

SB

341

SENATE JUDICIARY COMMITTEE SUBSTITUTE
SENATE BILL 341
SECTIONAL ANALYSIS

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

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

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

Article 1. Organization of State Procurement.

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

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

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

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

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

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

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

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

Article 4. Other Procurement Methods.

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

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

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

Article 5. Contract Formation and Modification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 36.30.480. Cost principle regulations shall be adopted.

Article 6. Procurement Records and Reports.

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

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

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

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

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

Article 7. Legal and Contractual Remedies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

officer's recommendation or take any other appropriate action.

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

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

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

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

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

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

Article 8. Intergovernmental Relations.

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

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

Sec. 36.30.720. Joint use of facilities is allowable.

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

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

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

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

Sec. 36.30.790. Definitions for this article are provided.

Article 9. General Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 36.30.990. Definitions.

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

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

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

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

SECTION 69. This is the repealer section.

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

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

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

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

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

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

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

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

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

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

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

Article 4. Other Procurement Methods.

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

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

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

Article 5. Contract Formation and Modification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 36.30.480. Cost principle regulations shall be adopted.

Article 6. Procurement Records and Reports.

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

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

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

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

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

Article 7. Legal and Contractual Remedies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

officer's recommendation or take any other appropriate action.

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

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

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

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

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

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

Article 8. Intergovernmental Relations.

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

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

Sec. 36.30.720. Joint use of facilities is allowable.

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

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

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

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

Sec. 36.30.790. Definitions for this article are provided.

Article 9. General Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 36.30.990. Definitions.

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

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

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

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

SECTION 69. This is the repealer section.

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

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

**SENATE BILL 341
STATE PROCUREMENT CODE**

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

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

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

Major Modifications in CS SB 341 (Jud):

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

AMENDMENTS

AMENDMENT #1 by Senate Finance

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

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

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

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

AMENDMENT #2 by Senate Finance

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

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

AMENDMENT #3 by Senator Rodey

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

ANTICIPATED AMENDMENT by Senator Ferguson

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



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

SENATE SELECT INTERIM COMMITTEE ON PROCUREMENT PRACTICES AND PROCEDURES

January 13, 1986

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

Dear Mr. President:

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

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

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

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

PROCUREMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ETHICS

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

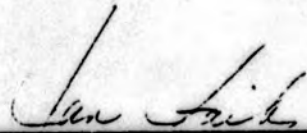
The Committee held two meetings in which it reviewed current statutes pertaining to conflict of interest and ethical behavior for state employees. The Committee also reviewed legislation introduced in the 13th Legislature that would have established an ethics code for the executive branch. Of particular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

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

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

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

Respectfully submitted,



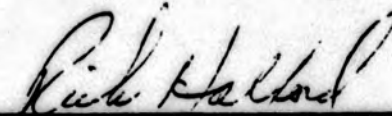
Senator Jan Faiks,
Chairman



Senator Jalmar Kettula
Vice-Chairman



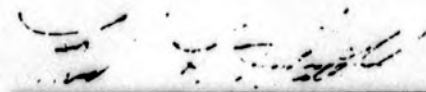
Senator Edna DeVries



Senator Rick Halford



Senator Joe Josephson



Senator Fred Zharoff

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

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

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

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

Article 1. Organization of State Procurement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 2. Competitive Sealed Bidding.

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

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

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

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

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

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

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

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

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

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

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

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

Article 3. Competitive Sealed Proposals.

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

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

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

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

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

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

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

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

Article 4. Other Procurement Methods.

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

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

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

Article 5. Preference for Alaska Products.

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

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

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

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

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

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

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

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

Sec. 36.30.338. Definitions for this article.

Article 6. Contract Formation and Modification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 36.30.480. Cost principle regulations shall be adopted.

Article 7. Procurement Records and Reports.

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

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

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

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

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

Article 8. Legal and Contractual Remedies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 9. Intergovernmental Relations.

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

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

Sec. 36.30.720. Joint use of facilities is allowable.

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

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

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

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

Sec. 36.30.790. Definitions for this article are provided.

Article 10. General Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 36.30.950. Severability clause is included.

Sec. 36.30.990. Definitions.

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

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

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

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

SECTION 67. This is the repealer section.

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

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

ALASKA STATE AFL-CIO

2501 Commercial Dr.
Anchorage, Alaska 99501
(907) 338-6284



819 1st Ave.
Fairbanks, Alaska 99701
(907) 456-2030

MANO FREY
Executive President

April 1, 1986

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

To the Co-Chair, members of the Committee:

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

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

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

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

Testimony CS SB 341
Dixie Hudish/ AFL-CIO

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

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

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

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

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

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

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

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

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

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

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

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

See pg 5
line 9-13

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

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

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

Finally,

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

AGC AMENDMENTS TO CS SB 341 (Jud)

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

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

two lowest bidders shall submit

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

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

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

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

Renumber remaining sections accordingly

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

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

1 IN THE SENATE

2

SENATE BILL NO. 341

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

5 CHAPTER 30. STATE PROCUREMENT CODE.

6 ARTICLE 1. ORGANIZATION OF STATE PROCUREMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (2) bid protests;

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

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

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

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

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

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

29 (9) definitions and classes of contractual services and

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

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

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

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

13 the state.

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

15 commissioner evidence of a valid Alaska business license together with

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

17 contractor shall also submit a valid certificate of registration

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

19 submission of additional information.

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

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

22 under this chapter.

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

24 court system, and the Alaska Railroad Corporation.

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

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

27 specifications for supplies, services, professional services, and

28 construction required by an agency. The commissioner shall monitor

29 the use of these specifications.

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

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

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

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

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

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

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

24 (4) transfer of excess supplies.

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

1 lease the space through the department.

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

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

16 ARTICLE 2. COMPETITIVE SEALED BIDDING.

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

20 (b) Competitive sealed bidding is not required

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

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

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

1 be awarded for periods of three years or less;

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

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

6 (6) for professional services; or

7 (7) for concessions operated on state property.

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (3) publication in the Alaska Administrative Journal.

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

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

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

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

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

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

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

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

1 set out in the invitation to bid.

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

7 (1) holds a current Alaska business license;

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

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

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

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

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

25 ARTICLE 3. COMPETITIVE SEALED PROPOSALS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 ARTICLE 4. OTHER PROCUREMENT METHODS.

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

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

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

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

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

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

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

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

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

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

1 competition that is practicable under the circumstances.

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

6 ARTICLE 5. CONTRACT FORMATION AND MODIFICATION.

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

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

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

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

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

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

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

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

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

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

1 shall determine in writing that

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 Sec. 36.30.430. STANDARD MODIFICATION CLAUSES FOR CONTRACTS.

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

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

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

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

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

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

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

1 ARTICLE 6. PROCUREMENT RECORDS AND REPORTS.

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

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

- 11 (1) a copy of the contract;
12 (2) the register of proposals prepared under AS 36.30.230
13 and a copy of each proposal submitted;
14 (3) the written determination to award the contract pre-
15 pared under AS 36.30.250; and
16 (4) a summary of the information required under (1) - (3)
17 of this section.

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

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

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

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

5 Sec. 36.30.530. PUBLIC ACCESS TO PROCUREMENT INFORMATION.
6 Procurement information is public except as otherwise provided by law.

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

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

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

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

17 ARTICLE 7. LEGAL AND CONTRACTUAL REMEDIES.

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

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

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

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

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

3 (5) the form of relief requested.

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

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

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

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

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

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

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

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

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

1 of the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 This decision may be appealed to the commissioner of

23 _____ (administration/transportation

24 and public facilities). If you appeal, you must file

25 a written notice of appeal with the commissioner within

26 five days after you receive this decision."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 decision must

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

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

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

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

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

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

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

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

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

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

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

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

29 (b) The hearing officer may

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

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

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

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

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

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

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

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

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

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

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

25 (9) administer oaths or affirmations.

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

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

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

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

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

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

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

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

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

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

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

16 ARTICLE 8. INTERGOVERNMENTAL RELATIONS.

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

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

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

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

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

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

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

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

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

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

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

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

29 Sec. 36.30.735. RESTRICTION ON CONTRACTING WITH OR EMPLOYING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 ARTICLE 9. GENERAL PROVISIONS.

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

1 solicited or entered into before that date.

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

7 (1) grants;

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

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

13 (4) contracts for medical doctors and dentists;

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

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

17 (7) disposals under AS 38.05;

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

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

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

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

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

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

1 political subdivisions, or the state and other governments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 different definition is prescribed for a particular provision,

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

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

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

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

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

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

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

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

1 by mutual action of the parties to the contract;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (1) sue and be sued;

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

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

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

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

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

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

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

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

1 schools in the regional educational attendance area;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (3) encourage and promote the establishment of adequate
23 sanatorium facilities within the state to care for persons suffering
24 from tuberculosis and allied conditions;

25 (4) under the provisions of AS 36.30 (State Procurement
26 Code), obtain, by purchase or donation from surplus federal property
27 or otherwise, medical supplies and equipment useful in carrying out
28 this program and to allot or resell these supplies and equipment to
29 private institutions engaged by the department to carry out this

1 program;

2 (5) under the provisions of AS 36.30, contract with hos-
3 pitals, associations, or sanatoria qualified and equipped to give
4 adequate care inside or outside the state;

5 (6) employ necessary and trained personnel to carry out the
6 purposes of AS 18.15.120 - 18.15.140;

7 (7) pay the costs of care and incidental expenses for
8 residents of the state, in whole or in part, depending on the ability
9 of each patient to pay, and the temporary costs of care and transpor-
10 tation for nonresidents on the same basis until they can be trans-
11 ferred to their residence;

12 (8) enlist the cooperation of state and federal agencies
13 operating in the state for the furtherance of this program;

14 (9) establish standards in accordance with department
15 procedure for the care of tuberculars receiving treatment under
16 AS 18.15.120 - 18.15.140.

17 * Sec. 10. AS 18.55.100 is amended by adding a new subsection to read:

18 (d) The authority's power to contract, lease, rent, construct,
19 acquire, procure, and provide for services under this section is
20 governed by AS 36.30.

21 * Sec. 11. AS 19.05.020 is amended to read:

22 Sec. 19.05.020. REGULATIONS. The department shall adopt regu-
23 lations necessary to carry out the purpose of AS 19.05 - AS 19.25.
24 The regulations may not conflict with AS 36.30 (State Procurement
25 Code) or regulations adopted by the Department of Administration to
26 implement that chapter.

27 * Sec. 12. AS 19.05.080 is amended to read:

28 Sec. 19.05.080. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-
29 RIALS BY PURCHASE OR EMINENT DOMAIN. The department on behalf of the

1 state and as part of the cost of constructing or maintaining a highway
2 may purchase in the open market, acquire, take over, or condemn under
3 the right and power of eminent domain land in fee simple or easements
4 which it considers necessary for present public use, either temporary
5 or permanent, or which it considers necessary and reasonable for the
6 public use. By the same means, the department may obtain material,
7 including clay, gravel, sand, or rock, or the land necessary to obtain
8 material, including access to it. The department may acquire the land
9 or materials notwithstanding the fact that title to it is vested in
10 the state or a department, agency, commission or institution of the
11 state. Acquisition of materials by purchase in the open market under
12 this section is governed by AS 36.30 (State Procurement Code).

13 * Sec. 13. AS 19.10.160 is amended to read:

14 Sec. 19.10.160. STANDARD PLANS AND SPECIFICATIONS. The depart-
15 ment shall prepare and adopt uniform standard plans and specifications
16 for the establishment, construction and maintenance of highways in the
17 state. The department may amend the plans and specifications as it
18 considers advisable. The standards shall conform as closely as
19 practicable to those adopted by the American Association of State
20 Highway and Transportation Officials.

21 * Sec. 14. AS 19.10.170(a) is amended to read:

22 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is
23 [SHALL BE] the general policy of the state [DEPARTMENT] to require the
24 construction of all highways under bid contract in accordance with
25 AS 36.30 (State Procurement Code). However, subject to the provisions
26 of (b) of this section, when the estimated cost of a construction
27 project is less than \$100,000 or when it appears to be in the best
28 interests of the state, the department may perform the work notwith-
29 standing any other provisions of law.

1 * Sec. 15. AS 19.10.180 is repealed and reenacted to read:

2 Sec. 19.10.180. REQUEST FOR PUBLIC BIDS. Requests for public
3 bids are governed by AS 36.30 (State Procurement Code). The request
4 for public bids may require the contractor to furnish equipment,
5 labor, materials, and supplies for the project, or it may state that
6 the department will furnish the materials and supplies. If the de-
7 partment elects to provide materials and supplies for a project, it
8 shall do so at the time it adopts the construction program. The
9 department shall acquire these materials and supplies under AS 36.30
10 by requesting bids for them according to the class, type, and nature
11 of the materials and supplies. The contract for materials and sup-
12 plies may be awarded either upon the basis of delivery to the con-
13 struction project directly or to a central storehouse or storehouses
14 maintained by the department. Those materials and supplies so pur-
15 chased by the department may be delivered to the project site without
16 expense to the contractor, or it may sell them to the contractor at
17 cost and make the materials and supplies a part of the construction
18 cost.

19 * Sec. 16. AS 19.10.200 is repealed and reenacted to read:

20 Sec. 19.10.200. PROCEDURES FOR THE AWARD OF CONTRACTS. The
21 award of a contract for highway construction work is governed by
22 AS 36.30 (State Procurement Code), AS 19.05 - AS 19.25, and regula-
23 tions adopted under those laws.

24 * Sec. 17. AS 19.30.070 is amended to read:

25 Sec. 19.30.070. CONTRACTS FOR CONSTRUCTION OF ROADS. The
26 director of the division of lands may contract with private persons
27 for the construction of roads to and on state lands programmed for
28 surface disposal which are not more than six miles from existing roads
29 or highways. Contracts under this section are governed by AS 36.30

1 (State Procurement Code).

2 * Sec. 18. AS 19.30.080 is amended to read:

3 Sec. 19.30.080. CONSTRUCTION STANDARDS AND MAINTENANCE. An
4 access road constructed under AS 19.30.060 - 19.30.100 shall be of low
5 standard, not necessarily suitable for all weather use. The state is
6 not under obligation to maintain an access road constructed under AS
7 19.30.060 - 19.30.100. If an access road is constructed outside a
8 municipality that has zoning ordinances, the right-of-way width for
9 the road shall be determined by the division of lands and the Depart-
10 ment of Transportation and Public Facilities. If an access road is
11 constructed within the boundaries of a municipality that has zoning
12 ordinances, the right-of-way width shall conform to the subdivision
13 control ordinances of the municipality. Contracts for the work on an
14 access road are governed by AS 36.30 (State Procurement Code) [SHALL
15 BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER QUALIFIED TO CONTRACT WITH
16 THE STATE].

17 * Sec. 19. AS 19.60.010 is amended to read:

18 Sec. 19.60.010. ACQUISITION AND MAINTENANCE OF FERRY TERMINAL
19 FACILITIES. The department shall construct, purchase or lease ferry
20 terminal facilities at locations it selects for the loading and un-
21 loading of passengers and vehicles under their own power, on and off
22 ferries. The department shall repair and maintain these facilities.
23 Construction and purchasing under this section are governed by
24 AS 36.30 (State Procurement Code).

25 * Sec. 20. AS 23.15.611(a) is amended to read:

26 (a) The department may [IS AUTHORIZED TO] participate in pro-
27 grams of manpower training if it finds they are necessary to meet the
28 occupational needs of the state. This authorization includes authori-
29 ty to execute on behalf of the state agreements or contracts which may

1 be necessary or desirable to enable the state to participate in a
2 program, to receive and expend all appropriate funds made available
3 for programs by the state or from other sources, to supervise the
4 expenditure of the funds and conduct of the programs by other public
5 and private agencies of the state, and to make the reports and certifi-
6 cates which are called for, and in cooperative arrangements with the
7 Department of Education. Contracts with private entities under this
8 subsection are governed by AS 36.30 (State Procurement Code).

9 * Sec. 21. AS 23.20.075(a) is amended to read:

10 (a) The department may acquire in the name of the state by term
11 purchase agreements based on competitive bids in accordance with
12 AS 36.30 (State Procurement Code) land and buildings upon terms and
13 conditions that [WHICH] are approved by the Bureau of Employment
14 Security of the United States, or its successor, for the purpose of
15 providing office space for the department at a place which the depart-
16 ment finds necessary and suitable.

