 1986

PHONE: 465-3616

FROM: Michael A. Nizich
Director, Division of
Administrative Services
Office of the Governor

SUBJECT: SB 341

The Department of Administration has requested all State agencies to carefully review SB 341 ("An Act Relating to State Procurement Practices and Procedures") and to submit position papers and fiscal notes to your office. I have reviewed this bill in detail, and find no substantive changes from current practices and procedures. Although I am aware that a substantial amount of time was spent on this issue by the Senate Committee on State Procurement Practices and Procedures, the Department of Administration and the Department of Law, there is nothing in this bill that materially changes the way State agencies currently purchase goods and services (with the exception of Legislative Affairs).

No fiscal note is attached to this memo. It is not possible to determine what fiscal impact this legislation will have on the Office of the Governor until the required regulations are promulgated by the Department of Administration.

I am available to answer questions or discuss this issue further at your convenience.

cc: Ray Gillespie
Laurie Herman
Marsha Hubbard

Pos.tion Paper
SB 341

This bill establishes fair, comprehensive and modern procurement practices and procedures for the State. It causes these practices and procedures to be applied as consistently as possible among the executive, legislative and judicial branches of State government. It helps to promote broad-based competition and increased economy in all State procurement activities. It provides safeguards for the maintenance of a procurement system of quality and integrity while permitting continued development of the procurement practices and policies of the State.

The Department of Administration supports this bill with the attached amendments.

Robert J. Link, Director
Division of General Services & Supply

2/4/86
Date

Commissioner Eleanor Andrews
Department of Administration

2/7/86
Date

Analysis of Bill/Program Effects
SB 341

This bill will create the need for a complete revision of chapter 15 of the Administrative Code and complete revision of the Policy and Procedures Manual for the contracting section of the Division of General Services & Supply. These revisions will be accomplished through a professional services contract.

Sec. 36.30.005
Executive branch procurement authority is centralized with the commissioner of Administration and the chief procurement officer, but may be delegated as specified in the bill.

Sec. 36.30.005(b)
The procurement authority related to construction and the State Equipment Fleet and the control over construction and the State Equipment Fleet is transferred to the commissioner of Transportation and Public Facilities (DOT&PF), subject to regulations adopted by the commissioner of Administration.

Sec. 36.30.010
The chief procurement officer may be removed from office by the commissioner only for cause. The term of office of the chief procurement officer expires when the term of office of the Governor expires.

Sec. 36.30.010
Unless specifically provided otherwise, the chief procurement officer is responsible for the procurement, inventory and sale of all goods and services used by the State and for the regulations necessary to carry out the intent of the bill.

Sec. 36.30.015
The Department of Transportation and Public Facilities may contract for the procurement of equipment for the State Equipment Fleet.

Sec. 36.30.015-.020-.030
The judicial and legislative branches and the Alaska Railroad Corporation must adopt procurement procedures which are substantially equivalent to the procedures prescribed in this bill.

Sec. 36.30.050
Lists of contractors to provide goods and services must be developed and maintained. These lists must be used and made available for use by all branches of State government.

Sec. 36.30.050
A person who wishes to be on the contractors' list must have a valid Alaska business license and pay a biennial fee. The requirement that all those on the contractors' list have an Alaska business license may be in conflict with

federal restraint of trade laws. The State may face legal challenges to this requirement from out-of-state contractors.

Sec. 36.30.060
The commissioner must adopt regulations governing specifications for goods and services and monitor the use of these specifications.

Sec. 36.30.070
The commissioner must adopt regulations governing the management, sale and disposal of goods.

Sec. 36.30.080
The Department of Administration must lease space for the use of the State or an agency. If the lease agreement is for an amount in excess of $1,000,000 annual rent, the department must provide notice to the legislature as described in the bill.

Sec. 36.30.140
The bill provides that the procurement officers must open all invitations in the presence of at least one witness.

Sec. 36.30.160
Late bids will not be accepted unless the delay was due to an error of a State employee directly responsible for opening the bids.

Sec. 36.30.190
The commissioner may provide by regulation that, in cases where it is not practical or advantageous to procure goods or services through competitive bidding, these goods or services may be procured through competitive sealed proposals. In cases where competitive sealed proposals are used, the chief procurement officer or, for construction contracts and procurements for the State Equipment Fleet, the commissioner of DOT&PF, must determine in writing that the use of competitive bidding is not practical or advantageous to the State.

Sec. 36.30.210
All contractors and subcontractors responding to a request for competitive sealed proposals must have a valid Alaska business license. The requirement that all those on the contractors list have an Alaska business license may be in conflict with federal restraint of trade laws. The State may face legal challenges to this requirement from out-of-state contractors.

Sec. 36.30.300
Goods and services may be procured without competitive sealed bids or competitive sealed proposals or other forms of competition only after a written determination has been made by the commissioner that there is only one source for the required goods or services. Current law permits the commissioner to limit bid solicitation or to waive bidding requirements when a finding is made that it is in the best interest of the State to do so. From December 1, 1984, to December 1, 1985, the Division of General Services & Supply processed 548 bid waiver requests under current law. Of those sampled, only 20 percent meet the sole source requirement of the new bill. This means that under the new bill 438 more competitive sealed bids would be required.

Sec. 36.30.360
The procurement officer is required to prepare a written determination of responsibility of a bidder in accordance with regulations adopted by the commissioner.

Sec. 36.30.365
The bill requires that the procurement officer provide each bidder a notice of intent to award a contract (abstract) at least ten days prior to the award of the contract. Current law requires that five days pass from the time the abstract is issued until the award becomes final. This change will affect the operations of the Division of General Services & Supply in that it will add a minimum of five working days to the length of each competitive sealed bid and competitive sealed proposal.

Sec. 36.30.390
The bill requires that before using a multi-term contract the procurement officer will determine, in writing, that the estimated requirements are reasonably firm and continuing for the proposed period of the contract and that the contract will serve the best interest of the State by encouraging effective competition or otherwise promoting economies in State procurement. This will add additional time to the transaction each time a multi-term contract is used.

Sec. 36.30.430-.460
The bill requires the commissioner to adopt regulations to permit the inclusion in contracts of clauses providing for adjustments in prices, time of performance, and remedies for liquidated damages, delay or nonperformance, and termination of the contract for default or the convenience of the State. The procurement officer may vary these required clauses provided a written determination justifying the change is made and that this determination is reviewed and approved by the Department of Law. This procedure will have an operational impact on the Division of General Services & Supply, since it will build in additional time to the preparation of each nonstandard bid. The additional time will be caused by the requirement to make a written determination and have it approved by the Department of Law. Neither of these steps are required under the current law.

Sec. 36.30.540
The bill requires that the commissioner report to the legislature every two years any matters that involved litigation, any recommendations for changes of this chapter, usage of sole source and emergency procurements provisions of this chapter and a summary of the information concerning competitive sealed proposals.

Sec. 36.30.560-.565-.570
The bill provides that an interested party may protest the award of a contract, the proposed award of a contract or the solicitation for goods or services before the bid is opened. The protest must be filed in writing with the procurement officer and according to the form described in the bill, including, a detailed statement of the factual and legal grounds of the protest and the form of relief requested. Depending on the nature of the protest, it may be filed up to ten days from the date of the notice of intent to award. This is a change from the existing law, in that it allows five

additional days for a protest to be filed. If a protest is received after a contract has been awarded the procurement officer must give notice to the contractor or, if no award has been made, to all interested parties. This will require additional work on the part of the procurement officers since they are not now required to provide the notices referenced above. The increase in time allotted for the receipt of protests will add to the time it takes to conduct competitive sealed bids.

Sec. 36.30.575
After a protest is filed an award may be made unless the procurement officer determines in writing that reasonable probability exists that the protest will be sustained or that stay of the award is not contrary to the best interest of the State. This changes existing law. Currently awards are automatically stayed when a protest is received. The award remains in abeyance until the hearing officer renders a decision on the protest. The new bill creates additional work for the procurement officers since it permits them to make a first-line, written determination on the propriety of the protest.

Sec. 36.30.580
The bill requires the procurement officer to issue a written decision containing the basis for the decision within 14 days after a protest is filed. A copy of the decision must be furnished to the protester by a type of mail that provides evidence of receipt. The time for a decision may be extended up to 26 days by the commissioner for cause. If the decision is not made by the date due, the protester may proceed as if the procurement officer had issued a decision adverse to the protester. This requires additional work on the part of the procurement officers. Under current law the written decision to the protester is prepared by the hearing officer. This change will also require additional work from the support staff, since they will have to keep files of the decision and the evidence of receipt of mail by the protester.

Sec. 36.30.585
The bill requires that the procurement officer implement an appropriate remedy if the procurement officer sustains the protest. This is a change from the current law. Currently the hearing officer determines whether or not a protest should be sustained and directs an appropriate remedy. The new bill will create additional work for the procurement officers.

Sec. 36.30.590
The bill permits a protester to appeal the decision made by the procurement officer to the commissioner. The appeal must be filed within five days of the protester's receipt of the procurement officer's decision and identify the factual or legal errors which form the basis for the appeal. A copy of the appeal must be filed with the procurement officer. This will have an operational impact on the bid process because it adds an additional five days to it.

Sec. 36.30.595
The bill requires that the procurement officer immediately give notice to the contractor, if a contract has been awarded, or to all interested parties if no award has been made. The commissioner must, on request, furnish a copy of the appeal to any person notified above. Under current law the person who files the appeal is responsible for providing a copy of their appeal to all

interested parties. This change will create additional work for the procurement officers.

Sec. 36.30.605
The new bill requires that the procurement officer file a complete report on the protest and decision with the commissioner within seven days from the time the protest appeal is filed. The commissioner may extend this time if the procurement officer requests it in writing and there is sufficient reason to warrant an extension. The commissioner must notify the protester in writing of the date the report is due if an extension is granted. The protester may file comments on the protest report with the commissioner within seven days of the protester's receipt of the protest report. The protester must file copies of these comments with the procurement officer and other interested parties. The commissioner may extend this time if the protester requests it in writing and there is sufficient reason to warrant an extension. The commissioner must notify the procurement officer in writing of the date the report is due if an extension is granted. None of this is required under current law. It will cause an operational and fiscal impact on the Division of General Services & Supply. The operational impact will be the additional 14 days, minimum, that it takes to close the transaction.

Sec. 36.30.620
The bill permits a contractor to file a claim concerning a contract awarded under this section. If a claim is filed the procurement officer must review the facts relating to the controversy, obtain legal, fiscal or other necessary advice and issue a written decision within 90 days after receipt of the claim. This time may be extended by the commissioner for good cause if the controversy concerns an amount in excess of $50,000. If an extension is granted the procurement officer must so notify the contractor and advise the contractor of the date by which a decision will be issued. The procurement officer must send a copy of the decision to the contractor by some method that provides evidence of receipt. If the decision is not issued by the date due, the contractor may proceed as if a decision was made that was adverse to the contractor.

If a contract controversy cannot be resolved by agreement the matter must be immediately forwarded to the commissioner. The procedures described above are not in the current law. They will create additional work for the procurement officers.

Sec. 36.30.625
The bill permits an appeal, based on legal or factual errors of the procurement officer's decision, to be filed with the commissioner. A copy of the appeal must be filed with the procurement officer.

Sec. 36.30.630
The bill provides that the commissioner may, within 15 days of the receipt of an appeal, adopt the decision of the procurement officer or schedule a hearing.

Sec. 36.30.635
The bill provides that a person, for cause, may be debarred from doing business with the State, for a period not to exceed three years, after consultation with the using agency and the attorney general and after a hearing. It further provides that a person, for probable cause, may be suspended from doing business with the State, for a period not to exceed three months, after consultation with the using agency and the attorney general.

Proposed Technical Amendments to
SB 341

Sec. 36.30.010
Page 2
Lines 21, 22, 23, 24, 25

PROPOSED AMENDMENT
(a) The commissioner shall appoint to the partially exempt service the chief procurement officer of the State who is responsible for the procurement and managment of supplies, services, and professional services for agencies in the executive branch.

REASON: To clarify the intent of the bill because elsewhere it makes the chief procurement officer for the management of supplies during their life cycle, including the responsibility for property management, inventory and disposal.