17 * Sec. 22. AS 23.35.110 is amended to read:

18 Sec. 23.35.110. CONTRACTS FOR CARE. In carrying out this
19 chapter, the department may enter into contracts or other arrangements
20 with hospitals and doctors in the state for furnishing care on an
21 annual basis to persons entitled to benefits. Contracting under this
22 section is governed by AS 36.30 (State Procurement Code).

23 * Sec. 23. AS 24.55.275 is amended to read:

24 Sec. 24.55.275. CONTRACT PROCEDURES. The ombudsman shall adopt
25 by regulation procedures consistent with AS 36.30 [AS 24.23] to be
26 followed by the office of the ombudsman in contracting for services.
27 However, the procedure for requests for proposals does not apply to
28 contracts for investigations under AS 24.55.100.

29 * Sec. 24. AS 24.60.040(a) is amended to read:

1 (a) A person to whom this chapter applies may not be a party to
2 or have an interest in a state contract or lease unless the contract
3 or lease is let under the competitive bid procedure in AS 36.30 (State
4 Procurement Code) [AS 37.05.230] or the total annual amount of the
5 state contract or lease is \$1,000 or less, or is a standardized con-
6 tract or lease which was developed under publicly established guide-
7 lines and is generally available to the public at large, members of a
8 profession, occupation or group. A person has an interest in a state
9 contract or lease under this section if the person receives direct or
10 indirect financial benefits.

11 * Sec. 25. AS 26.05.230(a) is amended to read:

12 (a) Buildings and sites for armory purposes may be leased or
13 constructed, based upon location and size of units to be organized,
14 and shall be financed through state and federal appropriations or
15 both. These facilities may be made available by local communities or
16 by the cooperative arrangement between the state and the federal
17 government and any local community. Leasing and construction under
18 this subsection are governed by AS 36.30 (State Procurement Code).

19 * Sec. 26. AS 26.05.280 is amended to read:

20 Sec. 26.05.280. TRANSPORTATION, SUBSISTENCE, AND SUPPLIES.
21 There shall be provided by the state, transportation and subsistence
22 for all officers and enlisted persons who are ordered into active
23 service by the state for encampment, field duty, or other duty. Neces-
24 sary transportation, stores and subsistence for troops when ordered on
25 duty shall be contracted by the proper officers and paid for as other
26 military bills. Contracting under this section is governed by AS 36.-
27 30 (State Procurement Code).

28 * Sec. 27. AS 27.21.030 is amended to read.

29 Sec. 27.21.030. GENERAL POWERS. To accomplish the purposes of

1 this chapter, the commissioner may

2 (1) in accordance with the Administrative Procedure Act
3 (AS 44.62) adopt, amend, and enforce regulations pertaining to surface
4 coal mining and reclamation operations;

5 (2) issue permits;

6 (3) conduct hearings and conferences;

7 (4) issue orders requiring an operator to take the actions
8 necessary to comply with this chapter and the regulations adopted
9 under this chapter;

10 (5) issue orders modifying previous orders;

11 (6) after opportunity for a due process hearing, issue a
12 final order revoking the permit of an operator who has failed to
13 comply with an order of the commissioner to take action required by
14 this chapter or regulations adopted under this chapter;

15 (7) order the immediate cessation of all or part of a
16 surface coal mining and reclamation operation if the commissioner
17 finds that the operation or part of the operation creates an imminent
18 danger to the health or safety of the public or is causing or can
19 reasonably be expected to cause significant imminent harm to land,
20 air, or water resources, and, to the extent reasonably necessary to
21 eliminate or alleviate those conditions, take other action or make
22 changes in a permit, as provided in this chapter;

23 (8) hire and authorize the hiring of employees and private
24 contractors, subject to the conflict of interest provisions of this
25 chapter and subject to AS 36.30 (State Procurement Code), to assist in
26 carrying out the requirements of this chapter;

27 (9) enter and inspect a surface coal mining operation that
28 is subject to the provisions of this chapter to assure that the opera-
29 tion is in compliance with this chapter;

- 1 (10) conduct, encourage, request, and participate in
2 studies, surveys, investigations, research, experiments, training, and
3 demonstrations;
- 4 (11) prepare reports and require permittees to prepare
5 reports;
- 6 (12) accept, receive, and administer grants, gifts, or other
7 money made available for the purposes of this chapter regardless of
8 the source of the grants, gifts, or money;
- 9 (13) take the steps necessary to allow the state to partici-
10 pate to the fullest extent practicable in the abandoned mine land
11 program provided in Title IV of the Surface Mining Control and Recla-
12 mation Act of 1977, including engaged in any work and adopting, amend-
13 ing and enforcing regulations;
- 14 (14) take the actions necessary to establish and maintain
15 exclusive jurisdiction over surface coal mining and reclamation opera-
16 tions in the state under the provisions of the Surface Mining Control
17 and Reclamation Act of 1977, including making recommendations for
18 legislation to clarify or amend this chapter to conform with the terms
19 of the Surface Mining Control and Reclamation Act of 1977;
- 20 (15) contract with state agencies to obtain the professional
21 and technical services necessary to carry out the provisions of this
22 chapter;
- 23 (16) coordinate the review of applications and issuance of
24 permits for surface coal mining and reclamation operations with other
25 federal or state permit processes applicable to those operations;
- 26 (17) enter into cooperative agreements with the Secretary of
27 the United States Department of the Interior for the regulation of
28 surface coal mining operations on federal land in accordance with the
29 Surface Mining Control and Reclamation Act of 1977; and

1 (18) perform other duties required by this chapter.

2 * Sec. 28. AS 33.30.050 is amended to read:

3 Sec. 33.30.050. COMMISSIONER TO PROVIDE MEDICAL SERVICES. The
4 commissioner shall detail physicians, nurses, and psychiatrists, or
5 their aides, and laboratory technicians, employed by the department to
6 any prison facility where state prisoners are detained or confined,
7 for the purpose of furnishing necessary medical services, including
8 examinations for communicable and infectious diseases. However, if
9 medical services cannot be furnished by physicians, nurses, psychia-
10 trists, or their aides, and laboratory technicians, regularly employed
11 by the department, the commissioner may contract with private practi-
12 tioners located in the area of a prison facility to furnish these
13 services. The cost of contracted services shall be paid out of appro-
14 priations made to the department. Contracting for services under this
15 section is governed by AS 36.30 (State Procurement Code).

16 * Sec. 29. AS 33.30.062(a) is amended to read:

17 (a) The commissioner may enter into an agreement with a private-
18 ly operated correctional facility, but only if the facility is located
19 in the state and if the purpose of the agreement is to involve prison-
20 ers in a work or rehabilitation furlough program established under
21 this chapter, to provide necessary facilities under AS 33.30.282 -
22 33.30.288, or to confine prisoners convicted of a misdemeanor. An
23 [NOTWITHSTANDING AS 37.05.230(1)(B), AN] agreement awarded under this
24 subsection is governed by AS 36.30 (State Procurement Code) [SHALL BE
25 BASED ON COMPETITIVE BIDS].

26 * Sec. 30. AS 33.32.015(b) is amended to read:

27 (b) The commissioner of corrections may
28 (1) subject to AS 36.30 (State Procurement Code) [THE
29 FISCAL PROCEDURES ACT (AS 37.05)], use, purchase, lease, equip, and

1 maintain buildings, machinery, and other equipment, and may purchase
2 materials and enter into contracts, which may be necessary for the
3 correctional industries program;

4 (2) provide for prisoners to be employed in rendering
5 services and producing articles, materials, and supplies needed by a
6 state agency, a political subdivision of the state, an agency of the
7 federal government, other states or their political subdivisions, or
8 for use by nonprofit organizations;

9 (3) if the Correctional Industries Commission established
10 in AS 33.32.070 approves, employ prisoners to provide services or
11 products as needed by private industry if the services or products
12 have potential for contributing to the economy of the state and will
13 have minimal negative impact on an existing private industry or labor
14 force in the state.

15 * Sec. 31. AS 35.05.010 is amended to read:

16 Sec. 35.05.010. PLANNING AND CONSTRUCTION. The department is
17 responsible for the planning and construction of public works except
18 as provided for court facilities in AS 22.05.025. Contracts for
19 planning and construction of public works are governed by AS 36.30
20 (State Procurement Code).

21 * Sec. 32. AS 35.05.020 is amended to read:

22 Sec. 35.05.020. RULES AND REGULATIONS. The department shall
23 adopt [RULES AND] regulations that [WHICH] it considers necessary to
24 carry out the purpose of this title. The regulations may not conflict
25 with AS 36.30 (State Procurement Code) or the regulations adopted by
26 the Department of Administration under that chapter.

27 * Sec. 33. AS 35 is amended by adding a new section to read:

28 Sec. 35.10.195. CONFORMANCE WITH AS 36.30. The contractual
29 techniques for the procurement of labor, materials, and contractual

1 services under the policies developed under this chapter must conform
2 to the requirements of AS 36.30 (State Procurement Code).

3 * Sec. 34. AS 35.15.010(a) is amended to read:

4 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is
5 [SHALL BE] the general policy of the state [DEPARTMENT] to require the
6 construction of all public works under bid contract in accordance with
7 AS 36.30 (State Procurement Code). However, when the estimated cost
8 of a construction project is less than \$100,000, or when it appears to
9 be in the best interests of the state, the department may perform the
10 work, notwithstanding any other provisions of law. A complete record
11 shall be kept by the commissioner or the commissioner's designee of
12 all transactions entered into under this section including names of
13 employees involved in the transactions.

14 * Sec. 35. AS 35.15.020 is repealed and reenacted to read:

15 Sec. 35.15.020. REQUEST FOR PUBLIC BIDS. The solicitation of
16 bids for construction of public works is governed by AS 36.30 (State
17 Procurement Code). The request for bids may require the contractor to
18 furnish equipment, labor, materials, and supplies for the project, or
19 it may state that the department will furnish the materials and sup-
20 plies. If the department elects to provide materials and supplies for
21 a project, it shall make the election at the time it adopts the con-
22 struction program. The department shall acquire these materials and
23 supplies under AS 36.30 by requesting bids for them according to the
24 class, type, and nature of the materials and supplies. The contract
25 may be awarded either upon the basis of delivery to the construction
26 project directly or to a central storehouse or storehouses maintained
27 by the department. Those materials and supplies so purchased by the
28 department may be delivered to the project site without expense to the
29 contractor, or it may sell them to the contractor at cost and make the

1 materials and supplies a part of the construction cost.

2 * Sec. 36. AS 35.15.040 is repealed and reenacted to read:

3 Sec. 35.15.040. PROCEDURES FOR THE AWARD OF CONTRACTS. Award of
4 a contract for the construction of a public work shall comply with
5 this title, AS 36.30 (State Procurement Code), and the regulations
6 adopted under those laws.

7 * Sec. 37. AS 35.20.010 is amended to read:

8 Sec. 35.20.010. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-
9 RIALS BY PURCHASE OR EMINENT DOMAIN. The department, on behalf of the
10 state and as part of the cost of constructing or maintaining a public
11 work, may purchase in the open market, acquire, take over, or condemn
12 under the right and power of eminent domain land in fee simple or
13 easements which it considers necessary for present public use, either
14 temporary or permanent, or which it considers necessary and reasonable
15 for the public use. By the same means, the department may obtain
16 material including clay, gravel, sand, or rock, or the land necessary
17 to obtain the material, and the necessary land or easements to provide
18 access to it. The department may acquire the land or material
19 notwithstanding the fact that the title to it is in the state or a
20 department, agency, commission or institution of the state.
21 Acquisition of material in the open market under this section is
22 governed by AS 36.30 (State Procurement Code).

23 * Sec. 38. AS 37.05 is amended by adding a new section to read:

24 Sec. 37.05.232. PETTY CASH ACCOUNTS. The department shall
25 determine the amount of the petty cash accounts needed by each state
26 agency and inspect the petty cash accounts at least once each year to
27 determine that the total plus amounts of receipts for unreplenished
28 disbursements is equal to the fixed sum of cash set aside. Shortages
29 in petty cash accounts are a personal liability of the responsible

1 head of the agency to whom the account is set aside. The department
2 shall adopt necessary regulations governing use and replenishment of
3 petty cash funds.

4 * Sec. 39. AS 41.21.020(a) is amended to read:

5 (a) The Department of Natural Resources shall

6 (1) develop a continuing plan for the conservation and
7 maximum use in the public interest of the scenic, historic, archaeo-
8 logic, scientific, biological, and recreational resources of the
9 state;

10 (2) plan for and develop a system of state parks and recre-
11 ational facilities, to be established as the legislature authorizes
12 and directs;

13 (3) acquire by gift, purchase, or transfer from state or
14 federal agencies, or from individuals, corporations, partnerships or
15 associations, land necessary, suitable and proper for roadside, pic-
16 nic, recreational or park purposes;

17 (4) control, develop and maintain state parks and recrea-
18 tional areas;

19 (5) provide for the acquisition, care, control, supervi-
20 sion, improvement, development, extension and maintenance of public
21 recreational land, and make necessary arrangements, contracts or
22 commitments for the improvement and development of land acquired under
23 AS 41.21.010 - 41.21.040; contracting for improvement and development
24 under this paragraph is governed by AS 36.30 (State Procurement Code);

25 (6) adopt, in accordance with this section and the Adminis-
26 trative Procedure Act (AS 44.62), regulations governing the use and
27 designating incompatible uses within the boundaries of state park and
28 recreational areas to protect the property and to preserve the peace;

29 (7) cooperate with the United States and its agencies and

1 local subdivisions of the state to secure the effective supervision,
2 improvement, development, extension, and maintenance of state parks,
3 state monuments, state historical areas, and state recreational areas,
4 and secure agreements or contracts for the purpose of AS 41.21.010 -
5 41.21.040;

6 (8) encourage the organization of state public park and
7 recreational activities in the local political subdivisions of the
8 state;

9 (9) provide for consulting service designed to develop
10 local park and recreation facilities and programs;

11 (10) provide clearing-house services for other state agen-
12 cies concerned with park and recreation matters; and

13 (11) perform other duties as are prescribed by executive
14 order or by law;

15 (12) maintain memorials to Alaska veterans located in state
16 parks;

17 (13) adopt, in accordance with the Administrative Procedure
18 Act (AS 44.62), regulations governing the use of the Chena River State
19 Recreation Area and designating incompatible uses within the bound-
20 aries of the Chena River State Recreation Area in accordance with
21 AS 41.21.490.

22 * Sec. 40. AS 42.40.920(b) is amended to read:

23 (b) Unless specifically provided otherwise in this chapter, the
24 following laws do not apply to the operations of the corporation:

25 (1) AS 19;

26 (2) AS 30.15;

27 (3) AS 35;

28 (4) AS 36.30, except as specifically provided in AS 36.30

29 (State Procurement Code);

- 1 (5) AS 37.05;
2 (6) [(5)] AS 37.07;
3 (7) [(6)] AS 37.10.010 - 37.10.060;
4 (8) [(7)] AS 37.10.085;
5 (9) [(8)] AS 37.20;
6 (10) [(9)] AS 37.25;
7 (11) [(10)] AS 38;
8 (12) [(11)] AS 44.62.040 - 44.62.320.

9 * Sec. 41. AS 44.21.310(a) is amended to read:

10 (a) The telecommunications divisions, as directed by the deputy
11 commissioner, shall

12 (1) advise the governor on matters of policy and comprehen-
13 sive state planning for telecommunications services;

14 (2) make an annual report to the governor and to the legis-
15 lature on the activities of the telecommunications divisions;

16 (3) coordinate, manage, and supervise state programs in
17 telecommunications, including the management of those telecommunica-
18 tion services for the state obtained from common carriers and from the
19 communications industry;

20 (4) when requested, provide technical and consulting assis-
21 tance to the executive, judicial, and legislative branches of state
22 government, to the University of Alaska, and to private noncommercial
23 entities which request that assistance in facility procurement and
24 leasing and in identifying long-range goals and objectives for the
25 state and its political subdivisions in all aspects of telecommunica-
26 tions, including public, educational, and instructional telecommunica-
27 tions;

28 (5) prepare and maintain a state comprehensive telecommu-
29 nications development plan to further state telecommunications devel-

1 opment and to meet state telecommunications needs and prepare and
2 maintain a comprehensive inventory of all state communications facil
3 ities;

4 (6) whenever feasible, procure services from private enter-
5 prise or certified and franchised utilities and contract for the
6 construction, management, operation and maintenance of telecommunica-
7 tions systems, and develop a procurement policy consistent with
8 AS 36.30 (State Procurement Code) [UNDER AS 37.05.010 - 37.05.410];
9 the procurement policy must seek to achieve the maximum benefit to the
10 public, and methods of procurement, including lease, purchase, rental,
11 or combinations of lease, purchase, and rental, must be selected on
12 the basis of factors such as the ratio of long-range costs versus
13 benefits, life cycle costing, and the costs to the communications
14 industry to the extent that these costs may affect local and long
15 distance basic telephone rates; procurement, contracting, construc-
16 tion, and maintenance under this paragraph is governed by AS 36.30;

17 (7) provide information and assistance to state agencies to
18 promote governmental coordination and unity in the preparation of
19 agency plans and programs involving the use of telecommunications;

20 (8) apply for and accept federal and private money, proper-
21 ty, or assistance, that may be appropriated, granted, or otherwise
22 made available to the telecommunications divisions and use and dis-
23 burse money and property for purposes consistent with AS 44.21.300 -
24 44.21.330 and AS 44.21.256 - 44.21.290, subject to reasonable limita-
25 tions imposed by the grantor;

26 (9) participate with other governmental units in planning,
27 and assist local governments and governmental conferences and councils
28 in the state in planning and coordinating their activities relating to
29 telecommunications;

1 (10) provide for the orderly transition to new telecommu-
2 nications services and systems by state agencies;

3 (11) serve as a clearinghouse for information, data, and
4 other materials which may be necessary or helpful to federal, state,
5 or local governmental agencies in the development of telecommunication
6 systems;

7 (12) coordinate their services and activities with those of
8 other state departments and agencies to the fullest extent possible to
9 avoid unnecessary duplication; and

10 (13) provide that all activities of the telecommunications
11 divisions are responsive to state statutes and regulations, and to the
12 regulations and rulings of the Federal Communications Commission.

13 * Sec. 42. AS 44.19.144(b) is amended to read:

14 (b) The director may

15 (1) With the written concurrence of the governor, enter
16 into contracts and subcontracts on behalf of the state to carry out
17 the provisions of AS 44.19.141 - 44.19.152; contracting under this
18 paragraph is governed by AS 36.30 (State Procurement Code);

19 (2) act for the state in the initiation, investigation,
20 evaluation of or participation in any program relative to the stated
21 purpose of AS 44.19.141 - 44.19.152 which may involve more than one
22 government or governmental unit;

23 (3) on behalf of the state, accept and expend any gifts or
24 grants made to the state with the approval of the governor where such
25 gifts or grants were made for the purposes of furthering the objec-
26 tives of the office.

27 * Sec. 43. AS 44.33.300 is amended to read:

28 Sec. 44.33.300. WAIVER OF CERTAIN PROVISIONS. When the
29 governor has by proclamation declared an area impacted by an economic

1 disaster, the following provisions regarding public contracts may be
2 waived to the extent specified in the proclamation.

3 (1) the requirement of a contractor's bond as prescribed in
4 AS 36.25.010 may be waived if the contract amount does not exceed
5 \$100,000;

6 (2) the public bid requirements as contained in AS 19.10.-
7 170, AS [19.10.190,] 19.30.191(b), AS 35.15.010 - 35.15.020, and
8 AS 36.30 (State Procurement Code) [AND AS 35.15.010 - 35.15.030] may
9 be waived if the contract is to be performed by a contractor whose
10 principal office is in the designated area and the contract amount
11 does not exceed \$50,000;

12 (3) the general policy to require all construction to be
13 under bid contract as contained in AS 19.10.170, AS 35.15.010, and
14 AS 36.30 (State Procurement Code) may be waived if the contract is to
15 be performed by the state, another governmental entity, or a nonprofit
16 entity.

17 * Sec. 44. AS 44.47.250 is amended by adding a new subsection to read:

18 (c) Contracts with persons or nongovernmental entities under
19 this section are governed by AS 36.30.

20 * Sec. 45. AS 44.47.490(a) is amended to read:

21 (a) The director may establish field offices under this chapter,
22 may hire one or more lending officers, and, under AS 36.30 (State
23 Procurement Code), may contract for the services of

24 (1) real property appraisers who are familiar with rural
25 construction; and

26 (2) engineers who are familiar with engineering problems in
27 arctic and subarctic regions.

28 * Sec. 46. AS 44.71.010 is amended to read:

29 Sec. 44.71.010. DISPOSITION OF OBSOLETE OR SURPLUS STATE PROP-

1 ERTY. The Department of Administration shall take possession of
2 obsolete or surplus property of the state for which there is no imme-
3 diate or prospective use, except abandoned or obsolete school build-
4 ings and other school property. It shall also take possession of
5 property remaining in the control of a commission or board of the
6 state government after the commission or board stops functioning. The
7 Department of Administration shall sell, lease, license, or dispose of
8 the property on the terms it considers for the best interests of the
9 state in conformance with regulations adopted under AS 36.30 (State
10 Procurement Code)

11 * Sec. 47. AS 44.77.010(a) is amended to read:

12 (a) Except as provided in (d) of this section, every [EVERY]
13 claim for reimbursement for money expended, or for compensation for
14 labor, materials, or supplies furnished, or services given to or for
15 the state, whether based on a contract or on a ratification, shall be
16 promptly presented to the appropriate administrative or executive
17 officer for approval and payment.

18 * Sec. 48. AS 44.77.010 is amended by adding a new subsection to read:

19 (d) A claim that is governed by AS 36.30.560 - 36.30.699 is not
20 governed by this chapter.

21 * Sec. 49. AS 44.85.120 is amended to read:

22 Sec. 44.85.120. CARE AND CUSTODY OF BONDS. The bond bank
23 authority, in accordance with AS 36.30 (State Procurement Code), may
24 enter into agreements or contracts with a bank, trust company, banking
25 or financial institution inside or outside the state as may be neces-
26 sary, desirable or convenient, in the opinion of the bond bank author-
27 ity, for rendering services in connection with the care, custody or
28 safekeeping of municipal bonds or other investments held or owned by
29 the bond bank authority, for rendering services in connection with the

1 payment or collection of amounts payable as to principal or interest,
2 and for rendering services in connection with the delivery to the bond
3 bank authority of municipal bonds or other investments purchased by it
4 or sold by it, and to pay the cost of those services. The bond bank
5 authority may also, in connection with any of the services to be
6 rendered by a bank, trust company or banking or financial institution
7 as to the custody and safekeeping of its municipal bonds or invest-
8 ments, require security in the form of collateral bonds, surety agree-
9 ments or security agreements in such form and amount as, in the opin-
10 ion of the bond bank authority, is necessary or desirable.

11 * Sec. 50. AS 44.99.001 is amended to read:

12 Sec. 44.99.001. ADMINISTRATION OF HIGHWAY SAFETY PROGRAM. The
13 governor may contract and do all other things necessary on behalf of
14 this state under 23 U.S.C. 401-404 (Highway Safety Act of 1966), and
15 may cooperate with interested persons and agencies to effectuate the
16 purposes of that Act. Contracting under this section is governed by
17 AS 36.30 (State Procurement Code). The governor may designate a
18 person to serve as the governor's highway safety representative;
19 however, the governor is the official in this state having the ulti-
20 mate responsibility for dealing with the federal government with
21 respect to programs and activities under the Federal Highway Safety
22 Act of 1966. The governor shall coordinate the activities relating to
23 highway safety of state departments, agencies and subdivisions and of
24 the Governor's Commission on Transportation Safety established in
25 AS 44.19.190.

26 * Sec. 51. AS 46.04.090(a) is amended to read:

27 (a) The department, when feasible, shall enter into contracts
28 with persons or private organizations to provide the personnel,
29 equipment, or other services or supplies which may be required to

1 carry out this chapter. Contracts under this section are governed by
2 AS 36.30 (State Procurement Code). When private contracting is not
3 feasible, the department may establish and maintain at ports, harbors,
4 or other locations in the state, the cleanup personnel, equipment, and
5 supplies which, in its judgment, are necessary to carry out this
6 chapter.

7 * Sec. 52. AS 46.07.040(a) is amended to read:

8 (a) The commissioner shall provide for the construction of
9 facilities under this chapter, and is authorized to provide for the
10 construction by contract or through grants to public agencies or
11 private nonprofit organizations, or otherwise. A [NO] contribution
12 toward the cost of the construction of a facility may not be required
13 from its users. Construction under this section by contract is gov-
14 erned by AS 36.30 (State Procurement Code).

15 * Sec. 53. AS 46.15.020(a) is amended to read:

16 (a) The commissioner shall exercise all those powers and do all
17 those acts necessary to carry out the provisions and objectives of
18 this chapter. The commissioner may

19 (1) subject to AS 36.30 (State Procurement Code), enter
20 into contractual agreements necessary to carry out the provisions of
21 this chapter including agreements with federal, state and local agen-
22 cies;

23 (2) apply for, accept, administer and expend grants, gifts,
24 and loans from the federal government and any other public or private
25 sources for the purposes of this chapter, and adopt procedures and do
26 acts not otherwise restricted by law which are necessary to qualify
27 the state to receive grants, gifts and loans;

28 (3) establish a division of water in the Department of
29 Natural Resources and assign to that division the responsibility for

1 carrying out the provisions of this chapter.

2 * Sec. 54. AS 47.05.015(c) is amended to read:

3 (c) A contract authorized under this section is exempt from the
4 competitive bid requirements of AS 36.30 (State Procurement Code)
5 [AS 37.05.230]. In awarding a contract under this section the depart-
6 ment shall [PUBLISH A] request [FOR] proposals in accordance with
7 regulations of the Department of Administration under AS 36.30 (State
8 Procurement Code) [DEPARTMENT].

9 * Sec. 55. AS 47.30.350(a) is amended to read:

10 (a) The department shall

11 (1) develop and submit to the Surgeon General of the United
12 States Public Health Service a comprehensive program for the con-
13 structing and equipping of hospitals and other facilities for the
14 examination, observation, care, and treatment of the mentally ill;

15 (2) develop and submit to the Surgeon General plans and
16 specifications for the constructing and equipping of the hospitals and
17 other facilities;

18 (3) construct and equip the hospitals and other facilities
19 in accordance with the program, plans, and specifications approved by
20 the Surgeon General; construction and equipping under this paragraph
21 is governed by AS 36.30 (State Procurement Code);

22 (4) cooperate, coordinate, and contract, wherever indicated
23 and desirable, with other state boards, departments and agencies, and
24 agencies of the United States in the construction program, and hire
25 necessary personnel and enter into contracts with private individuals
26 and companies, to the end that the hospitals and other facilities are
27 constructed in the most economical and expeditious manner; contracting
28 and construction under this section are governed by AS 36.30 (State
29 Procurement Code).

1 Sec. 56. AS 47.30.660 is amended to read:

2 Sec. 47.30.660. POWERS AND DUTIES OF DEPARTMENT. The depart-
3 ment is the mental health authority of the state and shall

4 (1) administer a comprehensive program for the prevention
5 of mental illness and the care and treatment of the mentally ill,
6 including inpatient and outpatient care and treatment and the procure-
7 ment of services of specialists or other persons on a contractual or
8 other basis;

9 (2) take the actions and undertake the obligations which
10 are necessary to participate in federal grants-in-aid programs and
11 accept federal or other financial aid from whatever sources for the
12 study, examination, care, and treatment of the mentally ill;

13 (3) administer AS 47.30.660 - 47.30.915;

14 (4) designate, operate, and maintain treatment facilities
15 equipped and qualified to provide inpatient and outpatient care and
16 treatment for the mentally ill;

17 (5) provide for the placement of mentally ill patients in
18 designated treatment facilities;

19 (6) enter into arrangements with governmental agencies for
20 the care or treatment of the mentally ill in facilities of the govern-
21 mental agencies in the state or in another state;

22 (7) enter into contracts with treatment facilities for the
23 custody and care or treatment of the mentally ill; contracts under
24 this paragraph are governed by AS 36.30 (State Procurement Code);

25 (8) enter into contracts which incorporate safeguards
26 consistent with AS 47.30.660 - 47.30.915 and the preservation of the
27 civil rights of the patients with another state for the custody and
28 care or treatment of patients previously committed from this state
29 under 48 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd

1 Session, 70 Stat. 709;

2 (9) prescribe the form of applications, records, reports,
3 requests for release, and consents to medical or psychological treat-
4 ment required by AS 47.30.660 - 47.30.915;

5 (10) require reports from the head of a treatment facility
6 concerning the care of patients;

7 (11) visit each treatment facility at least annually to
8 review methods of care or treatment for patients;

9 (12) investigate complaints made by a patient or an inter-
10 ested party on behalf of a patient;

11 (13) delegate upon mutual agreement to another officer or
12 agency of it, or a political subdivision of the state, or a treatment
13 facility designated, any of the duties and powers imposed upon it by
14 AS 47.30.660 - 47.30.915; and

15 (14) adopt regulations to implement the provisions of
16 AS 47.30.660 - 47.30.915.

17 * Sec. 57. AS 47.35.010(a) is amended to read:

18 (a) The department may

19 (1) license and supervise boarding homes, foster homes,
20 group homes, nurseries, institutions caring for children and foster
21 homes, group homes and institutions caring for dependent adults;

22 (2) investigate and supervise licensees;

23 (3) enforce the standards established by it;

24 (4) contract with private or municipal agencies to investi-
25 gate and make recommendations to the department for the licensing and
26 supervision of boarding homes, foster homes, group homes, nurseries,
27 institutions caring for children and foster homes, group homes and
28 institutions caring for dependent adults under procedures and
29 standards of operation established by the department; contracts with

1 private agencies under this paragraph are governed by AS 36.30 (State
2 Procurement Code).

3 * Sec. 58. AS 47.37.030 is amended to read:

4 Sec. 47.37.030. POWERS OF OFFICE. The office may

5 (1) plan, establish, and maintain treatment programs as
6 appropriate;

7 (2) make contracts and award grants necessary or incidental
8 to the performance of its duties and the execution of its powers,
9 including contracts with and grants to public and private agencies,
10 organizations, and individuals, to pay them for services rendered or
11 furnished to alcoholics or intoxicated persons; to the maximum extent
12 possible, contracts and grants shall be for a period of two years;
13 contracts under this paragraph are governed by AS 36.30 (State Pro-
14 curement Code);

15 (3) solicit and accept for use a gift of money or property
16 or a grant of money, services, or property from the federal govern-
17 ment, the state, or a political subdivision of it or a private source,
18 and do all things necessary to cooperate with the federal government
19 or any of its agencies in making an application for a grant;

20 (4) administer or supervise the administration of the
21 provisions relating to alcoholics and intoxicated persons of any state
22 plan submitted for federal funding under federal health, welfare, or
23 treatment legislation;

24 (5) coordinate its activities and cooperate with alcoholism
25 programs in this and other states, and make contracts and other joint
26 or cooperative arrangements with state, local, or private agencies for
27 the treatment of alcoholics and intoxicated persons and for the common
28 advancement of alcoholism programs in this and other states;

29 (6) keep records and engage in research and the gathering

1 of relevant statistics;

2 (7) do other acts necessary to implement the authority
3 expressly granted to it;

4 (8) acquire, hold, or dispose of real property or any
5 interest in it, and construct, lease, or otherwise provide treatment
6 facilities for alcoholics and intoxicated persons; however, the office
7 shall encourage local initiative, involvement and financial participa-
8 tion under grants-in-aid whenever possible in preference to the con-
9 struction or operation of facilities directly by the office; contract-
10 ing and construction under this paragraph are governed by AS 36.30.

11 * Sec. 59. AS 47.37.130(g) is amended to read:

12 (g) The office may contract for the use of any facility as an
13 approved public treatment facility if the coordinator, subject to the
14 regulations of the department, considers this an effective and econom-
15 ical course to follow. Contracting under this subsection is governed
16 by AS 36.30 (State Procurement Code).

17 * Sec. 60. AS 47.90.010(a) is amended to read:

18 (a) The commissioner, in consultation with state and local
19 government agencies, community groups, and groups concerned with
20 displaced homemakers, may

21 (1) contract with eligible private profit and nonprofit
22 corporations for multipurpose service centers for displaced home-
23 makers; contracting under this paragraph is governed by AS 36.30
24 (State Procurement Code); and

25 (2) coordinate existing state programs for displaced home-
26 makers.