Sec. 36.30.015
Page 3
Lines 21, 22, 23

PROPOSED AMENDMENT
(a) The Department of Transportation and Public Facilities may contract for construction and procurements for the acquisition and operation of equipment in the State Equipment Fleet.

REASON: To clarify the intent of the bill, that is, to permit the Department of Transportation and Public Facilities to procure cars, trucks, graders, and necessary supplies for the operation of the State Equipment Fleet.

Sec. 36.30.015
Page 3
Lines 25, 26, 27

PROPOSED AMENDMENT
The commissioner of Transportation and Public Facilities may delegate to another agency the authority to contract for construction (.) and for the procurement of equipment to be added to the State Equipment Fleet.

REASON: To clarify the intent of the bill. Without the proposed amendment, the bill says that the commissioner of Transportation and Public Facilities may only delegate the authority to contract for construction and implies that none of the other authority vested in that position may be delegated.

Sec. 36.30.015
Page 4
Lines 5, 6, 7

PROPOSED AMENDMENT
(b) The commissioner may delegate to an agency the authority contract for and manage (SUPPLIES) services, professional services and supplies, except property of the State Equipment Fleet. (SERVICES AND PROFESSIONAL SERVICES.)

REASON: To clarify the intent of the bill.

Sec. 36.30.120
Page 10
Lines 8, 9, 10, 11, 12, 13

PROPOSED AMENDMENT
Bid security must be in an amount equal to at least

(1) 10 percent of the amount of the bid if the bid does not exceed $100,000; (OR) and

(2) five percent of the amount of (THE) a bid exceeding $100,000 . if the bid exceeds $100,000.

REASON: To clarify the intent of the bill, that is, that the bid security required for a contract greater than $100,000 is more than the bid security required for a contract of less than $100,000.

Sec. 36.30.140
Page 11
Lines 21, 22

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

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

Sec. 36.30.240
Page 16
Lines 5, 6, 7, 8, 9

PROPOSED AMENDMENT
Offerors reasonably susceptible of being selected for award shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and before the award of the contract for the purpose of obtaining best and final offers.

REASON: To clarify the intent of the bill, that is, that the contracting agency may accord specific offerors an opportunity to discuss and revise their competitive sealed proposals and submit their best and final offer but that this may be done only with offerors whose proposals initially met the intent of the competitive sealed proposal and were reasonably susceptible of being selected for award.

Sec. 36.30.380
Page 20
Lines 10, 11, 12, 13, 14

PROPOSED AMENDMENT
Except for a contract awarded through competitive sealed bidding (AND) or a firm fixed-price contract, a contract may not be used unless it has been determined in writing by the procurement officer that the proposed contractor's accounting system . . . .

REASON: To clarify the intent of the bill. That contracts established by competitive bid or other contracts with a fixed-price need not have the approval of the contractor's accounting system. These are contracts established by bid which do not have a firm fixed price.

Sec. 36.30.510
Page 25
Lines 8, 9, 10

PROPOSED AMENDMENT
A contract file open for public inspection must be kept by (THE COMMISSIONER AND) the contracting agency for each contract awarded under competitive sealed proposals.

REASON: The proposed amendment would eliminate the need for duplicate sets of contract files to be kept.

Proposed Amendments to
SB 341

Sec. 36.30.320(b)(2)
Page 18
Lines 25, 26, 27

(WITH A PERSON UNDER THIS SUBSECTION IF THE TOTAL AMOUNT OF PROFESSIONAL SERVICES CONTRACTS AWARDED TO THAT PERSON FROM THE AGENCY EXCEEDS $25,000 IN A 12 MONTH PERIOD.)

REASON: The intent of this section--to prevent the spending of a large amount of funds with a contractor in small parts to avoid the competitive process--is covered by (d) of this section. This paragraph will prevent a contractor who has received a contract over $25,000 from being considered for small contracts since it would be necessary to issue an RFP in order to consider them.

Sec. 36.30.300(d)
Page 18
Line 3--insert

(d) The using agency may submit written evidence to support a determination that there are a limited number of suppliers capable of providing specific requirements. If the determination is made by the commissioner of Administration or the commissioner of Transportation and Public Facilities as appropriate that a limited number of suppliers are capable of providing specific requirements and that use of the notice requirements of 36.30.130 is inappropriate the procurement officer shall seek the maximum competition practicable from those suppliers determined to be capable of meeting the State's requirements.

REASON: There are numerous circumstances in which a piece of equipment requires a part, accessory, or attachment which is only available from authorized dealers or representatives. The availability of the dealers authorized to sell within the state is often limited. It is appropriate to seek maximum competition from those capable of supplying the required items. It is inappropriate to notify numerous bidders who cannot possibly supply the requirements.

Sec. 36.30.130
Page 10 lines 19-29
Page 11 lines 1-8

We do not have a problem with the requirements of this section as we have been operating under these requirements. We would resist an effort to make the presently optional forms of notice mandatory. Requiring all forms of notice would increase work, paperwork, and more important, advertising costs significantly.

5/11K3/0130-10/1

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

BILL/Resolution No.: Senate Bill 341
Title: "An act relating to state procurement practices and procedures and providing for an effective date."
Sponsor: Rules by request for Senate
Requestor: Select committee
Date of Request: _____

FISCAL DETAIL

Agency Affected: _____
BRU: Department of Administration
Division of Administrative Services
Components: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	0	80.7	161.3	166.1	171.1	176.2
TRAVEL	0	8.9	17.8	18.3	18.8	19.4
CONTRACTUAL	0	38.2	76.4	78.7	81.1	83.5
SUPPLIES	0	1.0	1.9	2.0	2.1	2.2
EQUIPMENT	0	8.0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	136.8	257.4	265.1	273.1	281.3
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	136.8	257.4	265.1	273.1	281.3
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL		137.3	257.4	265.1	273.1	281.3

POSITIONS:

FULL-TIME	0	3	3	3	3	3
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Attached.

Prepared By: Gary Bader Gary M. Bader Phone: 465-2277
Division: Administrative Services Date: 2/6/86

Approved by Commissioner: Eleanor Andrews Date: 2/7/86
Agency: Department of Administration

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Rev. 11/8/85

7/1K1/0130-10

CONTINUATION of FISCAL NOTE ANALYSIS

For Senate Bill No. 341

SUBJECT OF PROPOSED BILL:

State procurement practices and procedures.

SUMMARY/EXPLANATION OF INTENT:

"To simplify, clarify, and modernize the law governing Porocurements by the State."

ESTIMATED FISCAL IMPACT:

Capital: 0

Operating: $136,800 FY 87
$257,400 FY 88

ANALYSIS:

A. Assumptions

1. Enactment of Senate Bill #341 will significantly impact the Department of Administration and the present method of bid solicitation and the subsequent protest and appeal process.

Because of the changes in Article 2 and Article 3 which will be addressed by General Services and Supply, an increased number of protests and appeals is anticipated by General Services and Supply. The changes proposed by Senate Bill #341 to the protest and appeals procedures and possible subsequent hearings are listed below:

Section 36.30.590 creates a two-step protest/appeal process for goods and services contract awards where previously there was only one step. Prior to SB341, a decision was made by the Commissioner of Administration to deny a protest, to rule on a protest or hear the protest. This decision can be based on timeliness and/or merit. This Bill creates a first step whereby a protest can be filed with the procurement officer. If the protestor is not satisfied with the decision of the procurement officer, a written appeal is to be filed within five days with the Commissioner. Unless the appeal is determined to be untimely or that no facts are in dispute, the appeal will go into the hearing process. This is based on the assumption that the Commissioner of Administration will not decide to delegate appeals and hearings to the department involved. This assumption is based on the need for efficiency and standardizing which can only be obtained by centralization. It is estimated that approximately 122 appeals will be heard by a hearing officer.

Section 36.30.595(b) requires the Commissioner to furnish a copy of filed appeals to "all interested parties." This newly required clerical function will require a mailing of an estimated ten notifications per each appeals and other related functions.

Section 36.30.630 grants the Commissioner 15 days after receipt of a written appeal to adopt the procurement officer's decision regarding contract controversies or determine if there should be a hearing. It is assumed that in order to make the decision, the Commissioner will conduct a complete investigation of the facts surrounding the contract controversy. This investigation should be exhaustive.

Section 36.30.650 and Section 36.30.660 are newly created to place into law procedures regarding debarment, suspension and reinstatement. Hearings may be held following receipt of a written appeal requesting a reconsideration or reinstatement. Based upon evidence showing that the cause no longer exists or has been mitigated, a Hearing Officer may make recommendations to the Commissioner.

2. Of the Goods and Services contracts, during the December 1, 1984, to December 1, 1985 period, 390 bid solicitations were conducted and 548 bid waivers were allowed by the commissioner as being in the best interest of the State. Of these 548 waivers, only 20% would meet the criteria of sole source or emergency requirements of the new bill. Therefore, under the new law, an additional 438 bid solicitations would be required. Of the 390 bids, there were 61 protests or 15.6%. Using this percentage, of the total solicitations required by the new law, 130 protests could be anticipated.

$$(390 + 438) * 15.6\% = 130 \text{ appeals}$$

Of these 130 expected protests, it is anticipated that approximately 52 will be resolved prior to requiring a hearing.

130	anticipated protests
-52	40% will be resolved by a purchasing officer decision
-11	8.5% will be deemed untimely
67	anticipated hearings or rulings based on submitted briefs

67	anticipated hearings based on Goods and Services contracts.
+50	anticipated appeals regarding contract controversies
+ 3	anticipated appeals regarding debarment and suspension
+ 2	anticipated appeals regarding reinstatement
122	anticipated total hearings

3. Inflation is estimated at three percent per year.

B. Staff Requirement

1. 122 hearings are anticipated per year.
2. Each Hearing Officer can hear and file on one appeal per week, based on estimates provided by Department of Labor.

3. General Government Unit (GGU)

Hours per year	= 1,950 hrs/yr
Annual Leave	= (127.5)
Five days Sick Leave	= (37.5)
Holidays (ten days)	= (75.0)
Employee Annual Hours Worked	1,710 hrs/yr
Employee Weeks worked/yr	45.6 wk/yr

4. 122 anticipated hearings/yr ÷ 46 hearings/H.O. = 2.6 H.O./yr. There is presently one hearing officer in the Department of Administration; thus 2 additional Hearing Officers are required.

C. Costs:

1. Personal Services: $80,657* (January 1, 1987 - June 20, 1987)
$161,314 (FY 88)

(2) Hearing Officers	R/21A	2 X $ 59,934 =	$119,868
Administrative Asst.	R14B	$ 41,446 =	$ 41,446
	TOTAL		$161,314

* FY 87 (.5 x 161,314) = 80,657

2. Travel: $8,884 (January 1, 1987 - June 30, 1987)
Full year cost is $17,768 for FY 88.

(a) Assumes 25% of hearings in Anchorage requiring two days per diem per trip at $80/day

(1)	Airfare	$ 352
(2)	Perdiem 2 X 80 -	160
(3)	30 trips X 512 X	$15,360

(b) Assumes 3% of hearing in Fairbanks requiring two days per diem per trip at $90/day.

(1)	Airfare	$ 422
(2)	Perdiem 2 X 90 -	180
(3)	4 trips X 602 =	$2,408

3. Contractual: $38,216 (January 1, 1987 - June 30, 1987)
Full year cost is $76,432 for FY 88.

(a)	Centrex (3 X $512) -	$1,536
(b)	Photocopies and transcripts	1,200
(c)	Telephone-toll ($10/call X 2 calls X 20/day x 12)	4,800
	Data Processing Chargeback	500
(d)	Professional Services	$59,400

Because a large percentage of contracts are put to bid at the same time, many appeals will occur at the same time. Because unheard appeals will delay contract awards, the appeals must be heard in a timely manner. It is therefore assumed that 15% of

the appeals will be heard by a contracted hearing officer. The average cost of a contracted hearing has been $3,000 - $4,000 in the past.

18 X $3,300 = $59,400

(e) Space Rental: $8,996

Hr Off	Range 21 = 85 X 2 =	170 sq. ft.
Admin Asst.	Range 14 = 85	85 sq. ft.
25% Circulation =		64 sq. ft.
Total		319 sq. ft.