27 * Sec. 61. AS 47.40.041(b) is amended to read:

28 (b) Notices published by the department concerning the opening
29 of the application process for a grant award shall specify the geo-

1 graphical area in which services are needed, the type of services, the
2 number of beds anticipated to be needed, the maximum number of days of
3 care, and any other requirements established by the department.
4 Grants authorized under this section are exempt from AS 36.30 (State
5 Procurement Code) [THE COMPETITIVE BID REQUIREMENTS OF AS 37.05.230].

6 * Sec. 62. REPORT. By December 1, 1987, the commissioner of adminis-
7 tration and the commissioner of transportation and public facilities shall
8 report to the legislature concerning procurements by state agencies during
9 the first six months of 1987. The report must include

- 10 (1) the records prepared under AS 36.30.510(4);
11 (2) recommendations for changes in AS 36.30 or other laws based
12 on implementation of AS 36.30 in those six months; and
13 (3) a description of any matters that involved litigation con-
14 cerning AS 36.30 during those six months.

15 * Sec. 63. REGULATIONS DEADLINE. The regulations required under
16 AS 36.30 as added by sec. 2 of this Act, shall be adopted by January 1,
17 1987 and shall be effective on that date. Regulations adopted under laws
18 repealed in sec. 64 of this Act become ineffective January 1, 1987.

19 * Sec. 64. REPEALER. The following laws are repealed: AS 14.40.340;
20 AS 19.10.190, 19.10.210; AS 24.23; AS 35.15.030, 35.15.050; AS 36.98;
21 AS 37.05.220, 37.05.230, 37.05.231, 37.05.240, 37.05.250, 37.05.260, 37.-
22 05.270, 37.05.280, 37.05.290, 37.05.400(2) and (3); AS 44.65; AS 44.77.-
23 010(c); and AS 47.90.010(c).

24 * Sec. 65. Section 63 of this Act takes effect immediately in accor-
25 dance with AS 01.10.070(c).

26 * Sec. 66. Except as provided in sec. 65, this Act takes effect Janu-
27 ary 1, 1987.

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS SB 341 (Fin)
 Title : Act relating to state
procurement practices & procedures

Sponsor : Rules by Request
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Dept of Administration
 BRU : General Services & Supply

Components : Purchasing

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		350.0	367.5	385.9	405.2	425.4

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		350.0	367.5	385.9	405.2	425.4
FEDERAL FUNDS						
OTHER						
TOTAL		350.0	367.5	385.9	405.2	425.4

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Senator Jan Faiks, Co-chairman *Jan Faiks* Phone : 465-4523
 Division : Senate Finance Committee *Jan Faiks* Date : 4/1/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

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

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS SB 341 (Jud)

Title : Act relating to state

procurement practices & procedures

Sponsor : Rules by Request

Requester : _____

Date of Request : _____

FISCAL DETAIL

Agency Affected : Dept of Administration

BRU : Div of Admin Services

Components : Administrative Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL		0	0	0	0	0
---------	--	---	---	---	---	---

REVENUE		0	0	0	0	0
---------	--	---	---	---	---	---

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Senator Jan Faiks, Co-chairman

Division : Senate Finance Committee

Phone : 465-4523

Date : 4/1/86

Approved by Commissioner : _____

Date : _____

Agency : _____

Distribution (by Agency preparing fiscal note) :

Legislative Finance

Legislative Sponsor

Requester

Office of Management and Budget

Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS SB 341 (Jud)

Title : Act relating to state

procurement practices & procedures

Sponsor Rules by Request _____

Requestor : _____

Date of Request : _____

FISCAL DETAIL

Agency Affected : Commerce & Economic Dev

BRU : Alaska State Housing Authority

Components : Housing Management

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL		0	0	0	0	0
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REVENUE		0	0	0	0	0
---------	--	---	---	---	---	---

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Senator Jan Faiks, Co-chairman

Division : Senate Finance Committee

Phone : 465-4523

Date : 4/1/86

Approved by Commissioner : _____

Date : _____

Agency : _____

Distribution (by Agency preparing fiscal note) :

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No.: CSSB 341 (Jud)
 Title: Act relating to state
procurement practices & procedures
 Sponsor: Rules by Request
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Community & Regional Affairs
 BRU: Local Govt Assistance;
Child Assistance, Displaced
Homemakers, Admin & Support
 Components: Grants Admin, Child Care,
Displaced Homemakers,
Admin Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL		0	0	0	0	0
---------	--	---	---	---	---	---

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Senator Jan Faiks, Co-chairman
 Division: Senate Finance Committee

Phone: 465-4523
 Date: 4/1/86

Approved by Commissioner: _____
 Agency: _____

Date: _____

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS SB 341 (Jud)
 Title : Act relating to state

Sponsor : Rules by Request
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Dept of Natural Resources
 BRU : Management & Administration

Components : Administrative Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL		0	0	0	0	0
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REVENUE		0	0	0	0	0
---------	--	---	---	---	---	---

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Senator Jan Faiks, Co-chairman Phone : 465-4523
 Division : Senate Finance Committee Date : 4/1/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

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

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS SB 341 (Jud)
 Title : Act relating to state
procurement practices & procedures
 Sponsor : Rules by Request
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Dept of Environmental
Conservation
 BRU : _____
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Senator Jan Faiks, Co-chairman Phone : 465-4523
 Division : Senate Finance Committee Date : 4/1/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

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

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution NS SB 341 (Jud)
 Title State Procurement Practices

 Sponsor : Rules Committee
 Requester : Interim Comm. on Procurement
 Date of Request : 1/16/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : Administration

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Sid LaMonica, Administrative Officer Phone : 465-4328
 Division : Public Safety Date : 1/16/86
 Approved by Commissioner [Signature] Date : 1-22-86
 Agency : Public Safety

Distribution (by Agency preparing fiscal note) :

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

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS SB 341 (Jud)
 Title : Act relating to state
procurement practices & procedures
 Sponsor : Rules by Request
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Dept of Transportation
and Public Facilities
 BRU : _____
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL		0	0	0	0	0
---------	--	---	---	---	---	---

REVENUE		0	0	0	0	0
---------	--	---	---	---	---	---

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Senator Jan Faiks, Co-chairman Phone : 4654523
 Division : Senate Finance Committee Date : _____
 Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

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

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811-3300

RECEIVED
ASHA

February 25, 1986

FEB 28 '86

Mr. Wayne I. Tucker
Office of Inspector General
Western Regional Office
P.O. Box 5400
Albuquerque, NM 87115

Route	XX
Route	DSX
Route	XX
File	1

Dear Mr. Tucker:

In your February 14, 1986 letter, you inquired about the audit coverage of certain federal funds expended by the Alaska Department of Commerce and Economic Development (DCED). Specifically, your concerns centered around Alaska State Housing Authority (ASHA) which is an independent, quasi-corporation that is related to DCED only in an administrative way as specified by State statute. Because of this operational separation, we exclude ASHA from our State Department audit of DCED.

A public accounting firm audits ASHA of which you have received a copy of their 1984 combined financial statements. The auditor's opinion references a scope exclusion which includes, "and certain federally subsidized activities." This exclusion relates to federally subsidized Department of Housing and Urban Development (HUD) programs referenced in Note 1 to the financial statements.

The HUD programs are audited by the same public accounting firm (Coopers and Lybrand) but are done so on a two-year cycle. The last audit report we received by this office was for the two years ended 3/31/84, and entitled "Examination of Financial Statements and Supplementary Data of: Annual Contribution Contracts, Preliminary Loan Contract, Section 8, S-014E."

If you haven't received a copy of this report, I would suggest you contact Mr. Paul Harris of ASHA. Furthermore, you may consider contacting HUD directly regarding federal compliance audit coverage of ASHA.

Mr. Wayne Tucker

-2-

February 25, 1986

If we can be of further assistance, feel free to contact me.

Sincerely,



Merle R. Jonson
Deputy Legislative Auditor
Division of Legislative Audit

cc: Paul Harris, ASHA



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

RECEIVED
ASHA

JAN 31 '86

JAN 31 1986

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

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

Dear Ms. Morse-Quinn:

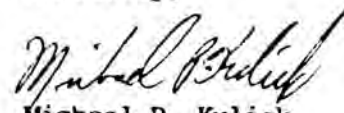
Subject: Senate Bill 8001
Proposed State Procurement Act

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

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

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

Sincerely,


Michael P. Kulick
Manager

AGU

A M E N D M E N T

TO: Proposed CS For SB 341 (Jud)
Dated: March 7, 1986

- (1) Page 10, line 18 and 19:

Sec. 36.30.115. SUBCONTRACTORS. (a) Within ~~72~~ [24] hours after the opening of bids, the apparent low [EACH] bidder shall submit a list of subcontractors the bidder proposes to use in the performance of the contract.

- (2) Page 11, line 8, a new section to read:

(c) The listing of a subcontractor by a prime contractor is not an expressed or implied acceptance of a subcontractor's bid by a prime contractor.

Renumber following sections accordingly.

- (3) Page 17, line 6:

Alaska business license and, within ~~72~~ [24] hours after the date by

must be substituted in order form

FISCAL NOTE SUMMARY FOR SENATE BILL 341

<u>Department</u>	<u>Amount</u>	<u>Positions</u>
✓ Community and Regional Affairs	\$ 243,200	10 F/T
✓ Alaska State Housing Authority	\$2,890,310	13 F/T
✓ Department of Administration General Services	\$ 493,700	9 F/T
✓ Department of Administration Administrative Services	\$ 136,800	3 F/T
✓ Department of Natural Resources	\$ 33,500	1 F/T
Department of Environmental Conservation	\$ 49,400	1 F/T
Department of Transportation	<u>\$ 200,000</u>	<u>1 F/T</u>
TOTAL	\$4,046,910	38 F/T

Public Safety

- 0 -

- 0 -

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER POSITION PAPER

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

☐ **949 E. 38TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
PHONE: (907) 583-1073**

RE: CS for SB 341

SPONSOR: Senate Rules Committees

Comments

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

Grants Definition

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

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

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

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

The Department also notes that Sections 46 and 65 of CS SB 341 subject the Day Care Assistance program and the Displaced Homemaker's program, respectively, to the provisions of the bill. The Department considers these programs to be grants and not procurements and suggests that these sections should be deleted.

Department Recommendations

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

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

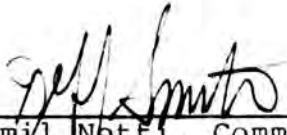
The Department of Community and Regional Affairs suggests that another major distinction between grants and procurements is that grantees are most typically entities which are organized for a public purpose and/or operate in a manner which does not yield them a profit. Conversely, procurements are most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

In view of the above, the Department of Community and Regional Affairs recommends the following language be used in CS SB 341 as the definition of a grant.

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

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

The Department of Community and Regional Affairs does favor the overall intent of the bill. If the above enumerated concerns are properly addressed, the Department's fiscal note could be reduced to 47.7; these costs are associated with the Administrative Officer I position in the Division of Administrative Services.



Emil Notet, Commissioner
March 28, 1986

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

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

FISCAL DETAIL

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

EXPENDITURES/REVENUES : (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND		243.2	449.4	462.9	476.8	491.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

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

Prepared by : Remond Henderson *Remond Henderson* Phone : 465-4708
 Division : Administrative Services Date : 3/28/86

Approved by Commissioner : Emil Notti *Emil Notti* Date : 3/28/86
 Agency : Community and Regional Affairs

Distribution (by Agency preparing fiscal note) :

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS SB 341

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

Assumptions

1. The definition of "procurement" in CS SB 341 is interpreted as applying to projects currently treated as grants creating an increase in time to prepare and review the required documents.
2. Number of grants each staff could effectively administer would be greatly reduced.
3. The Department receives a significant number of new grants each year.
4. The Department would need to provide increased oversight of procurement documents in order to provide some measure of quality control within the Department.

Municipal and Regional Assistance Division

- 4 Grants Administrators to more closely monitor grants and meet increased requirements under proposed procurement provisions - \$182.7
- 1 Clerk Typist III and 1 Administrative Assistant to provide additional clerical and technical support for increased professional staff - \$66.6

Community Development Division

- 1 Grants Administrator and 1 Community Development Specialist I/II to more closely monitor grants and meet increased requirements under proposed procurement provisions \$112.5
- 1 Clerk Typist III to provide additional clerical support - \$32.4

Administrative Services Division

One Administrative Officer I position to provide training and technical assistance to departmental staff to assure compliance with the procurement provisions and to serve as final review of all documents - \$47.4

All positions are full-time 12-month positions. However, since CS SB 341 is effective January 1, 1987, FY 87 costs are for six months.

NOTE: If the definition of procurement is amended to exclude the bulk of grants administered by the Department, the fiscal impact of the bill would be greatly reduced.

Position Title Grants Administrator - Beginning FY 87			No. of Positions 4	Range/Step 17/A	Barg. Unit GGU	Gov. Leg.	Approv.	Disapp.																									
Time Status PFT	Staff Months 12	RP Number	Location Anchorage	Election District																													
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>Amount</th> </tr> <tr> <th>1</th> <th>2</th> </tr> </thead> <tbody> <tr> <td>Salary 34,740 x 4</td> <td>138,960</td> </tr> <tr> <td>Benefits 10,930 x 4</td> <td>43,720</td> </tr> <tr> <td>Premium Pay</td> <td></td> </tr> <tr> <td>Other</td> <td>182,680</td> </tr> <tr> <td>Total Personal Services</td> <td></td> </tr> <tr> <td>Travel</td> <td>5,000</td> </tr> <tr> <td>Contractual</td> <td>12,000</td> </tr> <tr> <td>Commodities</td> <td>1,000</td> </tr> <tr> <td>Equipment</td> <td>8,000</td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Cost</td> <td>208,680</td> </tr> </tbody> </table>			Type of Expenditure	Amount	1	2	Salary 34,740 x 4	138,960	Benefits 10,930 x 4	43,720	Premium Pay		Other	182,680	Total Personal Services		Travel	5,000	Contractual	12,000	Commodities	1,000	Equipment	8,000	Other		Total Cost	208,680	Justification CS SB 341, as written, would subject virtually all of the Division's grants to unincorporated communities and nonprofit organizations to the provisions of the proposed State procurement practices and procedures. The fiscal impact of this would be significant as virtually all grants would have to be treated as Professional Services Contracts. The procurement practices of the grantee would have to be more closely monitored with corresponding increases in oversight and reporting. The number of grants each administrator could adequately monitor would be greatly reduced. For purposes of this fiscal note, it is assumed the average number of grants per administrator would have to be reduced from about 75 per person to 20 grants per person.				
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Receipt Code	Funding Source	Amount																															
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**Request For
New Position**

Agency Community and Regional Affairs
 BRU Local Government Assistance
 Component Grants Administration

FY 87

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 Revised Date _____

Position Title Administrative Assistant (Beginning FY87)			No. of Positions 12/A	Range/Step 12/A	Base Unit GGU	Gov.	Approv.	Disapp.																										
Time Status PFT	Staff Months 12	RP Number	Location Anchorage		Election District	Leg.																												
Justification																																		
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Type of Expenditure	Amount																																	
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For B&M Use Only Key Number _____																																		

**Request For
New Position**

Agency Community & Regional Affairs
BRU Local Government Assistance
Component Grants Administration

Page 1 of 1
Revised Date _____

FY 87

Position Title Clerk Typist III - Beginning FY 87			No. of Positions 1	Range/Step 8/A	Barg. Unit GGU	Gov.	Approv.	Disapp.																									
Time Status PFT	Staff Months 12	RP Number	Location Anchorage		Election District	Leg.																											
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0317F/3

**Request For
New Position**

Agency Community and Regional Affairs
 BRU Local Government Assistance
 Component Grants Administration

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 Revised Date _____

FY 87

Position Title Grants Administrator			No. of Positions 1	Range/Step 17A	Barg. Unit GGU	Gov.	Approv.	Disapp.	
Time Status PFT	Staff Months 12	RP Number	Location Anchorage		Election District	Leg.			
Type of Expenditure			Justification Generally, Child Care grants are awarded to the same contractors yearly. Under CS SB 341, the Child Care monies would have to go out to bid, probably resulting in new contractors and new local administrators. Therefore, this position would need to provide training and technical assistance to the new recipients. An additional Grants Administrator is needed in order to process the increased amount of paperwork under CS SB 341.						
1		2							Amount
Salary		34,740							
Benefits		10,930							
Premium Pay									
Other									
Total Personal Services		45,670							
Travel		5,200							
Contractual		5,900							
Commodities		600							
Equipment		700							
Other									
Total Cost		58,070							
Receipt Code									
Funding Source									
Federal Receipts 1002									
G. F. Match 1003									
General Funds 1004 58.1									
I-A Receipts 1005									
Program Receipts 1028									
CIP Receipts 1061									
Other									
For B&M Use Only									
Key Number _____									