319 Sq. Ft. X $2.35* mo X 12 = $8,996
* average per sq. ft./mo in Juneau

4. Supplies: $900 (January 1, 1987 - June 30, 1987)
Full year cost is $1,854 (FY 88)
FY 87: 3 emp X $50/mo X 6 mo - $900
FY 88: 3 emp X $50/mo X 12 mo X 1.03 Inflation = $1,854

5. Equipment (one-time) : $7,954

(a) Furniture

Chairs (3@ $150)	$ 450
Desks (3@ $500)	$1,500
File Cabinet (4@ $366)	$1,464

(b) Office Equipment

Calculators (2 @ $270)	$ 540
Computer Terminal w/word-processing hook-up	4,000

Position Title	Time Status	Staff Months	RP Number
Administrative Assistant	PFT	12	

No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
1	14B	G			

Location	Election District	Leg.
Juneau		

Type of Expenditure		Amount
1	2	3
Salary	29,196	
Benefits	10,565	
Premium Pay	1,685	
Other		
Total Personal Services		41,446
Travel		
Contractual		3,511
Commodities		432
Equipment		650
Other		
Total Cost		46,039

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	46,039
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

The duties of the Administrative Assistant will include, but not be limited to; organizing the files of each protest that is not satisfied at the procurement officer level, determination of time schedules and the sending of various types of required notification, performing research for the Hearing Officers, and performing the various accounting functions required by the unit.

Request For New Position

Agency: Department of Administration
BRU: Administrative Services
Component: Administrative Services

FY 87

7/1K1/0130-10/15

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Hearing Officers (2)	2	21A	G			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	24		Juneau				

Type of Expenditure		Amount
1	2	3
Salary	91,488	
Benefits	28,381	
Premium Pay	0	
Other	0	
Total Personal Services		119,869
Travel 13 trips Anch, 4 trips Fbks		17,768
Contractual		13,521
Commodities		865
Equipment		2,764
Other		
Total Cost		154,787

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	154,787
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

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Key Number ___ - ___ - ___ - ___ - ___

Justification

Three hearing officers will be required in FY 87 to hear appeals that have not been satisfied at the procurement officer or preliminary hearing officer level. Presently, one hearing officer position exists in the Department of Administration, therefore, two additional officers are required. The duties include, but are not limited to; review of decisions of procurement officers, review of all pertinent documentation and materials, notification to all interested parties of filed appeals, and conducting hearings according to AS 36.670.

SINGLE POSITION COST PER YEAR

$3,812 X 12 = $45,744.00
Benefits = 14,190.39
Total = 59,934.39

Request For New Position

Agency: Department of Administration
BRU: Administrative Services
Component: Administrative Services

FY 87

7/1K1/0130-10/9

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 02-05-86

REQUEST
Bill/Resolution No.: SB 341
Title: An act relating to the State procurement practices and procedures; and providing for an effective date.
Sponsor: Senate Rules
Requestor:
Date of Request:

FISCAL DETAIL
Agency Affected: Administration
BRU: General Services & Supply
Components: Purchasing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES		222.7	445.5	460.5	475.5	490.9
TRAVEL		10.0				
CONTRACTUAL		189.0	38.0	43.0	38.0	43.0
SUPPLIES						
EQUIPMENT		72.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		493.7	483.5	503.5	513.5	533.9
FEDERAL FUNDS						
OTHER						
TOTAL		493.7	483.5	503.5	513.5	533.9

POSITIONS:

FULL-TIME		9	9	9	9	9
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Attached

Prepared By: Robert J. Link
Division: General Services & Supply
Phone: 465-2250
Date: 02-05-86

Approved by Commissioner: Eleanor Andrews
Date: 02-05-86
Agency: Department of Administration

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Rev. 11/8/85

1/11D2/0205-05/2

Senate Bill No. 341

FISCAL NOTE ANALYSIS:

A. REGULATIONS-PROCEDURES DEVELOPMENT AND TRAINING = $135,000

The bill will create the need for a complete revision of the chapter 15 of the Administrative Code. This revision will be accomplished through a professional legal services contract. to write the regulations and conduct the required public hearings and is estimated to cost $55,000 (see detail below).

The bill will create the need for a complete revision of the Policy and Procedures Manual for the contracting section of the Division of General Services and Supply. This revision will be accomplished through a professional services contract with an associate attorney. The cost of this contract plus the necessary printing is estimated to be $25,000 (see detail below) .

Since the bill will completely revise the statute, and subsequently the administrative code and the policy and procedures manual of the division, we estimate that it will train approximately 310 state employees. in the newly required procedures. This will be accomplished through a professional services contract with an instructor plus printing and travel for an amount estimated to be (see detail below) $55,000.

Legal services contract for regulations: $100.00/hr x 83hr/month x 6 months = $50,000.

Para-legal Contract for Policy and Procedures Manual: $40.00/hr x 83hr/month x 6 months = $20,000.

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

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

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

Travel for public hearings in four locations: 2 people x $385/airfare + $240/perdiem x 4 locations = $5000

Travel for training in four locations: 2 people x

$385/airfare + $240/perdiem x 4 locations = $5000
Total $135,000

The Department of Transportation has also budgeted for training and procedures development. The amounts which they have budget are to provide for procedures and training in the procurement of construction and its related activities. The amounts budget by General Services are for procurements not related to construction.

B. BIDDERS LIST = $45,000

Lists of contractors to provide goods and services must be developed and maintained. These lists must be used and made available for use by all branches of state government. Department of Administration, Division of General Services and Supply is responsible for developing, maintaining, and making the lists available for use by all branches of state government. This will be accomplished through a professional services data processing contract. The cost of this contract is estimated to be $40,000 one-time contractual expense of

A person who wishes to be on the contractors list must have a valid Alaska business license and pay a biennial fee. The fees will be received and processed by the administrative support staff. We estimate that the cost of receiving and processing the fees will be $5,000. This is equal to 312 hours of an administrative support technicians time at $16.01 per hour. This is a biennial contractual expense since the administrative support staff is budgeted for by purchasing, but once the funds are received they are transferred to the Division of Administrative Services. The Division of General Services and Supply then contracts with the Division of Administrative Services for administrative support. This is a biennial contractual expense of $5,000.

C. Workload Impact = $313,700

The Division of General Services currently has 13 purchasing agents. It is anticipated that the increased work load (see detail description on the New Position Request Form) will require the addition of 9 new purchasing agents.

9 positions x $49,503 salary and benefits, purchasing agent III, range 18A = $445,527 (because the bill goes into effect in January) = $222,763 personal services

increase in FY87. $445,527 personal services increase in FY88. We estimate that this cost will increase each succeeding fiscal year due to merit increases.

Each of the 9 new purchasing agent positions will required by the bill will need approximately $8,000 in equipment (systems furniture and micro-computers). $8,000 x 9 = $72,000 This is a one-time equipment expense.

The cost of printing and advertising bids will increase from $46,100 to $81,120. An annual increase of $35,020.

$46,100 : 704 = $65 x 1248 = $81,120
- $46,100 = $35,020

The cost of mailing bids will increase from $3,800 to $6,739. An annual increase of $2,939.

$3,800 : 704 = $5.40 x 1248 = $6,739
- $3,800 = $2,939

D. SUMMARY

1. Personal Services $222,763

9 positions x $49,503 salary and benefits, purchasing agent III, range 18A = $445,527 (because the bill goes into effect in January) = $222,763 personal services increase in FY87.

2. Travel $10,000

Travel for public hearings in four locations: 2 people x $385/airfare + $240/perdiem x 4 locations = $5000

Travel for training in four locations: 2 people x $385/airfare + $240/perdiem x 4 locations = $5000

3. Contractual Services $189,000

Legal services contract for regulations: $100.00/hr x 83hr/month x 6 months = $50,000.

Para-legal Contract for Policy and Procedures Manual: $40.00/hr x 83hr/month x 6 months = $20,000.

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

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

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

Data processing contract for bidders List = $40,000

Maintenance secretarial support of bidders list = $5,000.

The cost of printing and advertising bids will increase from $46,100 to $81,120. An annual increase of $35,020. for an FY 87 (6 months) of $15,510.

The cost of mailing bids will increase from $3,800 to $6,739. An annual increase of $2,939 for an FY 87 (6 months) amount of $1470.

4. Equipment $72,000

Equipment for the 9 new purchasing agent positions will be $8,000 x 9 = $72,000

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Purchasing Agent III	9	18A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.
Full-time	6		Juneau/Anch		

Type of Expenditure		Amount
1	2	3
Salary	168,106	
Benefits	54,657	
Premium Pay		
Other		
Total Personal Services		222,763
Travel		
Contractual		
Commodities		
Equipment		72,000
Other		
Total Cost		294,763

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

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Key Number ___ - ___ - ___ - ___ - ___

Justification

Sec. 36.30.300

Under the new bill goods and services may be procured without competitive sealed bids only after a written determination has been made by the commissioner that there is only one source for the required goods or services. Current law permits the commissioner to limit bid solicitation or to waive bidding requirements when a finding is made that it is in the best interest of the State to do so.

We estimate an average of 680 acquisitions per year are being purchased under the bid waiver provision of the current law. Purchases made under a bid waiver require 20 percent of the work of a purchase made under a competitive sealed bid.

For planning purposes, we consider one average competitive sealed bid to be equal to one Work Unit and five bid waivers to be one Work Unit. During the past fiscal year the Division of General Services & Supply processed 704 competitive sealed bids (704 Work Units) and 680 bid waiver requests (680 ÷ 5) = 136 Work Units). The sum of these activities equals 840 Work Units for the division or 60 Work Units per year for each of 14 purchasing agents. [704 + 136 (680 ÷ 5) = 840 ÷ 60 = 14] Since this data base was compiled the staff has been reduced by one (1) position to a total of 13 purchasing agents.

Of the bid waivers sampled, only 20 percent meet the sole source or emergency requirement of the new bill. This means that we will have to accomplish the additional 80 percent work necessary to make these purchases as competitive sealed bids. This will create an additional 544 Work Units (680 x .8 = 544). This amount and the remaining 27.2 Work Units (bid waivers, 136 ÷ 5 = 27.2) will be added to the 704 competitive sealed bids we are currently doing. The sum of this equals 1,275 Work Units for the division. At a production rate of 60 Work Units per year for

1/1D1/0210-03/1

Request For New Position

Agency Department of Administration
BRU General Services & Supply
Component Purchasing

FY 87

each purchasing agent it will require 21.25 purchasing agents to accomplish The 1,275 Work Units.

However, the pre-bid opening and post-bid opening protest/appeal procedures described in Sec. 36.30.560 through 36.30.605 are not required under existing law. For the period December 1, 1984, through December 1, 1985, 61 protests were received under the current law. We estimate that we will receive approximately 130 protests and appeals per year under the new bill. We estimate that the time required to respond to each of these protest/appeals will be equivalent to three (3) Work Units per year. Thus, each purchasing agent's annual Work Unit production will be reduced from 60 Work Units to 57 Work Units because of the time diverted to responding to protests/appeals. This means that it will require 22.36 purchasing agents to accomplish the 1,275 Work Units.

[704 + 544 (680 x .8) + 27.2 (136 ÷ 5) = 1,275 ÷ 57 = 22.36]

22.36 purchasing agents required under the new bill
13 current purchasing agents
9.36 additional purchasing agent positions required

Nine (9) positions x $49,503 salary and benefits, Purchasing Agent III, range 18A = $445,527 ÷ 2 (because the bill goes into effect in January) = $222,763 personal services increases in FY 87. $445,527 personal services increase in FY 88.

Five (5) of these positions will be located in Juneau and four (4) in Anchorage.

February 5, 1986

Ms. Marsha Hubbard
Deputy Commissioner
Department of Administration
P.O. Box C
Juneau, Alaska 99811

Re: SB 341

Dear Marsha:

Thank you for discussing with me the present activities within the administration to comment on SB 341. As requested, enclosed you may find a packet of comments and support materials that have been forwarded to Commissioner Lounsbury, Department of Commerce and Economic Development, and to Mr. Loren Rasmussen, Department of Transportation and Public Facilities. Mr. Rasmussen has indicated he is working with Bob Link of your department on a project to review and coordinate existing procurement practices of the various agencies in draft regulations for implementation of this bill.