**Request For
New Position**

Agency Community and Regional Affairs
 BRU Child Assistance
 Component Child Care

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 Revised Date _____

FY 87

Position Title Clerk Typist III			No. of Positions 1	Range/Step 8A	Barg. Unit CCU	Gov.	Approv.	Disapp.																									
Time Status PFT	Staff Months 12	RP Number	Location Anchorage, AK		Election District	Leg.																											
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>Amount</th> </tr> <tr> <th>1</th> <th>2</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>19,572</td> </tr> <tr> <td>Benefits</td> <td>7,045</td> </tr> <tr> <td>Premium Pay</td> <td></td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td>26,617</td> </tr> <tr> <td>Travel</td> <td></td> </tr> <tr> <td>Contractual</td> <td>1,400</td> </tr> <tr> <td>Commodities</td> <td>600</td> </tr> <tr> <td>Equipment</td> <td>3,800</td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Cost</td> <td>32,417</td> </tr> </tbody> </table>			Type of Expenditure	Amount	1	2	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	Justification Under CS SB 341, all the professional staff in the Child Care program would experience an increased workload. This clerk typist would provide the additional clerical support needed to carry-out the program.				
Type of Expenditure	Amount																																
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**Request For
New Position**

Agency Community and Regional Affairs
BRU Child Assistance
Component Child Care

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Revised Date _____

FY 87

Position Title Community Development Specialist I/II			No. of Positions I	Range/Step 16A	Barg. Unit 600	Gov.	Approv.	Disapp.																									
Time Status PFT	Staff Months 12	RP Number	Location Anchorage, AK		Election District	Leg.																											
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>Amount</th> </tr> <tr> <th>1</th> <th>3</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>32,424</td> </tr> <tr> <td>Benefits</td> <td>10,403</td> </tr> <tr> <td>Premium Pay</td> <td></td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td>42,827</td> </tr> <tr> <td>Travel</td> <td>8,200</td> </tr> <tr> <td>Contractual</td> <td>2,400</td> </tr> <tr> <td>Commodities</td> <td>500</td> </tr> <tr> <td>Equipment</td> <td>500</td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Cost</td> <td>54,427</td> </tr> </tbody> </table>			Type of Expenditure	Amount	1	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	54,427	Justification Currently, no administrative dollars are associated with this program. CS 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 administrative dollars for this program. If the administration of this program continued to function in this manner, we would be unable to implement the requirements set forth in CS 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 CS SB 341. Presently the program is handled like "pass through" grants. CS SB 341 would require this program to be handled as professional services contracts.				
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Salary	32,424																																
Benefits	10,403																																
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<table border="1"> <thead> <tr> <th>Receipt Code</th> <th>Funding Source</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td></td> <td>Federal Receipts 1002</td> <td></td> </tr> <tr> <td></td> <td>G. F. Match 1003</td> <td></td> </tr> <tr> <td></td> <td>General Funds 1004</td> <td>54.4</td> </tr> <tr> <td></td> <td>I-A Receipts 1005</td> <td></td> </tr> <tr> <td></td> <td>Program Receipts 1028</td> <td></td> </tr> <tr> <td></td> <td>CIP Receipts 1061</td> <td></td> </tr> <tr> <td></td> <td>Other</td> <td></td> </tr> </tbody> </table>			Receipt Code	Funding Source	Amount		Federal Receipts 1002			G. F. Match 1003			General Funds 1004	54.4		I-A Receipts 1005			Program Receipts 1028			CIP Receipts 1061			Other								
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For B&M Use Only Key Number _____																																	

**Request For
New Position**

Agency Community & Regional Affairs
BRU Job Training Partnership Act
Component Displaced Homemakers

FY 87

Page 1 of 1
Revised Date

Position Title Administrative Officer I			No. of Positions 1	Range/Step 1/A	Barg. Unit GGU	Gov.	Approv.	Disapp.																									
Time Status PFT	Staff Months 12	RP Number	Location Juneau		Election District	Leg.																											
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>Amount</th> </tr> <tr> <th>1</th> <th>2</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td>34,740</td> </tr> <tr> <td>Benefits</td> <td>10,930</td> </tr> <tr> <td>Premium Pay</td> <td></td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td>45,670</td> </tr> <tr> <td>Travel</td> <td></td> </tr> <tr> <td>Contractual</td> <td></td> </tr> <tr> <td>Commodities</td> <td>500</td> </tr> <tr> <td>Equipment</td> <td>1,500</td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Cost</td> <td>47,670</td> </tr> </tbody> </table>			Type of Expenditure	Amount	1	2	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	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 CS SB 341.				
Type of Expenditure	Amount																																
1	2																																
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**Request For
New Position**

Agency Community and Regional Affairs
 BRU Administration and Support
 Component Administrative Services

Page 1 of 1
 Revised Date

FY 87

RECEIVED MAR 24 1986



The Honorable Jan Faiks
Senator
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SB 341

Dear Senator Faiks:

The Senate Finance Committee is scheduled to discuss SB 341, the Procurement Bill, on Tuesday, March 25, 1986. The Alaska State Housing Authority (ASHA), as the conduit for the receipt of federal assistance for low-income and senior housing, seeks specific exemption from SB 341 on all federally-assisted operations. ASHA is comprehensively regulated by the U.S. Department of Housing and Urban Development in its housing programs. The bill, as proposed, will substantially impact the Alaska State Housing Authority (ASHA) in the following areas:

1. Increase the duration of vacancies between tenant occupancy to insure new State procedures are being followed;
2. Create a corresponding increase in waiting lists for public housing, as tenants will not be moved into vacated units as rapidly as they now are;
3. Reduce federal funds to ASHA based on intricate funding formulas that consider vacant unit turnover and occupancy levels;
4. Require increased personnel in management, maintenance and accounting for which the federal government will not pay;
5. Jeopardize ASHA's status as a "public housing authority" for continued receipt of federal funds at a time of federal cutbacks. These funds will revert to Seattle, Portland or San Francisco rather than stay in Alaska.

A convoluted system of double regulation under which ASHA follows both federal and state regulations when they are not explicitly inconsistent, and either state or federal regulation on a case-by-case basis when there is inconsistency, creates a scenario only a



lawyer could love. Section 10 of the bill in its references to AS 18.55.100 and 18.55.110 and the proposed 36.30.890 will create such a scenario. ASHA requests your consideration of a specific exemption for ASHA.

Attached are copies of three letters received by ASHA from Michael Kulick, Manager, Anchorage Office of the U.S. Department of Housing and Urban Development, registering HUD's concerns with regard to ASHA's inclusion in SB 341. These were included in the materials previously submitted to the Senate Judiciary Committee in support of an exemption for ASHA.

Since testifying before the Senate Judiciary Committee, we have prepared a fiscal note, which assumes full delegation to the Alaska State Housing Authority, as provided in the legislation. Federal funds to implement this legislation are not and will not be available, leaving a cost to the State General Fund as described in the fiscal note.

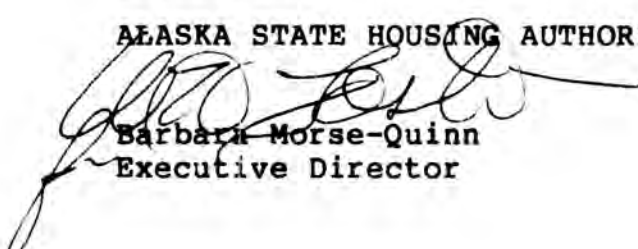
Also enclosed is a section analysis and narrative outlining ASHA's reasons for requesting an exemption. ASHA's concerns are that this legislation is in part duplicative, contradictory and unnecessarily burdensome for ASHA because of ASHA's relationship to the U.S. Department of Housing and Urban Development. Under SB 341, the procurement code will be applied to this housing authority, while all other housing authorities in the state are being exempted. No tenant, vendor or contractor will note benefits or receive increased services from this agency's application of this law. In fact, the agency's purpose will be descoped, muddled, made controversial, and its activities will cost significantly more to administer.

In a time of both federal and state monetary restraint, we advocate for available funds to go for housing, not administration.

On behalf of all our tenants and supporters of public housing, thank you for your consideration of our remarks.

Sincerely,

ALASKA STATE HOUSING AUTHORITY



Barbara Morse-Quinn
Executive Director

BMQ/sms

Enclosures



U.S. Department of Housing and Urban Development

Anchorage Office, Region X
701 "C" Street, Box 64
Anchorage, Alaska 99513

EIVED
ASHA

JAN 17 1986

JAN 24 '86

Barbara Morse-Quinn, Executive Director
Alaska State Housing Authority
Post Office Box 100080
Anchorage, Alaska 99510-0080

EX cc
DEX cc
Eq. Dept
EX Sec
Board

Dear Ms. Morse-Quinn:

Subject: Relationship of Alaska State Housing Authority
and the U. S. Department of Housing and Urban Development

This is in response to your letter dated January 17, 1986, requesting our comments on the relationship of Alaska State Housing Authority (ASHA) and U. S. Department of Housing and Urban Development (HUD).

The relationship is a contractual one which is defined by the terms of the Annual Contributions Contract. Under that document a public housing authority (PHA) is provided federal funds for the specific purpose of providing and operating housing for families of lower income. The funding is designated for specific projects and may only be used in accordance with the HUD-approved development program, contract terms, and HUD regulations and policies. Should the funding approved by HUD for a particular project not be made available to the PHA, it would be necessary for the federal government to provide additional funding in order for HUD to meet its contractual responsibilities to the PHA. For this reason, HUD cannot approve any arrangement whereby the PHA does not have total access to and control of, the funds supplied by HUD. As a small example of this, HUD requires the PHA to invest the funds provided in order to earn interest. The amount of funding provided has been calculated on the basis that a certain amount of interest will have been received by the PHA. Any attempt to make HUD funds provided to ASHA restricted as to access or control or subject to legislative approval would be strongly opposed by HUD. In this regard, I have been advised by our Headquarters' office that the Department has already taken such a position with another state when it recently advised the governor of that state that remedial legislation must be enacted to eliminate legislative control over HUD funds.

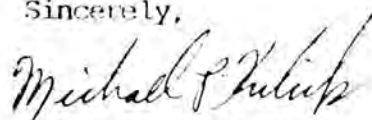
I am not in a position to discuss how HUD's legislation compares with that of other federal agencies. It is my impression, however, that HUD may have more authority, than other agencies, to become directly responsible

for the activities usually undertaken by a state agency using federal funds. For example, the default provisions of the statute and Annual Contributions Contract provide that title and/or possession be given to the Secretary, at the Secretary's discretion, should the PHA fail to observe the terms of the contract. In any case, HUD funds are specifically designated for an identifiable project to be developed or managed by a named PHA and are not considered generalized housing funds earmarked particular to be used in a state.

For additional comments, I refer you to the Regional Counsel's letter dated October 17, 1985, which speaks to the relationship between ASHA and HUD. Finally, we do believe the Attorney General's Opinion of June 9, 1983, interpreting AS 18.55.110 may have direct relevance to the issues you raised.

I hope this is of some assistance to you. Please keep us fully informed of your discussions on this matter and feel free to contact Susan Olsen, Chief Counsel, at 271-4683 for additional comments.

Sincerely,



Michael P. Kulick
Manager



U.S. Department Housing and Urban Development

Anchorage Office, Region X
701 "C" Street, Box 64
Anchorage, Alaska 99513

JAN 14 1986

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

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,

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ASHA

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EX-100
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H-3 ext
Board

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.

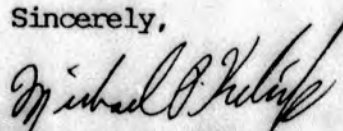
As you point out in your paragraph (12), HUD's policies, procedures and contract provisions, as well as its regulations, do govern the distribution and administration of federal monies designated for public housing projects. Section 36.30.890 of the proposed bill, therefore, provides only a limited exemption 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

Barbara Morse-Quinn, Executive Director
Alaska State Housing Authority
Post Office Box 100080
Anchorage, Alaska 99510-0080

Route	EX cc
Route	DFX cc
Route	All Dep't
File	EX Sec
	Board

Lead's cc

Dear Ms. Morse-Quinn:

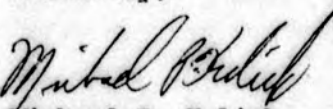
Subject: Senate Bill 8001
Proposed State Procurement Act

It has just come to our attention that Senate Bill 8001 does provide for an amendment to AS 18.55.100 by adding, "(d) The authority's power to contract, lease, rent, construct, acquire, procure and provide for services under this section is governed by AS 36.30."

We think the only logical application of this subsection with respect to leasing and renting is where Alaska State Housing Authority is procuring a lease for itself, equipment rentals, or similar transactions.

We do not recall any aspect of Senate Bill 8001 which would apply to the leasing of space to tenants. Inasmuch as Alaska State Housing Authority's tenant leasing policies and practices are subject to the U. S. Department of Housing and Urban Development's regulations and other requirements, we would find objectionable any application of Senate Bill 8001 in this regard.

Sincerely,


Michael P. Kulick
Manager

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS FOR SB 341
 Title : AN ACT RELATING TO STATE
PROCUREMENT PRACTICES & PROCEDURES
 Sponsor : RULES
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : COMMERCE & ECONOMIC DEV.
 BRU : ALASKA STATE HOUSING AUTHORITY
 Components : HOUSING MANAGEMENT

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		577.56	595.09	612.94	63.33	650.27
TRAVEL		35.80	36.87	37.98	39.12	40.29
CONTRACTUAL		128.35	132.20	136.17	140.26	141.47
SUPPLIES		16.50	17.00	17.51	18.04	18.58
EQUIPMENT		151.20				
LAND & STRUCTURES		1,980.90				
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		2,890.31	781.16	804.60	828.75	853.61

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		2,890.31	781.16	804.60	828.75	853.61
FEDERAL FUNDS		n/a	n/a	n/a	n/a	n/a
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		13	13	13	13	13
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached page

Prepared by : DIANE FAUDE, ADMINISTRATIVE OFFICER II Phone : 562-2813
 Division : HOUSING MANAGEMENT Date : 3/18/86

Approved by Commissioner : _____ Date : _____
 Agency : _____

Distribution (by Agency preparing fiscal note) :

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB341

The Alaska State Housing Authority procures approximately \$1,000,000/month in items in support of 3,125 housing units across the state. Operating currently under its own procurement regulations approved by both the state and federal government, SB341 would replace the present system with one of implementation by and reporting to a dual state and federal system.

To assume full delegation of Procurement Bill SB 341, this agency would have to establish control under a Procurement Director. This Director would require a staff of four people in the positions of Main Warehouseman, Facilities Service Manager, Building Services Manager and Inventory Control Analyst.

The Housing Management Department of the Alaska State Housing Authority has project offices in 16 locations across the State. Under the Procurement Director, a Main Warehouseman would have a staff of three sub/warehousemen who would each have an expeditor under their control. These staff people would be responsible for the actual purchasing, shipping and invoicing. They would also be essential in determining the needs and use of all products procured by the maintenance staff statewide.

In an Administrative Services Division, an Inventory Control Analyst would be responsible for maintaining and controlling inventory records to include the disposal of outdated/scrapped and the addition of new inventory purchases. This person would also assume the role of Surplus Sales Manager in conducting the sale or auction of destroyed/old equipment. A Facilities Service Manager would be responsible for the control and purchase of office products and supplies utilized on a daily basis by the central and statewide projects offices. A Building Services Manager would be responsible for tracking, executing and maintaining all service contracts procuring ongoing services such as elevator service, guard services, emergency call maintenance and the like.