I think you will find the materials and our position self-explanatory. We are out of the four publications of the U.S. Department of Housing and Urban Development (HUD) that specifically govern our procurement activities. One set of these publications was forwarded to Commissioner Lounsbury's office, and we can provide you with additional copies of these documents in about two weeks. Please let me know if you would like to receive them, or if there are any other materials you would like to receive from us.

Thank you for keeping us informed on the status of this legislation and administrative plans to implement its provisions. I, and the staff, are available for further comment at any time.

Sincerely,

ALASKA STATE HOUSING AUTHORITY

Barbara Morse-Quinn
Executive Director

BMQ:mrm

Enclosures

cc: ASHA Board Members

February 5, 1986

Mr. Loren Rasmussen
Department of Transportation
and Public Facilities
Division of Standards
and Technical Services
P.O. Box Z
Juneau, Alaska 99811

Re: SB 341

Dear Mr. Rasmussen:

The information in this package is forwarded in response to your recent telephone request to Preston Johnson, Director, Housing Development and Construction, for the Alaska State Housing Authority (ASHA). We are still waiting for the following federal publications governing our present procurement practices:

HUD Notice CPD 79.31
HUD Transmittal 7460-8
HUD Transmittal 7585.1 Rev-2 CH6-2
HUD Transmittal 7485.1 Rev-2

We have been told they will arrive within the next two weeks, and we will forward them to you, under separate cover, as soon as they are received.

With this letter, please find three letters from the U.S. Department of Housing and Urban Development (HUD) regarding their general oversight of this agency. Also, please find a copy of our existing purchasing regulations, a copy of HUD Form 52663 governing our contracts with HUD, ASHA staff sectional analysis of SB 341, and some related correspondence.

I hope this information is of use to you. Please be advised that we are not in a position, at this time, to endorse any proposed regulations implementing this bill. As you will see, we have serious concerns about being placed in a position of conflict with the policies of our federal funding source.

We would appreciate being informed of any comments you have with regard to our position and would like to receive directly and

review any draft regulations you promulgate. Thank you for contacting us. We will look forward to hearing from you again as your work progresses.

Sincerely,

ALASKA STATE HOUSING AUTHORITY

Barbara Morse-Quinn
Executive Director

BMQ:mrm

Enclosures

cc: ASHA Board Members
Commissioner Richard Knapp

January 31, 1986

The Honorable Loren Lounsbury
Commissioner
Department of Commerce and Economic
Development
P.O. Box D
Juneau, AK 99811

ATTENTION: Becky Bear

Re: SB 341

Dear Commissioner Lounsbury:

The Alaska State Housing Authority (ASHA) has been asked by your office to comment on SB 341. We appreciate your forwarding our remarks to their intended recipients. I, and members of the staff, are available for legislative testimony if it is requested or an appearance seems warranted.

The level of our procurement activities for the past twelve months averages nearly $1,000,000 per month, with approximately 1520 invoices per month being processed. Procurement is presently performed substantially as conceived by the legislation, but is directly governed by our compliance with AS 36; ASHA's purchasing regulations (3 AAC 95.010 et seq.); the published policies, procedures, handbooks, regulations and rules of the U.S. Department of Housing and Urban Development (HUD); and the specific provisions of our Annual Contributions Contract agreements executed by and between HUD and ASHA. Given the existing level of our activitity and our current contractual agreements with the federal government, we are seeking exemptions from this legislation, similar to those given to the Alaska Railroad Corporation.

Although our existing regulations have served ASHA well for several years, our regulations would become outdated by the passage of this bill. Should ASHA succeed in being exempted from this legislation, we would propose to review and update our regulations to make them as compatible as possible with each of the final provisions of the new state law. This task would be accomplished in coordination with HUD Counsel and the Office of the Attorney General. In the case of conflict, we may expect that federal authority over our procedures would prevail.

TELEPHONE (907) 562-2813 BOX 100080 ANCHORAGE, ALASKA 99510

I have attached comments from HUD officials outlining certain areas of concern, a copy of the pertinent sections of our contracts with them, a statistical analysis of our present level of procurement, and a staff sectional analysis. Due to an immediate deadline for comment these remarks are being telecopied, while backup information on HUD's published policies is arriving under separate cover.

For your information, we have been asked to coordinate directly with the Department of Administration and the Department of Transportation and Public Facilities in providing them with materials on our existing procedures. It is my understanding that they are reviewing all agencies' regulations and public policies for future regulation drafting efforts.

Thank you for providing us with this opportunity to comment. Please contact me if you are in need of additional information on this subject.

Sincerely,

ALASKA STATE HOUSING AUTHORITY

Barbara Morse-Quinn
Executive Director

BMQ/smr

Enclosures:

1) HUD Correspondence, January 24, 1986 (2 letters)
2) ASHA Staff Sectional Analysis
3) Analysis of Purchases 1/85-1/86
4) Correspondence to Senator Faiks, December 13, 1985
5) Annual Contributions Contract, SF-210
6) ASHA Purchasing Regulations (3 AAC 95-010 et seq.)
7) HUD Publications
   - °Notice CPD 79-31
   - °Transmittal 7460-8
   - °Transmittal 7585.1 REV-2 CHG-1
   - °Transmittal 7485.1 REV-2

cc: ASHA Board Members

U.S. Department of Housing and Urban Development
Anchorage Office, Region X
701 "C" Street, Box 64
Anchorage, Alaska 99513

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ASHA
JAN 24 '86

JAN 24 1986

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

To EX cc
Action DEK cc
Route Ea, Dept
File EX Sec
Board

Dear Ms. Morse-Quinn:

Subject: Relationship of Alaska State Housing Authority and the U. S. Department of Housing and Urban Development

This is in response to your letter dated January 17, 1986, requesting our comments on the relationship of Alaska State Housing Authority (ASHA) and U. S. Department of Housing and Urban Development (HUD).

The relationship is a contractual one which is defined by the terms of the Annual Contributions Contract. Under that document a public housing authority (PHA) is provided federal funds for the specific purpose of providing and operating housing for families of lower income. The funding is designated for specific projects and may only be used in accordance with the HUD-approved development program, contract terms, and HUD regulations and policies. Should the funding approved by HUD for a particular project not be made available to the PHA, it would be necessary for the federal government to provide additional funding in order for HUD to meet its contractual responsibilities to the PHA. For this reason, HUD cannot approve any arrangement whereby the PHA does not have total access to and control of, the funds supplied by HUD. As a small example of this, HUD requires the PHA to invest the funds provided in order to earn interest. The amount of funding provided has been calculated on the basis that a certain amount of interest will have been received by the PHA. Any attempt to make HUD funds provided to ASHA restricted as to access or control or subject to legislative approval would be strongly opposed by HUD. In this regard, I have been advised by our Headquarters' office that the Department has already taken such a position with another state when it recently advised the governor of that state that remedial legislation must be enacted to eliminate legislative control over HUD funds.

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

for the activities usually undertaken by a state agency using federal funds. For example, the default provisions of the statute and Annual Contributions Contract provide that title and/or possession be given to the Secretary, at the Secretary's discretion, should the PHA fail to observe the terms of the contract. In any case, HUD funds are specifically designated for an identifiable project to be developed or managed by a named PHA and are not considered generalized housing funds earmarked particular to be used in a state.

For additional comments, I refer you to the Regional Counsel's letter dated October 17, 1985, which speaks to the relationship between ASHA and HUD. Finally, we do believe the Attorney General's Opinion of June 9, 1983, interpreting AS 18.55.110 may have direct relevance to the issues you raised.

I hope this is of some assistance to you. Please keep us fully informed of your discussions on this matter and feel free to contact Susan Olsen, Chief Counsel, at 271-4683 for additional comments.

Sincerely,

Michael P. Kulick

Michael P. Kulick
Manager

U.S. Department of Housing and Urban Development
Anchorage Office, Region X
701 "C" Street, Box 64
Anchorage, Alaska 99513

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ASHA
JAN 24 '86

JAN 24 1986

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

Route EX BMQ
Route DEX cc
Route All Dept
File EX Sec
1 HM- 3 extra

Dear Ms. Morse-Quinn:

Subject: Senate Bill 8001
Proposed State Procurement Act

In response to your inquiry of December 13, 1985, we have reviewed the above-referenced bill from the perspective of its impact on Alaska State Housing Authority (ASHA) and U. S. Department of Housing and Urban Development (HUD) programs and operations. We find that, overall, as written, it may be viewed as burdensome and restrictive from a practical standpoint, and as undesirable to HUD in terms of foreseeable increased costs, time delays, and lack of adequate protections for federally-funded housing projects. We do not find the proposed act to be of particular value to either ASHA or HUD, inasmuch as we firmly believe that there are adequate and appropriate safeguards currently in place to meet any concerns the state may have with regard to fairness, economy, and control. This is accomplished by way of ASHA regulations and HUD's regulations and policies, and the requirements of the Annual Contributions Contract between HUD and ASHA.

While it is difficult to analyze the full impact, on an agency or federally-funded program, of a law for which regulations have not yet been written, we offer the following comments on the bill, along with responses to your comments to Senator Faiks.

As to the delegability of professional services authority, as well as the authority to procure supplies and other services (as referenced in your first two pages of comments), we think that the only logical interpretation of AS 36.30.015(b) is that such authority is delegable. However, there is no requirement that the authority be delegated, and, clearly, the adoption of regulations is not delegable, nor is there any requirement that the individual departments or agencies participate in the formulation of the regulations. While ASHA presently has the power under AS 18.55.100 to adopt its own regulations, the proposed legislation would apparently remove this power,

and we see this as a significant deficiency of the law from a practical and policy standpoint. We think that any applicable regulations should be written in accordance with HUD requirements. Additionally, as you are aware, HUD is particularly concerned with contracting for construction and has developed extensive "boiler-plate" provisions which are required to be utilized in any such contracts. We see great possibilities for conflict should the authority not be delegated to ASHA and should the regulations not comport with HUD's requirements.

We agree that most matters covered in your numbered paragraphs (2) and (3) are covered by HUD regulations, procedures, or other requirements which variously are less, or more, restrictive than that proposed by the state bill. This is true, of course, about most of the sections of the legislation. In HUD's view, a few of the areas which would raise immediate and strong conflict are: Section 36.30.080, which could involve the administration of federal funds for lease purposes through the state treasury; Section 36.30.170, which provides for an Alaska bidder preference; Section 36.30.270, which requires the approval of the Department of Law to alter any contract terms, rather than HUD's counsel; and Section 36.30.015, which requires the attorney general's approval of any contract for legal services. As an additional note, it appears that use of the consolidated supply program would be seriously curtailed or delayed in that already selected competitive bid suppliers would have to resubmit to the state's competitive bid process.

The extensive bid documentation required in Section 36.30.110, as discussed in your paragraph (5), does appear to be cumbersome and bound to cause delays. Further, we think the requirements for Alaska business licenses, as applied to subcontractors in supply contracts, is unduly restrictive and burdensome. HUD policy expects procurement procedures to be as broad and competitive as possible. As mentioned earlier, the provision for Alaska bidder preference is totally unacceptable for federally-funded ASHA projects. This raises questions also about the acceptability of Section 36.30.050, which requires every agency's use of a centrally maintained list of contractors.

Regarding your paragraph (6), HUD requires acceptable bid security of five percent. We would undoubtedly find that the ten percent requirement would be unacceptably excessive and would not be willing to approve these extra costs to a project.

Section 36.30.200(b), as referenced in your paragraph (8), appears to be unduly burdensome in that written determinations must be obtained from the chief procurement officer or the commissioner of transportation and public facilities prior to ASHA's ability to enter a contract by other means than a competitive bid (except where emergency or small procurement standards are met). Under the proposed legislation, authority for these determinations is not delegable.

We agree that ASHA's current regulations regarding emergency conditions are more narrowly defined than the proposed language, and, therefore, less apt to present grounds for disputes, either before or after a procurement action is taken [reference your paragraph (9)].

As to your paragraphs (10) and (11), we do not believe that either Section 36.30.370 or Section 36.30.380 conflicts with HUD regulations. However, to require an agency to review and analyze the capability of a proposed contractor's accounting system is, we think, excessively burdensome.

As you point out in your paragraph (12), HUD's policies, procedures and contract provisions, as well as its regulations, do govern the distribution and administration of federal monies designated for public housing projects. Section 36.30.890 of the proposed bill, therefore, provides only a limited exemption to ASHA. Limited exemption could jeopardize ASHA's receipt of HUD funds in an instance of conflict with the state procurement statute. We note the relevance of the Alaska Attorney General's opinion of June 9, 1983, on the applicability of Title 36 to ASHA, wherein he discusses AS 18.55.110 as follows:

> . . . We believe the more probable legislative intent was to provide an explicit statutory exemption in instances where the application of state law would jeopardize the receipt of federal assistance. . . . By the statute's own terms, the focus of the exemption is 'to secure [federal] financial aid for housing projects.' . . . Consequently, we interpret AS 18.55.110 as exempting the application of state or local law when a federal funding entity, properly exercising its discretion, notifies ASHA in writing that the receipt of federal funds would be jeopardized were State or local law deemed applicable.

It seems to us that this opinion may be an instructive and persuasive rationale for exempting ASHA from the proposed procurement statute. We tend to agree with you that an acceptable alternative to what we view as a basis for recurring interpretive, managerial, and legal problems under the proposed law, would be to include ASHA as an exempt agency along with the railroad, the legislature, and the court system. If ASHA is not made exempt, then, at a minimum, we would want to see added the terms "policy or other requirement" to the existing terms "federal statute or regulation" in AS 36.30.890.

Thank you for this opportunity to comment.

Sincerely,

Michael P. Kulick
Manager

U.S. Department of Housing and Urban Development
Anchorage Office, Region X
701 "C" Street, Box 64
Anchorage, Alaska 99513

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ASHA
JAN 31 '86

JAN 31 1986

Route EX cc
Route DEX cc
Route All Dept Heads cc
File EX Sec
Board

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

Dear Ms. Morse-Quinn:

Subject: Senate Bill 8001
Proposed State Procurement Act

It has just come to our attention that Senate Bill 8001 does provide for an amendment to AS 18.55.100 by adding, "(d) The authority's power to contract, lease, rent, construct, acquire, procure and provide for services under this section is governed by AS 36.30."

We think the only logical application of this subsection with respect to leasing and renting is where Alaska State Housing Authority is procuring a lease for itself, equipment rentals, or similar transactions.

We do not recall any aspect of Senate Bill 8001 which would apply to the leasing of space to tenants. Inasmuch as Alaska State Housing Authority's tenant leasing policies and practices are subject to the U. S. Department of Housing and Urban Development's regulations and other requirements, we would find objectionable any application of Senate Bill 8001 in this regard.

Sincerely,

Michael P. Kulick
Manager

ALASKA STATE HOUSING AUTHORITY

INTER OFFICE MEMORANDUM

DATE January 31 19 86

FROM: Dick Pryor, Contracts and Budgeting Officer

TO: Barbara Morse-Quinn, Executive Director

SUBJECT: Procurement Bill Study Group

The study group as appointed by your memorandum of January 23, 1986 has reviewed State Bill 341. This bill would enact a State Procurement Code. As written, Senate Bill 341 would require the Alaska State Housing Authority to fully comply with the statute and the subsequent regulations developed by the Department of Administration.

Our review of the bill brings us to the same conclusions as expressed by the U.S. Department of Housing and Urban Development (HUD) in their letter to ASHA of January 24, 1986 (copy attached).

ASHA was established by the state to meet the federal requirements of a public housing authority for the purposes of applying for and receiving HUD funding for public low- and moderate-income housing. This funding is provided under the terms and conditions of a federal contract called an Annual Contributions Contract (ACC). This contract requires our compliance with HUD federal statutes, regulations and policies, or other requirements HUD may so determine are necessary. ASHA is subject to an annual HUD audit and periodic management review by HUD. Our contracting and procurement process must comply with federal law, HUD policy, and the provisions of the ACC contract. This process is reviewed extensively by federal officials. Each individual contract we let must be approved by HUD.

The imposing of another governmental system on ASHA would make our procurement and contracting process exessively cumbersome and costly to administer. Were this bill to pass in its present form, HUD funding of these projects would be seriously jeopardized. In addition, we would expect that the assets of the Authority would be reduced by an amount equal to the cost of developing a procurement office and redevelopment of our accounting system.

It is the recommendation of the study group that ASHA be exempted from the state procurement code. To our knowledge, ASHA is the only authority or state entity that receives and expends federal funding directly. ASHA is governed by extensive federal statutes, regulations, policy, and contract provisions in the expenditures of these funds. ASHA, as a federally recognized public housing authority, receives the funds by entering into

ALASKA STATE HOUSING AUTHORITY

INTER OFFICE MEMORANDUM

DATE January 31 19 86

FROM: Dick Pryor

TO: Barbara Morse-Quinn

SUBJECT: Procurement Bill Study Group

contracts directly with the federal government. Budgets are submitted and approved annually by HUD. The apparent control of this federal funding by the State as proposed by this bill and the subsequent regulations that would be promulgated will affect our continued funding under our contracts with HUD. Therefore, our sectional comments are as follows:

Section 36.30.990(1) should be changed to include the Alaska State Housing Authority as an exempt agency along with the Alaska Railroad Corporation. Section 10 of the bill relating to AS 18.55.100 must be deleted.

In the event ASHA is not exempted from the bill, Section 36.30.890 must be changed to include "federal policy and other requirements" in addition to the existing terms "federal statutes and regulations". Also Section 36.30.015 must include the authority to delegate for contracting for services and professional services. If ASHA is not to be exempt from Senate Bill 341, we propose to receive full delegation for all our procurement and contracting activities.

In the further event that ASHA is not exempt from the bill and the above changes to the bill in Sections 36.30.890 and 36.30.015 are not made, ASHA's ability to effectively expend federal funds will be severely affected. The ability to operate the federally-funded low- and moderate-income housing statewide would be jeopardized. We anticipate HUD officials would enter into a legal dialogue with ASHA and state officials to resolve these matters to their satisfaction.

If no changes to the bill are made the following sections would cause serious problems in our ability to operate as a Public Housing Authority (PHA) under federal law:

1. Section 36.36.015. As written the inability of DOA to delegate authority to contract for technical services and professional services would be very cumbersome for ASHA.

2. Section 36.30.040. Most of the things mentioned in this section are governed by HUD policy and handbooks for the housing programs and would present conflicts not exempted by Section 36.30.890.

ALASKA STATE HOUSING AUTHORITY

INTER OFFICE MEMORANDUM

DATE January 31 19 86

FROM: Dick Pryor

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3. Section 36.30.110. The requirement for a contractor at the time of bidding to submit names and Alaska Business Licenses is considered by HUD to be unduly restrictive on the bidding process.

4. Section 36.30.120. HUD policy is to require a 5% bid bond for all contracts. Anything higher is considered excessive and would not be allowed by HUD.

5. Section 36.30.160(b). An allowance for correction of mistakes in bid after bid opening is an unacceptable practice and should not be permitted for any reason.

6. Section 36.30.170. The Alaska bidder preference is unacceptable to HUD.

7. Section 36.30.200(b). The requirement to obtain written determinations from DOA or DOT/PF for entering into a contract by means other than competitive bid is considered by HUD to be unduly burdensome for ASHA in administering HUD approved and funded programs.

8. Section 36.30.270. The requirement for review by the Department of Law of contracts rather than by HUD's legal counsel is unacceptable to HUD, and review by both is burdensome and time consuming if their reviews conflict.

9. Section 36.30.430 and .460. The same comment as in 9 above apply regarding the Alaska Department of Law review.

10. Section 36.30.735(b). The reference to the Alaska State Housing Authority should be deleted and replaced by a more general term referring to all public authorities. Alaska State Housing Authority does not engage in any of the activities governed by the existing statute (44.65.060) which has been incorporated in this section.

11. Section 36.30.890. ASHA must comply with extensive policy, handbooks, contract provisions, and other requirements of HUD that are in conflict with this procurement code. The provision for only federal statute or regulations to prevail is

ALASKA STATE HOUSING AUTHORITY

INTER OFFICE MEMORANDUM

DATE January 31 ,86

FROM: Dick Pryor

TO: Barbara Morse-Quinn

SUBJECT Procurement Bill Study Group

not sufficient for the continued operation of ASHA on HUD directives.

12. Section 10. Delete entire section. This section is directly in conflict with the HUD requirements set out in comment (11) above.

Enclosed with this report is a copy of HUD's comments on the proposed procurement code and copies of same of HUD's policy handbooks as examples of the current requirements we must meet. Also enclosed is a summary of our procurement activity for the past years.

Dick Pryor
Contracts and Budgeting Officer

DP/laj

Encls.

ALASKA STATE HOUSING AUTHORITY

INTER OFFICE MEMORANDUM

DATE January 31 19 86

FROM: Edna E. Fremlin, Administrative Assistant for Modernization

TO: Dick Pryor, Contracts and Budgeting Officer

SUBJECT: For Inclusion in Telex Regarding State Procurement Regulations

A complete transition from federal to state regulations would be costly and burdensome for this Authority unless the State would bear the expense.

Before ASHA is bound to State procurement regulations it should be established if federal funds would cease since ASHA is federally supported. ASHA's tenants are federally subsidized in low rent, elderly and Section 8 (private housing) programs as well.

To attempt adopting wholly the State procurement regulations without incorporating all State regulations on all matters could lead to serious consequences, example: wage rates, personnel actions (and duties) related to procurement.

Municipal and State building codes and other codes are adhered to by this Authority whether the construction is State or federally funded. However, procurement for construction should be guided by the source of the funds. State procurement, wage rates and other regulations should apply to State funded programs administered by ASHA. Likewise, federal procurement rules, wage rates, etc., should be the guide to federally funded contracts and purchases.

ASHA's specially funded Federal Modernization programs are two years in duration. This program cannot afford a cumbersome system for advertising bids and for procuring locally.

Bids and materials list are prepared in advance of receiving the funds. Upon receipt of the funds the bids are advertized and small purchasing commences. Shipping freight is also a consideration. The success of these programs is the timing. The State procurement bill offers no flexibility for such a program to function.

Edna E. Fremlin, Administrative Assistant for Modernization

EEF/laj

ALASKA STATE HOUSING AUTHORITY
ANALYSIS OF PURCHASES*
January 1985 to January 1986

Month	No. of Invoices	Amount
January 1986	1418	$1,134,071
December 1985	1688	632,310
November 1985	1452	534,836
October 1985	1718	1,240,746
September 1985	1750	589,509
August 1985	1940	892,378
July 1985	1350	536,249
June 1985	1506	1,272,783
May 1985	1726	1,020,969
April 1985	1056	1,737,736
March 1985	1250	907,694
February 1985	1291	1,014,430
January 1985	1613	1,478,645
Average for month	1520	$ 999,412

*Source: Comptroller, Alaska State Housing Authority

BMQ

December 13, 1985

The Honorable Jan Faiks
Senator
Senate Select Interim Committee on
Procurement Practices and Procedures
1024 West Sixth Avenue
Anchorage, Alaska 99501

Dear Senator Faiks:

The staff of the Alaska State Housing Authority (ASHA) has read three drafts of the procurement bill on which your committee has been working. From the most recent teleconference on the bill, it appears that certain sections remain "in process" and are to be given final definition at a later date. We expect that the formal committee process of legislative review will allow further opportunities to comment on this important document and that it will be possible to have these comments incorporated into later drafts. Based on what we have reviewed thus far, the following information regarding this legislation's impact on ASHA is offered:

(1) Sec.36.30.015(e) should be amended to state: "The boards of directors of the Alaska Railroad Corporation and the Alaska State Housing Authority shall adopt, etc."

As you may know, ASHA currently has in place procurement regulations particularly tailored to its business of constructing, managing and maintaining various types of housing units throughout Alaska. Given the fact that residential wage scales will differ from those applied to other types of public construction and that local building codes, zoning ordinances and construction permit procedures also vary from those used on other public projects, the need to delegate specific residential construction contract authority to ASHA becomes more apparent. Although this issue could be addressed administratively after the fact, it would be more straightforward for such delegation to receive direct legislative review and approval prior to passage of a new procurement law.