Salaries, including benefits, for each person are as follows: Procurement Director: \$71,500; Main Warehouseman: \$65,000; Sub/warehouseman (3) \$57,200 each; Expeditor (2): \$26,000 each; Inventory Control Analyst: \$45,500; Facilities Service Manager: \$57,200; Building Services Manager: \$57,200; Accounting Clerk III (2): \$28,780 each. Total = \$577,560

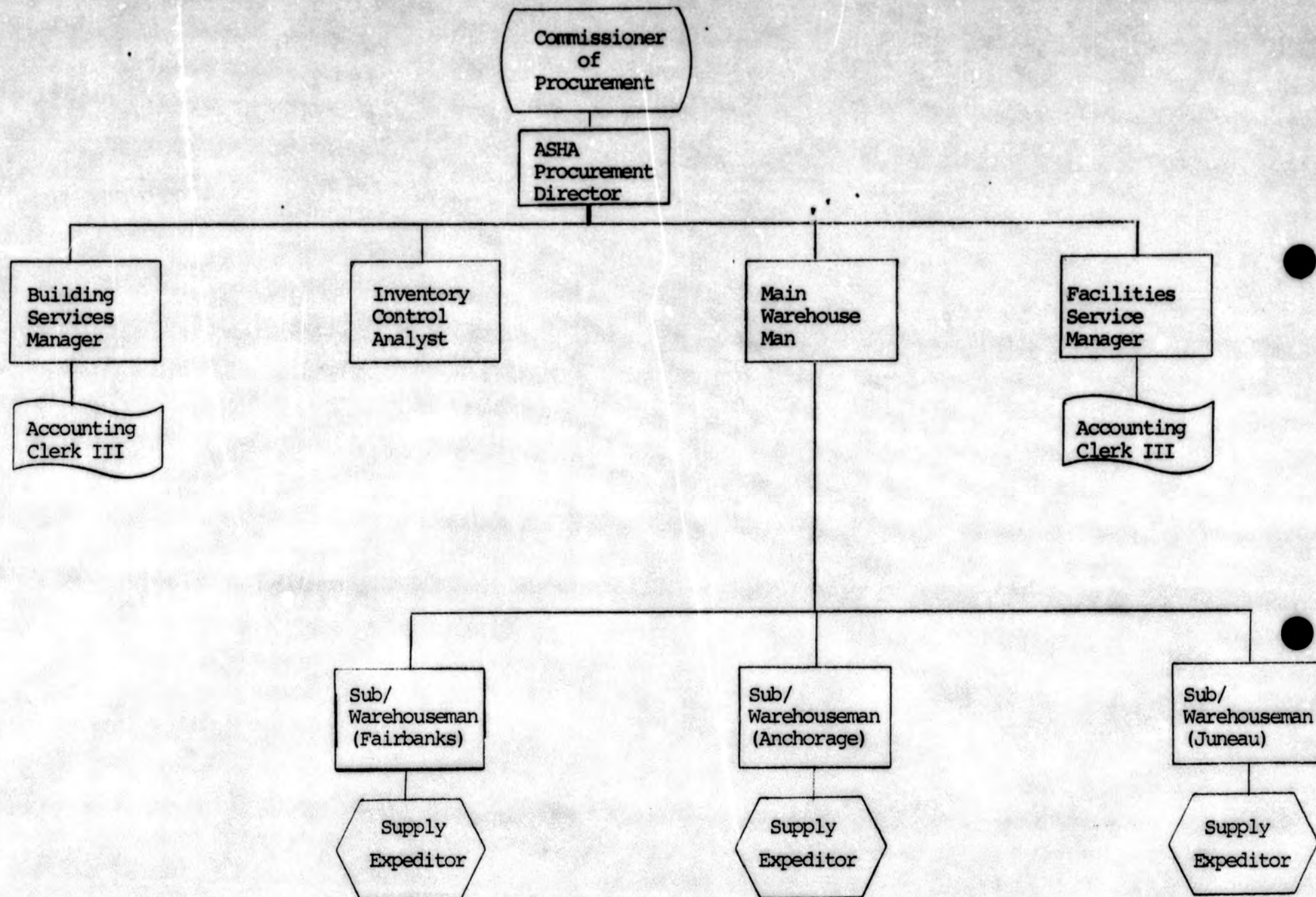
Travel would be required by the Procurement Director, Main Warehouseman, the three sub/warehousemen, the Inventory Control Analyst, Facilities Service Manager, and Building Services Manager. Total travel cost is estimated at \$35,800 for FY87.

Contractual Services focus on the installation of computer lines to each project location. Each person responsible for reporting to the Procurement Director would have a terminal and slave printer on-site. Each of the 24 project offices would also have a computer terminal on-site. The cost for these services would be \$28,350. Computer programming services overall are estimated at \$100,000.

Supplies will be an on-going line item to accommodate the reporting requirements and additional computer output of data to statewide locations on a scheduled basis. It is anticipated that each project and staff centralized in Anchorage would need \$500 per year in FY87 for a total cost of \$16,500.

Equipment will encompass the purchase of hardware (terminal, modem and slave printer), desk, chair, calculator, telephone, typewriter, file cabinets. This is estimated at \$151,200 for Anchorage and statewide project offices.

Land and structures: This initial expense will be extremely high in that existing warehouse space is not available at the project sites. Storage space for equipment and supplies is not available at this time therefore creating the need for a work area and storage area. The estimated cost for warehouse space in the 24 project offices and central Anchorage office is \$1,980,900.



MAIN WAREHOUSEMAN (continued)

CONTRACTUAL: It is also anticipated that computer programming will be necessary to incorporate the new procedure and format. Programming costs are estimated at \$100,000.

SUPPLIES: Office products and paper is estimated at \$500 per office x 25 = \$12,500

EQUIPMENT: Each project office (24) would establish a warehouse area complete with terminal, slave printer and modem; one (1) is needed for the main warehouseman.

Terminal	\$500 x 25	=	\$12,500
Modem	\$300 x 25	=	\$ 7,500
Slave printer	\$1000 x 25	=	\$25,000
Telephone equipment	\$150 x 25	=	\$ 3,750
Desk	\$400 x 25	=	\$10,000
Chair	\$250 x 25	=	\$ 6,250
Calculator	\$200 x 25	=	\$ 5,000
Typewriter	\$800 x 25	=	\$20,000
File Cabinets (\$200 ea)	\$400 x 25	=	\$10,000
		TOTAL:	\$100,000

LAND/STRUCTURES: Warehouse space is needed to establish control of equipment, materials and supplies at each site. Space would be estimated at 400 square feet for 13 projects. Construction cost is estimated at \$90 per square feet (if land is available) for a total cost of \$468,000.

In the Anchorage area, it is estimated that 4,000 square feet of warehouse space is necessary for seven projects. If the land is available, the estimated cost would be 4,000 x \$90 = \$360,000.

As the Central Supply system would be in the Anchorage area, it is estimated that 12,000 square feet of warehouse space are necessary to administer the procurement regulations and to effectuate large purchases of refrigerators, ranges, vehicles and the like. Estimated cost \$90 p.s.f. x 12,000 s.f. = 1,080,000.

TOTAL STRUCTURAL COST: \$1,908,000

Position Title Sub Warehouseman			No. of Positions 3	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.
Time Status FT	Staff Months 12 each	RP Number	Location Anch/Fbx/Juno	Election District	Leg.			

Type of Expenditure		Amount
1	2	3
Salary 44,000 each	132,000	
Benefits 13,200 each	39,600	
Premium Pay		
Other		
Total Personal Services		171,600
Travel \$2,000 each		6,000
Contractual		
Commodities		
Equipment		
Other		
Total Cost		177,600

Receipt Code	Funding Source	
	Federal Receipts 1002	
	G. F. Match 1003	
	General Funds 1004	177,600
	I-A Receipts 1005	
	Program Receipts 1028	
	CIP Receipts 1061	
	Other	

For B&M Use Only
 Key Number _____

Justification
 Under the main warehouseman, ASHA would establish three subwarehousemen positions. These three positions would be in contact with the central procurement office via phone and computer terminal. These three positions would be strategically located in the State in order to service the statewide operation of all project offices.

One person would be located in Fairbanks and service the north and west locations. One would be located in Juneau to directly service the southeast locations. The third would be stationed in Anchorage to service the seven projects in Anchorage and the areas of Valdez, Cordova, Seward and Wasilla.

These positions would be responsible for incorporating the procurement procedure and justifying purchases. They would actually perform procurement, authorize purchases by remote locations under their control and report directly to the main warehouseman. They would be responsible for collecting data input and working with the vendors in the project areas.

SALARIES: \$44,000; Benefits: \$13,200 = \$57,200

TRAVEL: Travel would be limited to an as-needed basis; estimate \$2,000 per person

CONTRACTUAL: Contractual service would be limited to computer access which is encompassed under the main warehouseman request. No other services foreseen at this time.

EQUIPMENT & STRUCTURES: Also encompassed under the main warehouseman request.

**Request For
New Position**

Agency DEPT OF COMM. & ECON DEVE.
 BRU ALASKA STATE HOUSING AUTHORITY
 Component HOUSING MANAGEMENT

FY 87

Page _____ of _____
 Revised Date _____

Request For New Position

Page	of
Revised Date	

FY 87

Position Title FACILITIES SERVICES MANAGER			No. of Positions 1	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.																										
Time Status FT	Staff Months 12	RP Number	Location Anchorage	Election District	Leg.																													
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**Request For
New Position**

Agency DEPT. OF COMMERCE & ECON. DEV.
 BRU ALASKA STATE HOUSING AUTHORITY
 Component HOUSING MANAGEMENT

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 Revised Date _____

FY 87

Position Title BUILDING SERVICES MANAGER			No. of Positions 1	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.																									
Time Status FT	Staff Months 12	RP Number	Location Anchorage	Election District	Leg.																												
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Request For
New Position

Agency DEPT. OF COMM. & ECON DEV.
 BRU ALASKA STATE HOUSING AUTHORITY
 Component HOUSING MANAGEMENT

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 Revised Date _____

FY 87

Position Title ACCOUNTING CLERK III			No. of Positions 2	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.																																												
Time Status FT	Staff Months 12 each	RP Number	Location Anchorage		Election District	Leg.																																														
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(continued)

**Request For
New Position**

Agency DEPT. OF COMMERCE & ECON. DEV.
BRU ALASKA STATE HOUSING AUTHORITY
Component HOUSING MANAGEMENT

FY 87

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Revised Date _____

ACCOUNTING CLERK III (continued)

EQUIPMENT: Terminal-\$500, slave printer-\$1000, modem-\$300; TOTAL: \$4,000

LAND/STRUCTURES: Office space per clerk would be limited to 100 square feet. If the land is available, the estimated construction cost would be \$90 per square foot x 100 = \$9,000 each

Position Title INVENTORY CONTROL ANALYST			No. of Positions 1	Range/Step	Barg. Unit	Gov.	Approv.	Disapp.																									
Time Status FT	Staff Months 12	RP Number	Location Anchorage		Election District	Leg.																											
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**Request For
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Agency DEPT. OF COMM. & ECON DEV.
BRU ALASKA STATE HOUSING AUTHORITY
Component HOUSING MANAGEMENT

FY 87

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STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 03-26-86

REQUEST

Bill/Resolution No.: CS for SB 341 (SUD)
Title: An act relating to the State
procurement practices and procedures;
and providing for an effective date.
Sponsor: Senate Rules
Requestor: Senate Finance
Date of Request: _____

FISCAL DETAIL

Agency Affected: Administration
BRU: General Services & Supply

Components: Purchasing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES		222.7	445.5	460.5	475.5	490.9
TRAVEL		10.0				
CONTRACTUAL		189.0	38.0	43.0	38.0	43.0
SUPPLIES						
EQUIPMENT		72.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		493.7	483.5	503.5	513.5	533.9
FEDERAL FUNDS						
OTHER						
TOTAL		493.7	483.5	503.5	513.5	533.9

POSITIONS:

FULL-TIME		9	9	9	9	9
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Attached

Prepared By: Robert J. Link
Division: General Services & Supply

Phone: 465-2250
Date: 03-26-86

Approved by Commissioner: Eleanor Andrews
Agency: Department of Administration

Date: 03-26-86

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Senate Bill No. 341

FISCAL NOTE ANALYSIS:

A. REGULATIONS-PROCEDURES DEVELOPMENT AND TRAINING = \$135,000

The bill will create the need for a complete revision of the chapter 15 of the Administrative Code. This revision will be accomplished through a professional legal services contract. to write the regulations and conduct the required public hearings and is estimated to cost \$55,000 (see detail below).

The bill will create the need for a complete revision of the Policy and Procedures Manual for the contracting section of the Division of General Services and Supply. This revision will be accomplished through a professional services contract with an associate attorney. The cost of this contract plus the necessary printing is estimated to be \$25,000 (see detail below) .

Since the bill will completely revise the statute, and subsequently the administrative code and the policy and procedures manual of the division, we estimate that it will be necessary to train approximately 310 state employees in the newly required procedures. This will be accomplished through a professional services contract with an instructor plus printing and travel for an amount estimated to be (see detail below) \$55,000.

Legal services contract for regulations: $\$100.00/\text{hr} \times 83\text{hr}/\text{month} \times 6 \text{ months} = \$50,000.$

Para-legal Contract for Policy and Procedures Manual: $\$40.00/\text{hr} \times 83\text{hr}/\text{month} \times 6 \text{ months} = \$20,000.$

Instructors Contract: Develop training modules at $\$60/\text{hr} \times 525\text{hrs} = \$31,500$ + train 310 people $\times \$50/\text{person} = \$15,500$ for a total of \$47,000

Printing of the Policy and Procedures Manual: 200 manuals $\times \$25 = \5000

Printing of the Training Materials: 400 training guides $\times \$7.50 = \3000

Travel for public hearings in four locations: 2 people $\times \$385/\text{airfare} + \$240/\text{perdiem} \times 4 \text{ locations} = \5000

Travel for training in four locations: 2 people $\times$

\$385/airfare + \$240/perdiem x 4 locations = \$5000
Total \$135,000

The Department of Transportation has also budgeted for training and procedures development. The amounts which they have budget are to provide for procedures and training in the procurement of construction and its related activities. The amounts budget by General Services are for procurements not related to construction.

B. BIDDERS LIST = \$45,000

Lists of contractors to provide goods and services must be developed and maintained. These lists must be used and made available for use by all branches of state government. Department of Administration, Division of General Services and Supply is responsible for developing, maintaining, and making the lists available for use by all branches of state government. This will be accomplished through a professional services data processing contract. The cost of this contract is estimated to be a \$40,000 one-time contractual expense.

A person who wishes to be on the contractors list must have a valid Alaska business license and pay a biennial fee. The fees will be received and processed by the administrative support staff. We estimate that the cost of receiving and processing the fees will be \$5,000. This is equal to 312 hours of an administrative support technicians time at \$16.01 per hour. This is a biennial contractual expense since the administrative support staff is budgeted for by purchasing, but once the funds are received they are transferred to the Division of Administrative Services. The Division of General Services and Supply then contracts with the Division of Administrative Services for administrative support. This is a biennial contractual expense of \$5,000.

C. Workload Impact = \$313,700

The Division of General Services currently has 13 purchasing agents. It is anticipated that the increased work load (see detail description on the New Position Request Form) will require the addition of 9 new purchasing agents.

9 positions x \$49,503 salary and benefits,
purchasing agent III, range 18A = \$445,527
(because the bill goes into effect in
January) = \$222,763 personal services

increase in FY87. \$445,527 personal services increase in FY88. We estimate that this cost will increase each succeeding fiscal year due to merit increases.

Each of the 9 new purchasing agent positions will be required by the bill will need approximately \$8,000 in equipment (systems furniture and micro-computers). $\$8,000 \times 9 = \$72,000$. This is a one-time equipment expense.

The cost of printing and advertising bids will increase from \$46,100 to \$81,120. An annual increase of \$35,020.

$$\begin{aligned} \$46,100 : 704 &= \$65 \times 1248 = \$81,120 \\ - \$46,100 &= \$35,020 \end{aligned}$$

The cost of mailing bids will increase from \$3,800 to \$6,739. An annual increase of \$2,939.

$$\begin{aligned} \$3,800 : 704 &= \$5.40 \times 1248 = \$6,739 \\ - \$3,800 &= \$2,939 \end{aligned}$$

D. SUMMARY

1. Personal Services \$222,763

9 positions x \$49,503 salary and benefits, purchasing agent III, range 18A = \$445,527 (because the bill goes into effect in January) = \$222,763 personal services increase in FY87.

2. Travel \$10,000

Travel for public hearings in four locations: 2 people x \$385/airfare + \$240/perdiem x 4 locations = \$5000

Travel for training in four locations: 2 people x \$385/airfare + \$240/perdiem x 4 locations = \$5000

3. Contractual Services \$189,000

Legal services contract for regulations: \$100.00/hr x 83hr/month x 6 months = \$50,000.

Para-legal Contract for Policy and Procedures Manual: \$40.00/hr x 83hr/month x 6 months = \$20,000.