TELEPHONE (907) 562-2813 BOX 100080 ANCHORAGE, ALASKA 99510

With regard to the procurement of supplies and services (non-professional) with which we maintain some 3500 housing units across the State, it is again important to understand our current practices. Developed in accordance with U.S. Department of Housing and Urban Development policies, 3 AAC 95.010, et. seq. is a sophisticated set of regulations with application particular only to housing management uses. ASHA cannot predict and plan for broken pipes, windows or doorways, to name a few of the purchases we make on an as needed and regular basis. Tenants cannot be expected to wait for ASHA to go through individual procurement processes when stoves or refrigerators go out or when a damaged unit is vacated and in need of repairs. With over 1,000 people on waiting lists for low income housing across the State, and with vacancy/unit turnaround goals monitored by the federal government, the additional imposition of a State level review would not change the way we currently operate, nor serve any productive public purpose. Such review will only delay a system that has worked effectively for over forty years, was rewritten in 1981, and is in no current need of modification.

ASHA's procedures on professional services contracting have been performed in recent years under AS 36.98.010, et. seq., except in those cases where to follow such procedures is demonstrated to jeopardize our receipt of federal funds (AS 18.55.110). The lack of delegable professional services authority under this section is particularly troublesome to ASHA. State boilerplate articles, under Appendix A of Professional Services Contract Form 02-093 (Rev 10/82) are frequently not specific nor detailed enough to protect the interests of the U.S. Department of Housing and Urban Development and the Authority on large scale professional service contracts. By far the majority of our contractual agreements contain explicitly detailed articles created by and for ASHA projects. These contracts cannot be reduced to the generalities of the standard State professional services statement without significant loss to ASHA of contractual protections developed by the Authority through experience, research and course of dealing. ASHA is not automatically covered by the Division of Risk Management, the Division of Labor Relations, nor the Office of the Attorney General for

contractual problems arising after the fact. The protection of our assets from various liabilities or contingencies remains foremost in our minds when entering into a contractual agreement. It is inappropriate, at best, for the State to weaken our abilities to specifically protect federal funds for no demonstrated public purpose. If the Commissioner of Administration is not able to delegate this authority, then ASHA should be added to the Railroad, University and Court System with clear exemptions from this section.

(2) Sec.36.30.040(b)(8-13) regarding storerooms and inventories; classes of contractual services; price analysis; payments and performance bonds; cost principles in negotiations; and discrimination in contracting are areas where the U.S. Department of Housing and Urban Development directly monitors this housing authority. Any regulations adopted under this section which would apply to this agency will need to be reviewed and coordinated with the U.S. Department of Housing and Urban Development, Regional Counsel, for compliance with federal regulations.

(3) Sec.36.30.070(1-4) Governed by federal regulations applicable to ASHA.

(4) Sec.36.30.080(b) This language should be reviewed by bond counsel to any parties entering into lease-financing or lease-purchase agreements.

(5) Sec.36.30.110 These items should be required after bid award but before notice to proceed. Gathering this information is an unnecessarily cumbersome task for unsuccessful bidders to perform and would inundate agency personnel with useless reviews of extraneous information.

(6) Sec.36.30.120(b)(1-2) The 10% requirement of this section is higher than necessary and these unnecessary costs are eventually borne by the contracting agency within the cost of total project development. 5% is standard for construction purposes.

(8) Sec.36.30.200 This article almost precludes the state from using design/built options given the restrictions on competitive sealed proposals. Competitive sealed proposals become relegated to a second class type of solicitation and limit creativity of thought for development of new concepts in construction within budgeted fund limits.

(9) Sec.36.30.310 This section is more broadly written than that in current ASHA regulations. This agency would have a lower level of comfort operating under a statute prescribing an open-ended or subjective interpretation of instances affecting "public health, welfare or safety." Also, there is no consideration given to an analysis of time or urgency in determining an "emergency" exists.

(10) Sec.36.30.370 May conflict with U.S. Department of Housing and Urban Development regulations.

(11) Sec.36.30.380 May conflict with U.S. Department of Housing and Urban Development regulations.

(12) Sec.36.30.890 ASHA is not covered sufficiently by this section to avoid conflict with federal government practices and procedures. Federal due process allows public notice on regulations to come after the fact and, in the interim, to administer programs through interpretations of handbooks or other non-regulatory documents. Although not statute or regulation, this method of program delivery marks a federal preference to model programs after field trial experience is known. The State share of discretionary HUD funds oftentimes depends on ASHA's compliance with federal practices and procedures which aren't necessarily in statutory or regulation form. We would not be sufficiently exempted by this Section to avoid conflict with federal policies and procedures.

These initial comments are generated strictly from an in-house review by our staff. Neither our Board of Directors nor any officials from the U.S. Department of Housing and Urban Development have reviewed the most recent version of this legislation. It is likely they will have additional comments to offer.

The concept of centralized procurement is valuable and efficient for those agencies that may be inexperienced in the complexities of obtaining goods and services and/or have minimal written regulations or policies to structure their procurement activities. The Alaska State Housing Authority falls into neither category. With strict federal oversight and monitoring, federal funds are expended for a valuable public purpose. Financial information on expenditures is well documented and regularly reviewed. Complex volumes of federal procurement instructions are interpreted for ASHA by local HUD officials. Bidding and contracting activities are defined in detail by ASHA regulations.

The procedures of the State Procurement Code are exemplary in nature and should be modeled by all public organizations (including ASHA) operating on state and local levels. However, the delays and generic treatment this agency would experience in having this law superimposed on its existing systems would create confusion and inefficiencies for both the public and the agencies involved. Aside from generating new "paper pushing" positions and having to revamp many existing procedures after implementation, there is virtually no new effect to ASHA's present practices that would be realized from including ASHA in this legislation. Business will continue, only more slowly and at a greater cost to the programs involved.

Thank you for your consideration of these remarks. We shall be following with interest this legislation and look to an enhancement of ASHA's regulations to make them substantially equivalent to this bill in its final version. Should you or any members of the committee wish further information on this matter and its effect on our agency, please let me know.

Sincerely,

ALASKA STATE HOUSING AUTHORITY

Barbara Morse-Quinn

Barbara Morse-Quinn
Executive Director

BMQ/jlr
enclosure

cc: Susan Olsen, HUD, Chief Counsel
ASHA Board of Directors
ASHA Department Heads
Marsha Hubbard, DOA
Steve Hildebrand, DCED

Requisition for Partial Payment of Annual Contributions

U.S. Department of Housing and Urban Development
Section 8 and Section 23
Housing Assistance Payments Program

Note: See instructions in appropriate program handbooks

OMB No. 2502-0348 (exp. 10/31/86)

1. Program Type (Mark one) ☐ Section 23 ☐ Section 8	2. Date of Requisition	3. For Quarter Ending:	4. No. of Months in 1st FY	5. Project No.

6. Public Housing Agency (Name and Address)	7. Depository Bank (Name and Address)
8. PHA Annual Contributions Contract No.	**9. Depository Bank Account No.**

10. Housing Program Type (Mark one)

☐ (a) New Construction ☐ (b) Substantial Rehabilitation ☐ (c) Moderate Rehabilitation ☐ (d) Existing Housing Certificates ☐ (e) Housing Vouchers

11. PHA Fiscal Year Ending Date (Mark one box and complete year)

☐ (a) March 31, ☐ (b) June 30, ☐ (c) September 30, ☐ (d) December 31, 19: ____

12. Number of Units Under Lease to Eligible Families as of Date of Requisition	13. Average Monthly Housing Assistance Payment Per Unit as of Date of Requisition	14. Estimated Number of Units to be Under Lease at End of Requested Quarter	15. Unit Months Under Lease Year to Date	16. Average Monthly Housing Assistance Payment Per Unit Year to Date

	Estimate of Required Annual Contributions (a)	Total Cost Incurred and Fees Earned Year to Date (b) MM DD YY	Estimated Additional Cost and Fees Earned to End of Requested Quarter (c)	Cumulative Funds Required (d)
17. Preliminary Administrative and General Expense				
18. Carry Over of Preliminary Administrative and General Expense Approved in Previous Fiscal Year				
19. Preliminary Non-Expendable Equipment Expense				
20. Carry Over of Preliminary Non-Expendable Equipment Expense Approved in Previous Fiscal Year				
21. Estimated Housing Assistance Payments (Account 4715)				
22. Estimated Ongoing Administrative Fee				
23. Estimated Hard-to-House Fee (Existing Housing Certificates and Housing Vouchers Only)				
24. Total Independent Public Accountant Audit Costs (Section 8 Only)				
25. Total Allowance Approved for Security and Utility Deposits (Section 23 Only)				
Amount of Requisition				
26. Total Costs Incurred to Date (Sum of Lines 17 through 25)				
27. Total Funds Required to End of Requested Quarter (Sum of Lines 17 through 25)				
28. Payments Received to Date				
29. Payments Previously Approved for Fiscal Year to Date				
30. Over or Underpayment to Date (Difference of Line 28 and Line 26. Do not use brackets)				
31. Partial Payment Requirement During Requested Quarter (Line 27 minus Line 29)				

(CHECK)

(1) the information and materials submitted to the executive director by the party making the protest under 3AAC 95.225; and

(2) the information and materials available to ASHA staff.

(b) A copy of the decision under this section will be mailed or otherwise furnished to the party making the protest.

(c) The decision under this section is the final action that will be taken by ASHA on the protest. (Eff. 11/26/81, Register 80)

ARTICLE 4.
MISCELLANEOUS

Section
265. Federal Assistance
275. Definitions

3AAC 95.265. FEDERAL ASSISTANCE. If federal funds or other federal assistance are involved in any procurement by ASHA, this chapter will govern except to the extent that it is superseded by federal regulations or provisions. (Eff. 11/26/81, Register 80)

3AAC 95.275. DEFINITIONS. Unless the context indicates otherwise, in 3AAC 95.010--3AAC 95.265

(1) "ASHA" means the Alaska State Housing Authority;

(2) "ASHA's central office" means the executive offices of the Alaska State Housing Authority located in Anchorage, Alaska;

(3) "executive director" means the executive director of the Alaska State Housing Authority;

(4) "governmental entity" means a department, office, agency, commissioner, board, bureau, administration, division, authority or other organizational unit of a branch of federal, state, county, borough, municipal or other local government and specifically includes public corporate authorities, the University of Alaska, school districts, and Regional Housing Authorities;

(5) "HUD" means the United States Department of Housing and Urban Development. (Eff. 11/26/81, Register 80)

3AAC 95.225. FORM OF PROTEST. A protest under 3AAC 95.215 must be in writing and must set out or contain the following:

(1) the name of the party making the protest;

(2) the identity of the solicitation or contract being protested;

(3) the date the party making the protest first knew of the facts giving rise to the protest;

(4) the basis and nature of the protest;

(5) the facts supporting the protest and other relevant information;

(6) copies of all documents, affidavits, correspondence, and other materials relevant to the protest; and

(7) a statement of the relief requested. (Eff. 11/26/81, Register 80)

3AAC 95.235. TIME FOR FILING. A protest under 3AAC 95.215 must be filed with the executive director at ASHA's central office within the earlier of

(1) two business days after the party making the protest knew or should have known of the facts giving rise to the protest; or

(2) two business days after the party making the protest receives a notice of tentative award. (Eff. 11/26/81, Register 80)

3AAC 95.245. STAY OF PROCUREMENT. If a protest has been filed in accordance with 3AAC 95.215--3AAC 95.235 before contract award, ASHA will not make a contract award unless the executive director determines in writing that

(1) the items to be procured are urgently required;

(2) delivery or performance will be unduly delayed by failure to make award promptly; or

(3) a prompt award will be otherwise in the best interest of ASHA. (Eff. 11/26/81, Register 80)

3AAC 95.255. DECISION. (a) The executive director will issue a written decision on a protest which has been filed in accordance with 3AAC 95.215--3AAC 95.255. The decision will state the reasons for the action taken. The decision will be based on

3AAC 95.195. NO COMPETITION CONTRACTS. ASHA will, in its discretion, award a contract through direct negotiation if there is no competition. There is no competition if

(1) the rates or charges are set by law;

(2) there is only one source of procurement within the State of Alaska and the contract amount is under $50,000; or

(3) there in only one source of procurement within the borough where the goods or services are to be utilized and the contract amount is under $10,000. (Eff. 11/26/81, Register 80)

3AAC 95.205. NEGOTIATION AFTER UNSUCCESSFUL BIDDING. (a) ASHA will, in its discretion, award a contract through direct negotiation if an invitation to bid has been issued under 3AAC 95.010--3AAC 95.135 and all bids are rejected or no bids are received.