Instructors Contract: Develop training modules at \$60/hr x 525hrs = \$31,500 + train 310 people x \$50/person = \$15,500 for a total of \$47,000

Printing of the Policy and Procedures Manual: 200 manuals x \$25 = \$5000

Printing of the Training Materials: 400 training guides x \$7.50 = \$3000

Data processing contract for bidders List = \$40,000

Maintenance secretarial support of bidders list = \$5,000.

The cost of printing and advertising bids will increase from \$46,100 to \$81,120. An annual increase of \$35,020. for an FY 87 (6 months) of \$15,510.

The cost of mailing bids will increase from \$3,800 to \$6,739. An annual increase of \$2,939 for an FY 87 (6 months) amount of \$1470.

4. Equipment \$72,000

Equipment for the 9 new purchasing agent positions will be \$8,000 x 9 = \$72,000

Position Title <u>Purchasing Agent III</u>			No. of Positions 9	Range/Step 18A	Barg. Unit GGU	Gov.	Approv.	Disapp.																																																				
Time Status Full-time	Staff Months 6	RP Number	Location Juneau/Anch		Election District	Leg.																																																						
Type of Expenditure			Justification																																																									
			Sec. 36.30.300																																																									
			Under the new bill goods and services may be procured without competitive sealed bids only after a written determination has been made by the commissioner that there is only one source for the required goods or services. Current law permits the commissioner to limit bid solicitation or to waive bidding requirements when a finding is made that it is in the best interest of the State to do so.																																																									
			We estimate an average of 680 acquisitions per year are being purchased under the bid waiver provision of the current law. Purchases made under a bid waiver require 20 percent of the work of a purchase made under a competitive sealed bid.																																																									
			For planning purposes, we consider one average competitive sealed bid to be equal to one Work Unit and five bid waivers to be one Work Unit. During the past fiscal year the Division of General Services & Supply processed 704 competitive sealed bids (704 Work Units) and 680 bid waiver requests ($680 \div 5 = 136$ Work Units). The sum of these activities equals 840 Work Units for the division or 60 Work Units per year for each of 14 purchasing agents. [$704 \div 136$ ($680 \div 5$) = $840 \div 60 = 14$] Since this data base was compiled the staff has been reduced by one (1) position to a total of 13 purchasing agents.																																																									
			Of the bid waivers sampled, only 20 percent meet the sole source or emergency requirement of the new bill. This means that we will have to accomplish the additional 80 percent work necessary to make these purchases as competitive sealed bids. This will create an additional 544 Work Units ($680 \times .8 = 544$). This amount and the remaining 27.2 Work Units (bid waivers, $136 \div 5 = 27.2$) will be added to the 704 competitive sealed bids we are currently doing. The sum of this equals 1,275 Work Units for the division. At a production rate of 60 Work Units per year for																																																									
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>1</th> <th>2</th> <th>3</th> </tr> <tr> <td>Salary</td> <td>168,106</td> <td></td> </tr> <tr> <td>Benefits</td> <td>54,657</td> <td></td> </tr> <tr> <td>Premium Pay</td> <td></td> <td></td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td></td> <td>222,763</td> </tr> <tr> <td>Travel</td> <td></td> <td></td> </tr> <tr> <td>Contractual</td> <td></td> <td></td> </tr> <tr> <td>Commodities</td> <td></td> <td></td> </tr> <tr> <td>Equipment</td> <td></td> <td>72,000</td> </tr> <tr> <td>Other</td> <td></td> <td></td> </tr> <tr> <td>Total Cost</td> <td></td> <td>294,763</td> </tr> </table>			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	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>Receipt Code</th> <th>Funding Source</th> </tr> <tr> <td></td> <td>Federal Receipts 1002</td> </tr> <tr> <td></td> <td>G. F. Match 1003</td> </tr> <tr> <td></td> <td>General Funds 1004</td> </tr> <tr> <td></td> <td>I-A Receipts 1005</td> </tr> <tr> <td></td> <td>Program Receipts 1028</td> </tr> <tr> <td></td> <td>CIP Receipts 1061</td> </tr> <tr> <td></td> <td>Other</td> </tr> </table>						Receipt Code	Funding Source		Federal Receipts 1002		G. F. Match 1003		General Funds 1004		I-A Receipts 1005		Program Receipts 1028		CIP Receipts 1061		Other
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1/101/0210-03/1

**Request For
New Position**

Agency Department of Administration
 DRU General Services & Supply
 Component Purchasing

FY 87

Page 6 of 7
 Revised Date _____

each purchasing agent it will require 21.25 purchasing agents to accomplish The 1,275 Work Units.

However, the pre-bid opening and post-bid opening protest/appeal procedures described in Sec. 36.30.560 through 36.30.605 are not required under existing law. For the period December 1, 1984, through December 1, 1985, 61 protests were received under the current law. We estimate that we will receive approximately 130 protests and appeals per year under the new bill. We estimate that the time required to respond to each of these protest/appeals will be equivalent to three (3) Work Units per year. Thus, each purchasing agent's annual Work Unit production will be reduced from 60 Work Units to 57 Work Units because of the time diverted to responding to protests/appeals. This means that it will require 22.36 purchasing agents to accomplish the 1,275 Work Units.

$$[704 + 544 (680 \times .8) + 27.2 (136 + 5) = 1,275 + 57 = 22.36]$$

22.36 purchasing agents required under the new bill

13 current purchasing agents

9.36 additional purchasing agent positions required

Nine (9) positions x \$49,503 salary and benefits, Purchasing Agent III, range 18A = \$445,527 + 2 (because the bill goes into effect in January) = \$222,763 personal services increases in FY 87. \$445,527 personal services increase in FY 88.

Five (5) of these positions will be located in Juneau and four (4) in Anchorage.

1/11D2/0210-03/3



ADDITIONAL
EXPLANATION
FORM

AGENCY Department of Administration

BRU General Services & Supply

COMPONENT Purchasing

FY 87

Page 7 of 7

Revised Date _____

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
Bill/Resolution No.: Senate Bill 341
Title: "An act relating to state procurement practices and procedures and providing for an effective date."
Sponsor: Rules by request for Senate
Requestor: Select committee
Date of Request: _____

FISCAL DETAIL
Agency Affected: _____
BRU: Department of Administration
Division of Administrative Services
Components: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES	0	80.7	161.3	166.1	171.1	176.2
TRAVEL	0	8.9	17.8	18.3	18.8	19.4
CONTRACTUAL	0	38.2	76.4	78.7	81.1	83.5
SUPPLIES	0	1.0	1.9	2.0	2.1	2.2
EQUIPMENT	0	8.0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	136.8	257.4	265.1	273.1	281.3
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	136.8	257.4	265.1	273.1	281.3
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL		137.3	257.4	265.1	273.1	281.3

POSITIONS:

FULL-TIME	0	3	3	3	3	3
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Attached.

Prepared By: Gary Bader *Gary M. Bader*
Division: Administrative Services

Phone: 465-2277
Date: 2/6/86

Approved by Commissioner: Eleanor Andrews *Eleanor Andrews*
Agency: Department of Administration

Date: 2/7/86

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Senate Bill No. 341

SUBJECT OF PROPOSED BILL:

State procurement practices and procedures.

SUMMARY/EXPLANATION OF INTENT:

"To simplify, clarify, and modernize the law governing Procurements by the State."

ESTIMATED FISCAL IMPACT:

Capital: 0

Operating: \$136,800 FY 87
\$257,400 FY 88

ANALYSIS:

A. Assumptions

1. Enactment of Senate Bill #341 will significantly impact the Department of Administration and the present method of bid solicitation and the subsequent protest and appeal process.

Because of the changes in Article 2 and Article 3 which will be addressed by General Services and Supply, an increased number of protests and appeals is anticipated by General Services and Supply. The changes proposed by Senate Bill #341 to the protest and appeals procedures and possible subsequent hearings are listed below:

Section 36.30.590 creates a two-step protest/appeal process for goods and services contract awards where previously there was only one step. Prior to SB341, a decision was made by the Commissioner of Administration to deny a protest, to rule on a protest or hear the protest. This decision can be based on timeliness and/or merit. This Bill creates a first step whereby a protest can be filed with the procurement officer. If the protestor is not satisfied with the decision of the procurement officer, a written appeal is to be filed within five days with the Commissioner. Unless the appeal is determined to be untimely or that no facts are in dispute, the appeal will go into the hearing process. This is based on the assumption that the Commissioner of Administration will not decide to delegate appeals and hearings to the department involved. This assumption is based on the need for efficiency and standardizing which can only be obtained by centralization. It is estimated that approximately 122 appeals will be heard by a hearing officer.

Section 36.30.595(b) requires the Commissioner to furnish a copy of filed appeals to "all interested parties." This newly required clerical function will require a mailing of an estimated ten notifications per each appeals and other related functions.

Section 36.30.630 grants the Commissioner 15 days after receipt of a written appeal to adopt the procurement officer's decision regarding contract controversies or determine if there should be a hearing. It is assumed that in order to make the decision, the Commissioner will conduct a complete investigation of the facts surrounding the contract controversy. This investigation should be exhaustive.

Section 36.30.650 and Section 36.30.660 are newly created to place into law procedures regarding debarment, suspension and reinstatement. Hearings may be held following receipt of a written appeal requesting a reconsideration or reinstatement. Based upon evidence showing that the cause no longer exists or has been mitigated, a Hearing Officer may make recommendations to the Commissioner.

2. Of the Goods and Services contracts, during the December 1, 1984, to December 1, 1985 period, 390 bid solicitations were conducted and 548 bid waivers were allowed by the commissioner as being in the best interest of the State. Of these 548 waivers, only 20% would meet the criteria of sole source or emergency requirements of the new bill. Therefore, under the new law, an additional 438 bid solicitations would be required. Of the 390 bids, there were 61 protests or 15.6%. Using this percentage, of the total solicitations required by the new law, 130 protests could be anticipated.

$$(390 + 438) * 15.6\% = 130 \text{ appeals}$$

Of these 130 expected protests, it is anticipated that approximately 52 will be resolved prior to requiring a hearing.

130	anticipated protests
-52	40% will be resolved by a purchasing officer decision
-11	8.5% will be deemed untimely
<u>67</u>	anticipated hearings or rulings based on submitted briefs

67	anticipated hearings based on Goods and Services contracts.
+50	anticipated appeals regarding contract controversies
+ 3	anticipated appeals regarding debarment and suspension
+ 2	anticipated appeals regarding reinstatement
<u>122</u>	anticipated total hearings

3. Inflation is estimated at three percent per year.

B. Staff Requirement

1. 122 hearings are anticipated per year.
2. Each Hearing Officer can hear and file on one appeal per week, based on estimates provided by Department of Labor.

3. General Government Unit (GGU)

Hours per year	= 1,950 hrs/yr
Annual Leave	= (127.5)
Five days Sick Leave	= (37.5)
Holidays (ten days)	= <u>(75.0)</u>

Employee Annual Hours Worked 1,710 hrs/yr

Employee Weeks worked/yr 45.6 wk/yr

4. 122 anticipated hearings/yr + 46 hearings/H.O. = 2.6 H.O./yr.
There is presently one hearing officer in the Department of Administration; thus 2 additional Hearing Officers are required.

C. Costs:

1. Personal Services: \$80,657* (January 1, 1987 - June 20, 1987)
\$161,314 (FY 88)

(2) Hearing Officers	R/21A	2 X \$ 59,934 = \$119,868
Administrative Asst.	R14B	\$ 41,446 = \$ 41,446
	TOTAL	<u>\$161,314</u>

* FY 87 (.5 x 161,314) = 80,657

2. Travel: \$8,884 (January 1, 1987 - June 30, 1987)
Full year cost is \$17,768 for FY 88.

- (a) Assumes 25% of hearings in Anchorage requiring two days per diem per trip at \$80/day

(1) Airfare	\$ 352
(2) Perdiem 2 X 80 -	160
(3) 30 trips X 512 X	<u>\$15,360</u>

- (b) Assumes 3% of hearing in Fairbanks requiring two days per diem per trip at \$90/day.

(1) Airfare	\$ 422
(2) Perdiem 2 X 90 -	180
(3) 4 trips X 602 =	<u>\$2,408</u>

3. Contractual: \$38,216 (January 1, 1987 - June 30, 1987)
Full year cost is \$76,432 for FY 88.

- (a) Centrex (3 X \$512) - \$1,536

- (b) Photocopies and transcripts 1,200

- (c) Telephone-toll (\$10/call X 2 calls X 20/day x 12) 4,800

Data Processing Chargeback 500

- (d) Professional Services \$59,400

Because a large percentage of contracts are put to bid at the same time, many appeals will occur at the same time. Because unheard appeals will delay contract awards, the appeals must be heard in a timely manner. It is therefore assumed that 15% of

the appeals will be heard by a contracted hearing officer. The average cost of a contracted hearing has been \$3,000 - \$4,000 in the past.

$$18 \times \$3,300 = \$59,400$$

(e) Space Rental: \$8,996
Hr Off Range 21 = 85 X 2 = 170 sq. ft.
Admin Asst. Range 14 = 85 85 sq. ft.
25% Circulation = 64 sq. ft.
Total 319 sq. ft.

$$319 \text{ Sq. Ft.} \times \$2.35^* \text{ mo} \times 12 = \$8,996$$

* average per sq. ft./mo in Juneau

4. Supplies: \$900 (January 1, 1987 - June 30, 1987)
Full year cost is \$1,854 (FY 88)
FY 87: 3 emp X \$50/mo X 6 mo - \$900
FY 88: 3 emp X \$50/mo X 12 mo X 1.03 Inflation = \$1,854

5. Equipment (one-time) : \$7,954

(a) Furniture

Chairs (3@ \$150)	\$ 450
Desks (3@ \$500)	\$1,500
File Cabinet (4@ \$366)	\$1,464

(b) Office Equipment

Calculators (2 @ \$270)	\$ 540
Computer Terminal	4,000
w/word-processing hook-up	

Position Title Administrative Assistant			No. of Positions 1	Range/Step 14B	Barg. Unit 6	Gov.	Approv.	Disapp.																									
Time Status PFT	Staff Months 12	RP Number	Location Juneau		Election District	Leg.																											
<table border="1"> <thead> <tr> <th>Type of Expenditure</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>3</td> </tr> <tr> <td>Salary</td> <td>29,196</td> </tr> <tr> <td>Benefits</td> <td>10,565</td> </tr> <tr> <td>Premium Pay</td> <td>1,685</td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Personal Services</td> <td>41,446</td> </tr> <tr> <td>Travel</td> <td></td> </tr> <tr> <td>Contractual</td> <td>3,511</td> </tr> <tr> <td>Commodities</td> <td>432</td> </tr> <tr> <td>Equipment</td> <td>650</td> </tr> <tr> <td>Other</td> <td></td> </tr> <tr> <td>Total Cost</td> <td>46,039</td> </tr> </tbody> </table>			Type of Expenditure	Amount	1	3	Salary	29,196	Benefits	10,565	Premium Pay	1,685	Other		Total Personal Services	41,446	Travel		Contractual	3,511	Commodities	432	Equipment	650	Other		Total Cost	46,039	Justification The duties of the Administrative Assistant will include, but not be limited to; organizing the files of each protest that is not satisfied at the procurement officer level, determination of time schedules and the sending of various types of required notification, performing research for the Hearing Officers, and performing the various accounting functions required by the unit.				
Type of Expenditure	Amount																																
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For B&M Use Only Key Number _____																																	

**Request For
New Position**

Agency Department of Administration
BRU Administrative Services
Component Administrative Services

FY 87

Page 6 of 7
Revised Date _____

Position Title Hearing Officers (2)			No. of Positions 2	Range/Step 21A	Barg. Unit G	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 24	RP Number	Location Juneau		Election District	Leg.		
Type of Expenditure			Justification					
1		2	3					
Salary		91,488	Three hearing officers will be required in FY 87 to hear appeals that have not been satisfied at the procurement officer or preliminary hearing officer level. Presently, one hearing officer position exists in the Department of Administration, therefore, two additional officers are required. The duties include, but are not limited to; review of decisions of procurement officers, review of all pertinent documentation and materials, notification to all interested parties of filed appeals, and conducting hearings according to AS 36.670. SINGLE POSITION COST PER YEAR \$3,812 X 12 = \$45,744.00 Benefits = 14,190.39 Total = 59,934.39					
Benefits		28,381						
Premium Pay		0						
Other		0						
Total Personal Services		119,869						
Travel 13 trips Anch, 4 trips Fbks		17,768						
Contractual		13,521						
Commodities		865						
Equipment		2,764						
Other								
Total Cost		154,787						
Receipt Code		Funding Source						
		Federal Receipts 1002						
		G. F. Match 1003						
		General Funds 1004	154,787					
		I-A Receipts 1005						
		Program Receipts 1028						
		CIP Receipts 1061						
		Other						
For B&M Use Only								
Key Number								

**Request For
New Position**

Agency **Department of Administration**
BRU **Administrative Services**
Component **Administrative Services**

FY 87

Page **7** of **7**
Revised Date

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: 3/27/86

REQUEST

Bill/Resolution No.: CSSB 341 (Jud'y)
 Title: An Act Relating to State
Procurement Practices
 Sponsor: Rules Committee
 Requestor: Senate Finance
 Date of Request: 3/27/86

FISCAL DETAIL

Agency Affected: Dept. of Natural Resources
 BRU: Management & Administration
 Components: Administrative Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		31.0	32.5	34.1	35.8	37.6
TRAVEL		2.5	1.5	1.5	1.5	1.5
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		33.5	34.0	35.6	37.3	39.1

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		33.5	34.0	35.6	37.3	39.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See Attached Sheet

Prepared by: Christopher Rutz/Contracts Officer
 Division: Management

Phone: 465-2424
 Date: 3/27/86

Approved by Commissioner: Ned Faryher or ROBERT D. ARNOLD Date: 3/28/86
 Agency: Natural Resources

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Attachment to Department of Natural Resources Fiscal Note for SB341

Personel Service

Cost are computed for a range 10 supply technician, based in Juneau, with a 5% COLA increase per year. This position would support the contracting and supply staff and enable the Department to fulfill as outlined in the bill as well as provide procurement training for department employees.