(b) If all bids are rejected, ASHA will give each responsible bidder a reasonable opportunity to negotiate before a contract award is made under this section. Contract award under this section is not, however, limited to bidders on the original solicitation.

(c) Contract award under this section must be at

(1) a negotiated price lower than the lowest rejected bid by a responsible and responsive bidder under the original solicitation; and

(2) the lowest negotiated price offered by a responsible and responsive offeror. (Eff. 11/26/81, Register 80)

ARTICLE 3.

PROCUREMENT PROTESTS

Section
215. Right to Protest
225. Form of Protest
235. Time for Filing
245. Stay of Procurement
255. Decision

3AAC 95.215. RIGHT TO PROTEST. An actual or prospective bidder or offeror who is aggrieved in connection with the solicitation or award of a contract by ASHA may file a protest with the executive director. (Eff. 11/26/81, Register 80)

ARTICLE 2.
PROCUREMENT BY NEGOTIATION

Section
145. Negotiated Contracts
155. Small Procurement Contracts
165. Professional Services Contracts
175. Governmental Contracts
185. Emergency Contracts
195. No-competition Contracts
205. Negotiations After Unsuccessful Bidding

3AAC 95.145. NEGOTIATED CONTRACTS. ASHA will, in its discretion, award the contracts described in 3AAC 95.145-3AAC 95.205 through direct negotiation, without competitive sealed solicitations. (Eff. 11/26/81, Register 80)

3AAC 95.155. SMALL PROCUREMENT CONTRACTS. ASHA will, in its discretion, award a contract for a small procurement in an amount not greater than $5,000 through direct negotiation. (Eff. 11/26/81, Register 80)

3AAC 95.165. PROFESSIONAL SERVICES CONTRACT. ASHA will, in its discretion, award a contract for professional or technical services, including, but not limited to, a contract with an accountant, appraiser, architect, attorney, consultant, contract manager, draftsman, engineer, financial advisor, or physician, through direct negotiation. (Eff. 11/26/81, Register 80)

3AAC 95.175. GOVERNMENTAL CONTRACTS. ASHA will, in its discretion, award a contract between ASHA and one or more governmental entities or a contract for the procurement of goods or services through a consolidated supply contract or program of a governmental entity through direct negotiation.
(Eff. 11/26/81, Register 80)

3AAC 95.185. EMERGENCY CONTRACTS. In an emergency, ASHA will, in its discretion, award a contract by direct negotiation. An emergency exists if ASHA or the public could be seriously or materially injured, financially or otherwise, if the property or services contracted for are not furnished by a certain time and they could not be contracted for by that time by means of competitive sealed solicitations. The executive director shall cause to be made a written record of the facts constituting the emergency and shall determine in writing that an emergency exists before an award is made under this section. This section applies irrespective of whether the emergency could or should have been foreseen. (Eff. 11/26/81, Register 80)

(2) the ability and capacity of the bidder or offeror to perform the contract within the time specified without delay or interference;

(3) the character, integrity, reputation, judgment, experience, fitness and efficiency of the bidder or offeror;

(4) the quality of the performance of the bidder or offeror on previous contracts;

(5) the previous and existing compliance by the bidder or offeror with laws, ordinances, or regulations effecting or relating to the contact; and

(6) the sufficiency of the financial resources and ability of the bidder or offeror to perform the contract.

(c) If the lowest responsive bidder is determined to be not responsible, ASHA will, before contract award

(1) notify the bidder of the evidence reflecting upon the bidder's nonresponsibility; and

(2) afford the bidder an opportunity to rebut the evidence and to present relevant evidence as to his responsibility.

(d) If a contract award is made to a bidder other than the lowest responsive bidder, a full and complete written statement of the reasons for the award will be made by the executive director and delivered to the unsuccessful lowest responsive bidder. (Eff. 11/26/81, Register 80)

3AAC 95.135. AWARD. (a) Unless all bids are rejected, ASHA will make contract award in a writing by the executive director to the lowest responsive and responsible bidder.

(b) Unless all proposals are rejected, ASHA will make contract award in a writing by the executive director to the responsible offeror whose proposal is determined in writing by the executive director to be the most advantageous to ASHA, considering price and the evaluation factors set out in the request for proposals or other proposal documents.

(c) ASHA will, in its discretion, issue a notice of tentative award to all bidders or offerors before contract award. The notice of tentative award will set out the name of the bidder or offeror to whom ASHA anticipates making a contract award and the anticipated contract amount. The notice of tentative award will not constitute an acceptance or rejection of a bid or proposal or a contract award by ASHA.

(d) If two or more bids otherwise acceptable for contract award under 3AAC 95.015--3AAC 95.135 are tied, ASHA will make contract award to the tied bidder whose bid is determined in writing by the executive director to be in the best interest of ASHA. (Eff. 11/26/81, Register 80)

the public only under the immediate supervison of the executive director or his designee and under conditions which preclude the possibility of a substitution, addition, deletion, or alteration of a bid or proposal. (Eff. 11/26/81, Register 80)

3AAC 95.115. REJECTION OF BIDS AND PROPOSALS. ASHA may reject a bid or proposal for any reason not disallowed by law including, but not limited to, the following:

(1) the bid or proposal fails to conform to the requirements of the invitation to bid or request for proposals or is otherwise non-responsive;

(2) the bidder or offeror is not responsible;

(3) the bidder or offeror has failed to satisfactorily perform on a previous contract with ASHA or a governmental entity;

(4) the bidder or offeror has unpaid taxes, fees, fines, or other charges due ASHA or a governmental entity;

(5) the bidder or offeror is currently disbarred or ineligible from bidding on ASHA, federal, state, or other governmental entity contracts;

(6) the bid or proposal is late;

(7) the bid or proposal is unsigned;

(8) the bid or proposal is unreasonable as to price;

(9) the bid or proposal contains an ambiguity or uncertainty as to any term or condition; or

(10) the executive director determines in writing that acceptance of the bid or proposal is not in the best interest of ASHA. (Eff. 11/26/81, Register 80)

3AAC 95.125. RESPONSIBILITY OF BIDDERS AND OFFERORS. (a) ASHA will, in its discretion, make a reasonable inquiry to determine the responsibility of a bidder or offeror. The failure of a bidder or offeror to promptly supply information in connection with such an inquiry is grounds for a determination of non-responsibility with respect to the bidder or offeror.

(b) In determining the responsibility of a bidder or offeror, ASHA will, in its discretion, consider the following factors:

(1) the ability, capacity and skill of the bidder or offeror to perform the contract;

3AAC 95.075. LATE BIDS AND PROPOSALS. (a) A bid or proposal received at the office designated in the invitation to bid or request for proposals after the closing time for the submission of bids or proposals, is a late bid or proposal and will not be considered.

(b) Late bids or proposals will be retained by ASHA. (Eff. 11/26/81, Register 80)

3AAC 95.085. RECEIPT OF BIDS AND PROPOSALS. (a) Bids and proposals will be date and time stamped or marked upon receipt by ASHA. Bids bids and proposals received before the time set for opening will be kept unopened, except that unidentified bids and proposals may be opened by ASHA solely for the purpose of identification.

(b) Bids and proposals opened by mistake or for identification purposes will be immediately resealed in their envelopes. The person responsible for such an opening will write on or attach to the envelope an explanation of the opening, the date and time opened, and his name and position.

(c) Before bid or proposal opening, information concerning the identity and the number of bids or proposals received will be made available only to ASHA employees who have a need for such information within their scope of work, unless otherwise directed in writing by the executive director. (Eff. 11/26/81, Register 80)

3AAC 95.095. MODIFICATION AND WITHDRAWAL OF BIDS AND PROPOSALS. (a) Modified bids and proposals may be submitted at any time before the closing time for submission of bids or proposals. Modified bids and proposals must be submitted in sealed envelopes. The outside of the envelope must identify the contents as a modified bid or proposal and must set out the date and time of the bid or proposal opening.

(b) Bids and proposals may be withdrawn at any time before the closing time for submission of bids or proposals by written notice received at the place for the submission of bids or proposals. (Eff. 11/26/81, Register 80)

3AAC 95.105. OPENING OF BIDS AND PROPOSALS. (a) Bids and proposals received before the time set for opening will be opened in public at the time and place stated in the invitation to bid or request for proposals. The names of the bidders or offerors and the total amounts bid or proposed will be read aloud to the persons present.

(b) Examination of bids and proposals by the public will be permitted if it does not interfere unduly with the conduct of ASHA business. Original bids and proposals may be examined by

(6) a general description of the scope of work and services required or a general description of the type, quality and quantity of the items to be purchased; and

(7) bid or proposal guarantee requirements.
(Eff. 11/26/81, Register 80)

3AAC 95.055. PUBLIC NOTICE. (a) At least 20 days before the last day set for the submission of bids or proposals, or 10 days if it is anticipated by ASHA that the contract will not exceed $25,000, the invitation to bid or request for proposals will be:

(1) published in a newspaper of general circulation in the state;

(2) posted in a public building or ASHA office nearest the municipality, community or area in which the construction will be located or the goods or services will be utilized;

(3) posted in ASHA's central office in Anchorage, Alaska; and

(4) delivered to an office of the Associated General Contractors if the bid or proposal is for construction.

(b) ASHA will, in its discretion, also notify prospective bidders or proposers by any other method including but not limited to

(1) mailing or sending the invitation to bid or request for proposals to prospective bidders or proposers selected by ASHA; and

(2) publishing the invitation to bid or request for proposals in a trade journal.

(c) Failure by a prospective bidder or offeror to receive actual notice of an invitation to bid or request for proposals does not invalidate any bidding or proposal procedure.
(Eff. 11/26/81, Register 80)

3AAC 95.065. SUBMISSION OF BIDS AND PROPOSALS. (a) Bids and proposals must be submitted in sealed envelopes. The outside of an envelope must identify the contents as either a bid or proposal and must set out the date and time of the bid or proposal opening.

(b) Bids and proposals must be submitted so as to be received in the office designated in the invitation to bid or request for proposals no later than the closing time for submission of bids or proposals. (Eff. 11/26/81, Register 80)

3 AAC 95.025. COMPETITIVE SEALED BIDDING DEFINED. Competitive sealed bidding is a method of procurement which involves but is not limited to

(1) public solicitation of bids through an invitation to bid;

(2) public opening of bids; and

(3) contract award, if any, to the lowest responsive and responsible bidder. (Eff. 11/26/81, Register 80)

3 AAC 95.035. COMPETITIVE SEALED PROPOSAL DEFINED. Competitive sealed proposal is a method of procurement which involves but is not limited to

(1) public solicitation of proposals through a Request for Proposals;

(2) public opening of proposals;

(3) negotiations and discussions with responsible offerors whose proposals have been determined in writing by the executive director or his designee to be reasonably susceptible of being selected for award; and

(4) a contract award, if any, to the responsible offeror whose proposal is most advantageous to ASHA. (Eff. 11/26/81, Register 81)

3AAC 95.045. INVITATION TO BID AND REQUEST FOR PROPOSALS DEFINED. (a) ASHA will solicit bids through the use of an invitation to bid.

(b) ASHA will solicit proposals through the use of a request for proposals.

(c) An invitation to bid and a request for proposals will contain the following information:

(1) the date of the invitation to bid or request for proposal;

(2) the closing time for the submission of bids or proposals;

(3) the place for the submission of bids or proposals;

(4) the time and place for the opening of the bids or proposals;

(5) the place where bid or proposal forms or other relevant information regarding the bid or proposal may be obtained;

PART 9.
ALASKA STATE HOUSING AUTHORITY

Chapter
95. Procurement
(3 AAC 95.110 - 3 AAC 95.320)
96. Acquisition of Real Property and Improvements
(3 AAC 96.010 - 3 AAC 96.250)
97. Disposition of Real Property
(3 AAC 97.010 - 3 AAC 97.330)
98. Public Housing
(3 AAC 98.010 - 3 AAC 98.180)

CHAPTER 95.
PROCUREMENT

Article
1. Procurement by Competitive Solicitation
(3 AAC 95.010 - 3 AAC 95.135)
2. Procurement by Negotiation
(3 AAC 95.140 - 3 AAC 95.205)
3. Procurement Protests
(3 AAC 95.210 - 3 AAC 95.255)
4. Miscellaneous
(3 AAC 95.260 - 3 AAC 95.320)

ARTICLE 1.
PROCUREMENT BY COMPETITIVE SOLICITATION

Section
15. Contract Award by Competitive Solicitation
25. Competitive Sealed Bidding Defined
35. Competitive Sealed Proposal Defined
45. Invitation to Bid and Request for Proposals Defined
55. Public Notice
65. Submission of Bids and Proposals
75. Late Bids and Proposals
85. Receipt of Bids and Proposals
95. Modification and Withdrawal of Bids and Proposals
105. Opening of Bids and Proposals
115. Rejection of Bids and Proposals
125. Responsibility of Bidders and Offerors
135. Award

3 AAC 95.015. CONTRACT AWARD BY COMPETITIVE SOLICITATION. (a) ASHA will award all contracts for supplies, materials, equipment, services, construction and the leasing of real property by competitive sealed bidding or by competitive sealed proposal under 3AAC 95.015--3AAC 95.135, except as provided in 3AAC 95.145--3AAC 95.205.

(b) ASHA will, in its discretion, award a contract by competitive sealed proposal if the executive director makes a determination in writing that the use of competitive sealed bidding is not practicable or in the best interest of ASHA due to the nature of the procurement. (Eff. 11/26/81, Register 80)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

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OFFICE OF THE COMMISSIONER
POSITION PAPER

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

Emil Notti, Commissioner

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 341
Title: An Act relating to state procurement practices and procedures

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

FISCAL DETAIL

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

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		243.2	449.4	462.9	476.8	491.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

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

Prepared by: Remond Henderson Remond Henderson Phone: 465-4708
Division: Administrative Services Date: 2/6/86

Approved by Commissioner: _____ Date: 2/6/86
Agency: Community and Regional Affairs

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

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	No. of Positions	Range/Step	Barg. Unit	Class.	Approv.	Disapp.
Grants Administrator - Beginning FY 87	4	17/A	GGU			
Time Status	**Staff Months**	**RP Number**	**Location**	**Election District**	**Leg.**	
PFT	12		Anchorage			

Type of Expenditure			Amount
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

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	208.7
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ ___ . ___ ___ . ___ ___ . ___ ___ . ___ ___

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.

These four Grants Administrator positions would prepare grant contracts and procurement documents, closely monitor grant progress, provide advice and grant administration technical assistance, and assist grantees in finishing and closing out contracts. This would require adequate funding for toll calls and some travel funds.

0317F/1

Request For New Position

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

FY 87

Position Title	Administrative Assistant (Beginning FY87)						
Time Status: PFT	Staff Months: 12	RP Number	No. of Positions: 1	Range/Step: 12/A	Base Unit: GRU	Gov.	Approv.	Disapp.
			Location: Anchorage	Election District		Leg.		

Type of Expenditure		Amount
1	2	3
Salary	24,865	
Benefits	8,683	
Premium Pay		
Other		
Total Personal Services		33,548
Travel		-0-
Contractual		800
Commodities		200
Equipment		2,000
Other		
Total Cost		36,548

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	36.5
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number ___ - ___ - ___ - ___ - ___

Justification

This position would be needed to support the activities of the four (4) additional Grants Administrators required in FY 87, the four (4) new Grants Administrators needed in FY 88 and the three (3) new Grants Administrators needed in FY 89 (see attached related Requests for New Positions).

The Administrative Assistant would assist in maintaining files, keeping grant balances current, advertising and documentation needed to meet procurement and contract requirements, and other general support staff functions

Request For New Position

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

Page of
Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Cert.	Approv.	Disapp.
Clerk Typist III - Beginning FY 87	1	8/A	GGU			
Time Status	**Staff Months**	**RP Number**	**Location**	**Election District**	**Leg.**	
PFT	12		Anchorage			

Type of Expenditure		Amount
1	2	3
Salary	19,573	
Benefits	7,479	
Premium Pay		
Other		
Total Personal Services		27,052
Travel		-0-
Contractual		700
Commodities		300
Equipment		2,000
Other		
Total Cost		30,052

Receipt Code	Funding Source		
	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

Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Bargaining Unit	Geographic	Appropriation	Fund Source
Community Development Specialist I/II	1	16A	GGU			
Time Status	**Staff Months**	**RP Number**	**Location**	**Election District**		
PFT	12		Anchorage, AK			

Type of Expenditure		Amount
1	2	3
Salary	32,424	
Benefits	10,403	
Premium Pay		
Other		
Total Personal Services		42,827
Travel		8,200
Contractual		2,400
Commodities		500
Equipment		500
Other		
Total Cost		

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 ___ - ___ - ___ - ___ - ___

Justification

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 administraton 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.

Request For New Position

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

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Gov.	Appro.	Disap.
Grants Adminstrator	1	17A	GGU			
Time Status	**Staff Months**	**RP Number**	**Location**	**Election District**		
PFT	12		Anchorage			

Type of Expenditure		Amount
1	2	3
Salary	34,740	
Benefits	10,930	
Premium Pay		
Other		
Total Personal Services		45,670
Travel		5,200
Contractual		5,900
Commodities		600
Equipment		700
Other		
Total Cost		58,070

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	58.1
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

Justification

Generally, Child Care grants are awarded to the same contractors yearly. Under SB 341, the Child Care monies would have to go out to bid, probably resulting in new contractors and new local administrators. Therefore, this position would need to provide training and technical assistance to the new recipients.

An additional Grants Administrator is needed in order to process the increased amount of paperwork under SB 341.

Request For New Position

Agency Community & Regional Affairs
BRU Child Assistance
Component Child Care

Page 1 of 1
Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Barg. Unit	Geo.	Approv.	Disapp.
Clerk Typist III	1	8A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	12		Anchorage, AK				

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	32.4
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ . __ __ . __ . __ . __ __ . __ __

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.

Request For New Position

Agency: Community & Regional Affairs
BRU: Child Assistance
Component: Child Care

Page 1 of 1
Revised Date

FY 87

Position Title	No. of Positions	Range/Step	Bargaining Unit	Occ.	Agency	Div.
Administrative Officer I	1	17A	GGU			

Time Status	Staff Months	RP Number	Location	Election District	Leg.		
PFT	12		Juneau				

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	47.7
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number __ __ - __ __ - __ __ - __ __ - __ __

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.

Request For New Position

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

FY 87

DEPARTMENT OF EDUCATION POSITION PAPER
FOURTEENTH ALASKA LEGISLATURE
SECOND SESSION

SB 341

The Department has two concerns with this bill:

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

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

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

Harold Raynolds, Jr.
Commissioner

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

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

Sponsor: The Rules Committee
Requestor:
Date of Request:

FISCAL DETAIL

Agency Affected: Env. Conservation
BRU: Administration

Component: Administrative Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		49.5	49.8	51.8	53.8	56.2
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

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

Prepared by: W.A. Publicover Phone: 465-2676
Division: Administrative Services Date: 1-30-86

Approved by Commissioner: Bill Woss 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)

10/25/85

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 contacts and to act as agency expert in the procedural aspects of professional services contracts.

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

Type of Expenditure		Amount
1	2	3
Salary	28.4	
Benefits	9.5	
Premium Pay	--	
Other	--	
Total Personal Services		37.9
Travel		5.0
Contractual		5.0
Commodities		
Equipment		1.5
Other		
Total Cost		49.4

Receipt Code	Funding Source		
	Federal Receipts	1002	
	G. F. Match	1003	
	General Funds	1004	49.4
	I-A Receipts	1005	
	Program Receipts	1028	
	CIP Receipts	1061	
	Other		

For B&M Use Only
Key Number _____

Justification

The new State Procurement Code will place tighter controls on contracts for professional services. The Department typically has over 40 active contracts valued at over $2 million. While our professional staff defines the project scope and technical details, the procedural aspects of contracting are dispersed among the divisions. This allows inconsistencies, dilutes accountability, and hampers effective communications with the Department of Administration.

The Administrative Assistant will be the Department's expert on competitive sealed proposals. The position would be the focus for procedural aspects of RFPs, selection, and contract administration. The position will develop and standardize wording, provide a single point link to Department of Administration, advise on alternate procurement methods, maintain a contract tracking system, process payments, chair the contract closing committee, conduct training sessions or arrange for training, monitor the contract approval process, assist in handling protests, arrange official files and record retention schedules and maintain departmental contract procedures. The costs for this position are:

100	salary & benefits	37.9	300	postage for public notices	5.0
200	travel to regional offices to train field staff	5.0	400	Calculator, workstation	1.5

Request For New Position

Agency: Environmental Conservation

BRU: _____

Component: _____

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) ~~.~~

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.

POSITION PAPER/Department of Health & Social Services

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

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

FROM: for 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 Govenor

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 emphisis should be given to price.

36.30.300 page 17 Sole Source Procurements

General Concern

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

1. To rebid the project fairly all other bidders would, in most cases, need to have access to all information developed from the existing contract. This could result in considerable time for the State to prepare the bid or RFP and the contractors to prepare their proposals;

2. The dollar amount of the amendment by itself may be too small to create interest in the business community; and

3. Despite efforts of the State to provide for a fair bid, the current contractor has advantage over the

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

36.30.300 page 17 line 14 - 18, 22-23

Recommended change

Change lines 14-18:

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

Change lines 22-23:

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

Concern

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

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

36.30.365 page 19 line 25-26

Recommended Change

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

Concern

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

36.30.500 page 25

General Concern

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

36.30.560 to 36.30.590 pages 26 - 30

General Concern

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

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

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

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

36.30.930 page 47 lines 13 - 26

General Concern

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

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

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

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

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

State of Alaska

DIVISION OF MANAGEMENT

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

DATE: January 24, 1986

FILE NO: 510

TELEPHONE NO: 465-2424

FROM: Sharon Barton
Director

SUBJECT: SB 341 Procurement Bill

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

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

> "with a person under this subsection if the total amount of professional services contracts <u>for like services</u> awarded to that person <u>under sole source solicitation methods</u> 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:

> <u>(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.</u>

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 K. Barnett
Chris Rutz
James Baldwin

[redacted] Governor's Office

[redacted] ective Services	[redacted]	Rules Committee

Concur

PREPARED BY	DATE	DIRECTOR'S SIGNATURE	DATE
Sid LaMonica	1/16/86	[signature]	1-24-86

SUMMARY

GROUPS ASSISTING IN PREPARATION OF BILL	CONSTITUENT GROUPS APPEARING BY BILL
All Departments	Private Contractors/Vendors
ORGANIZATIONAL SUPPORT FOR BILL	**ORGANIZATIONAL OPPOSITION TO BILL**
None	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

01-039 (Rev. 12/83)

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: 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~~ with 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
REVENUE		0	0	0	0	0

FUNDING : (Thousands of Dollars)

GENERAL FUND		200.0	130.0	145.0	157.0	170.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

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

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

Approved by Commissioner : R. J. Knapp by Wayne S. Sparks 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)

10/25/85

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,

for 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 99775-5280

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.

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 <u>agency</u> 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 is 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,

for 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

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 28. - 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 thrashhold 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 threshhold 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 entirey since it has nc 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.

ATTACHMENT # 2

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 <u>may</u> 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

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 t[illegible] 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

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

ATTACHMENT # 3

Donald D. O'Dowd

UNIVERSITY OF ALASKA STATEWIDE SYSTEM

FAIRBANKS, ALASKA 99775-2560

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 Heaman

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 priorty to the Board of Regents were so included.

Baring unforeseen calamitites, 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; UAF -- $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. <u>Proposed Procurement Legislation</u>

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.