Travel

These cost are estimated at four trips to Anchorage/Fairbanks to provide training the year the bill is to be implemented and three trips the following years in order to maintain a active procurement training program and provide for participation in contract protests, writing, and bid openings, when necessary.

STATE OF ALASKA 1986 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : Senate Bill No. 341

Title : Procurement Practices and
Procedures

Sponsor : Rules Committee

Requestor : _____

Date of Request : _____

FISCAL DETAIL

Agency Affected : DOT&PF

BRU : _____

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		50.0	55.0	60.0	65.0	70.0
TRAVEL		10.0				
CONTRACTUAL		100.0	55.0	60.0	65.0	70.0
SUPPLIES		40.0	20.0	25.0	27.0	30.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		200.0	130.0	145.0	157.0	170.0

CAPITAL		0	0	0	0	0
---------	--	---	---	---	---	---

REVENUE		0	0	0	0	0
---------	--	---	---	---	---	---

FUNDING : (Thousands of Dollars)

GENERAL FUND		200.0	130.0	145.0	157.0	170.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Based on the following figures: 1) delegations to other agencies - \$30.0 for the start up year; 2) procedures updates - \$30.0 for start up year; 3) development of standards and forms - \$10.0 for start up year; 4) one officer plus expenses to administer hearings and claims - \$100.0; 5) list maintenance and mailing - \$10.0; and 6) subcontractor list checking and bid opening administration - \$10.0; 7) travel

Prepared by : Daniel F. Malick, Director

Phone : 465-3911

Division : Management and Finance

Date : 1-30-86

Approved by Commissioner : R. J. Knapp

Agency : DOT&PF

Date : 1-30-86

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

to the hearings for the Regulations.



Dept. of Transportation & Public Facilities

Position Paper

BILL NO: Senate Bill 341

TITLE: Procurement Practices

APPROVED:

W. S. Smith
R. J. Knapp
Commissioner

DATE:

January 30, 1986

The Department of Transportation and Public Facilities has worked closely with the Legislative interim committees in the drafting of Senate Bill 341. Many of the department's concerns of both a technical and policy nature have been addressed in the initial drafting of the bill.

However, while the department supports the Legislature and the administration's effort to revise and update procurement codes, there are a few areas within Senate Bill 341 that the department feels needs further consideration:

1. SB 341 requires the maintenance and use of bidders lists for the request for proposal and bid notification process. This is time consuming, expensive and has proven from department experience to be of limited value. We feel this requirement for DOT&PF construction should be removed from the bill.
2. SB 341 requires the listing of all sub-contractors at time of bid opening. This further complicates the bid opening process and might jeopardize bidder responsiveness ~~the~~ potentially large cost consequences to the state. The department feels that a subcontractor list would be appropriate to require seven days after the bid opening to limit the extent of bid shopping.
3. SB 341 lacks definitive statements on Alaska preference. An Alaska preference clause for all construction even those over \$5,000 should be considered.
4. SB 341 has no provisions for expanding sole-source and small procurement eligibility. There are numerous purchasing needs of the department which fall outside of the strict definitions provided in the bill. Some sort of extension process is highly advisable.
5. SB 341 requires "teeth" for handling of false claims. False claims without penalty would jeopardize the efficiency and credibility of the claims process.

6. SB 341's small procurement procedures limit consultants to a total of \$25,000 in small contracts within a twelve (12) month period. The department feels this is an unreasonable restriction and would seriously jeopardize the ability of many firms to continue providing critical services to the department.
7. There are numerous areas within the SB 341, particularly in Articles 5 and 6, where the statute is overly specific and those items might be best addressed in regulations.

The Department of Transportation and Public Facilities supports the current effort underway to update procurement procedure along the lines of the model procurement code with modifications to minimize the adverse impact on the state and private sector contracting community. The department is presently assisting in the development of Regulation to implement the bill.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB 341
 Title : State Procurement Practices

 Sponsor : Rules Committee
 Requestor : Interim Comm. on Procurement
 Date of Request : 1/16/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : Administration

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Sid LaMonica, Administrative Officer
 Division : Public Safety

Phone : 465-4328
 Date : 1/16/86

Approved by Commissioner [Signature]
 Agency : Public Safety

Date : 1-22-86

Distribution (by Agency preparing fiscal note) :

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

March 10, 1986

*I need to see
Bill Miles + show
him this memo*

MEMORANDUM

*on Bill's word - I will
vote to attempt.*

TO: Jan
FROM: Cheryl CF
SUBJECT: ASHA and Procurement Bill

I talked with Liz regarding how the Procurement Bill addresses ASHA. Previous language said that if state law conflicts with federal law, then federal law prevails. There is now language in the Judiciary bill which expands of this by stating that if state law conflicts with federal law and jeopardizes federal funds, then the federal law prevails.

ASHA, however, wants to be exempt from the entire thing. According to Rodey's staff, he is leaning toward total exemption. Your friend, Barbara Morse-Quinn even called up Senator Stevens' office to get them to intervene on ASHA's behalf but Stevens' office, after talking with Liz, decided to not get involved.

Baldwin says there is case law stating that ASHA is a state agency and therefore it should not be exempt. Liz is uncertain if it is the principal or the fact that ~~ASHA~~ ASHA drives Baldwin up the wall ~~again~~.



U.S. Department of Housing and Urban Development
Anchorage Office, Region X
701 "C" Street, Box 64
Anchorage, Alaska 99513

RECEIVED
ASHA

JAN 24 1986

JAN 24 '86

Barbara Morse-Quinn, Executive Director
Alaska State Housing Authority
Post Office Box 100080
Anchorage, Alaska 99510-0080

EX cc
DEX cc
EX, Dept
EX Sec
Board

Dear Ms. Morse-Quinn:

Subject: Relationship of Alaska State Housing Authority
and the U. S. Department of Housing and Urban Development

This is in response to your letter dated January 17, 1986, requesting our comments on the relationship of Alaska State Housing Authority (ASHA) and U. S. Department of Housing and Urban Development (HUD).

The relationship is a contractual one which is defined by the terms of the Annual Contributions Contract. Under that document a public housing authority (PHA) is provided federal funds for the specific purpose of providing and operating housing for families of lower income. The funding is designated for specific projects and may only be used in accordance with the HUD-approved development program, contract terms, and HUD regulations and policies. Should the funding approved by HUD for a particular project not be made available to the PHA, it would be necessary for the federal government to provide additional funding in order for HUD to meet its contractual responsibilities to the PHA. For this reason, HUD cannot approve any arrangement whereby the PHA does not have total access to and control of the funds supplied by HUD. As a small example of this, HUD requires the PHA to invest the funds provided in order to earn interest. The amount of funding provided has been calculated on the basis that a certain amount of interest will have been received by the PHA. Any attempt to make HUD funds provided to ASHA restricted as to access or control or subject to legislative approval would be strongly opposed by HUD. In this regard, I have been advised by our Headquarters' office that the Department has already taken such a position with another state when it recently advised the governor of that state that remedial legislation must be enacted to eliminate legislative control over HUD funds.

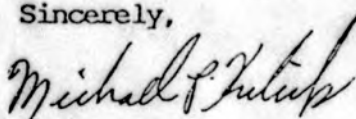
I am not in a position to discuss how HUD's legislation compares with that of other federal agencies. It is my impression, however, that HUD may have more authority, than other agencies, to become directly responsible

for the activities usually undertaken by a state agency using federal funds. ✓
For example, the default provisions of the statute and Annual Contributions Contract provide that title and/or possession be given to the Secretary, at the Secretary's discretion, should the PHA fail to observe the terms of the contract. In any case, HUD funds are specifically designated for an identifiable project to be developed or managed by a named PHA and are not considered generalized housing funds earmarked particular to be used in a state.

For additional comments, I refer you to the Regional Counsel's letter dated October 17, 1985, which speaks to the relationship between ASHA and HUD. Finally, we do believe the Attorney General's Opinion of June 9, 1983, interpreting AS 18.55.110 may have direct relevance to the issues you raised.

I hope this is of some assistance to you. Please keep us fully informed of your discussions on this matter and feel free to contact Susan Olsen, Chief Counsel, at 271-4683 for additional comments.

Sincerely,



Michael P. Kulick
Manager



U.S. Department of Housing and Urban Development
Anchorage Office, Region X
701 "C" Street, Box 64
Anchorage, Alaska 99513

RECEIVED
ASHA

JAN 24 1986

Barbara Morse-Quinn, Executive Director
Alaska State Housing Authority
Post Office Box 100080
Anchorage, Alaska 99510-0080

JAN 24 '86

Route	EX Sec
Route	DEX cc
Route	ALL Depts
File	EX Sec
	HM-3 extra

Dear Ms. Morse-Quinn:

Subject: Senate Bill 8001 : Now SB 54
Proposed State Procurement Act

In response to your inquiry of December 13, 1985, we have reviewed the above-referenced bill from the perspective of its impact on Alaska State Housing Authority (ASHA) and U. S. Department of Housing and Urban Development (HUD) programs and operations. We find that, overall, as written, it may be viewed as burdensome and restrictive from a practical standpoint, and as undesirable to HUD in terms of foreseeable increased costs, time delays, and lack of adequate protections for federally-funded housing projects. We do not find the proposed act to be of particular value to either ASHA or HUD, inasmuch as we firmly believe that there are adequate and appropriate safeguards currently in place to meet any concerns the state may have with regard to fairness, economy, and control. This is accomplished by way of ASHA regulations and HUD's regulations and policies, and the requirements of the Annual Contributions Contract between HUD and ASHA.

While it is difficult to analyze the full impact, on an agency or federally-funded program, of a law for which regulations have not yet been written, we offer the following comments on the bill, along with responses to your comments to Senator Faiks.

As to the delegability of professional services authority, as well as the authority to procure supplies and other services (as referenced in your first two pages of comments), we think that the only logical interpretation of AS 36.30.015(b) is that such authority is delegable. However, there is no requirement that the authority be delegated, and, clearly, the adoption of regulations is not delegable, nor is there any requirement that the individual departments or agencies participate in the formulation of the regulations. While ASHA presently has the power under AS 18.55.100 to adopt its own regulations, the proposed legislation would apparently remove this power,

and we see this as a significant deficiency of the law from a practical and policy standpoint. We think that any applicable regulations should be written in accordance with HUD requirements. Additionally, as you are aware, HUD is particularly concerned with contracting for construction and has developed extensive "boiler-plate" provisions which are required to be utilized in any such contracts. We see great possibilities for conflict should the authority not be delegated to ASHA and should the regulations not comport with HUD's requirements. ✓

We agree that most matters covered in your numbered paragraphs (2) and (3) are covered by HUD regulations, procedures, or other requirements which variously are less, or more, restrictive than that proposed by the state bill. This is true, of course, about most of the sections of the legislation. In HUD's view, a few of the areas which would raise immediate and strong conflict are: Section 36.30.080, which could involve the administration of federal funds for lease purposes through the state treasury; Section 36.30.170, which provides for an Alaska bidder preference; Section 36.30.270, which requires the approval of the Department of Law to alter any contract terms, rather than HUD's counsel; and Section 36.30.015, which requires the attorney general's approval of any contract for legal services. As an additional note, it appears that use of the consolidated supply program would be seriously curtailed or delayed in that already selected competitive bid suppliers would have to resubmit to the state's competitive bid process. ✓

The extensive bid documentation required in Section 36.30.110, as discussed in your paragraph (5), does appear to be cumbersome and bound to cause delays. Further, we think the requirements for Alaska business licenses, as applied to subcontractors in supply contracts, is unduly restrictive and burdensome. HUD policy expects procurement procedures to be as broad and competitive as possible. As mentioned earlier, the provision for Alaska bidder preference is totally unacceptable for federally-funded ASHA projects. This raises questions also about the acceptability of Section 36.30.050, which requires every agency's use of a centrally maintained list of contractors. ✓

Regarding your paragraph (6), HUD requires acceptable bid security of five percent. We would undoubtedly find that the ten percent requirement would be unacceptably excessive and would not be willing to approve these extra costs to a project.

Section 36.30.200(b), as referenced in your paragraph (8), appears to be unduly burdensome in that written determinations must be obtained from the chief procurement officer or the commissioner of transportation and public facilities prior to ASHA's ability to enter a contract by other means than a competitive bid (except where emergency or small procurement standards are met). Under the proposed legislation, authority for these determinations is not delegable.

We agree that ASHA's current regulations regarding emergency conditions are more narrowly defined than the proposed language, and, therefore, less apt to present grounds for disputes, either before or after a procurement action is taken [reference your paragraph (9)].

As to your paragraphs (10) and (11), we do not believe that either Section 36.30.370 or Section 36.30.380 conflicts with HUD regulations. However, to require an agency to review and analyze the capability of a proposed contractor's accounting system is, we think, excessively burdensome.

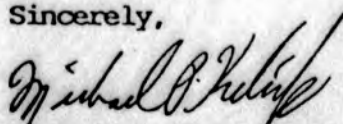
As you point out in your paragraph (12), HUD's policies, procedures and contract provisions, as well as its regulations, do govern the distribution and administration of federal monies designated for public housing projects. Section 36.30.890 of the proposed bill, therefore, provides only a limited exemption to ASHA. Limited exemption could jeopardize ASHA's receipt of HUD funds in an instance of conflict with the state procurement statute. We note the relevance of the Alaska Attorney General's opinion of June 9, 1983, on the applicability of Title 36 to ASHA, wherein he discusses AS 18.55.110 as follows:

. . . We believe the more probable legislative intent was to provide an explicit statutory exemption in instances where the application of state law would jeopardize the receipt of federal assistance. . . . By the statute's own terms, the focus of the exemption is 'to secure [federal] financial aid for housing projects.' . . . Consequently, we interpret AS 18.55.110 as exempting the application of state or local law when a federal funding entity, properly exercising its discretion, notifies ASHA in writing that the receipt of federal funds would be jeopardized were State or local law deemed applicable.

It seems to us that this opinion may be an instructive and persuasive rationale for exempting ASHA from the proposed procurement statute. We tend to agree with you that an acceptable alternative to what we view as a basis for recurring interpretive, managerial, and legal problems under the proposed law, would be to include ASHA as an exempt agency along with the railroad, the legislature, and the court system. If ASHA is not made exempt, then, at a minimum, we would want to see added the terms "policy or other requirement" to the existing terms "federal statute or regulation" in AS 36.30.890.

Thank you for this opportunity to comment.

Sincerely,



Michael P. Kulick
Manager

SECTION ANALYSIS

I. Amendments

(1) Section 36.30.015 should be amended to read as follows:

- (e) The boards [board] of the directors of the Alaska Railroad Corporation and the Alaska State Housing Authority shall adopt procedures to govern the procurement of supplies, services, professional services and construction by the corporation. The procedures must be substantially equivalent to the procedures prescribed in this chapter and in regulations adopted under this chapter.

Rationale: See following narrative re: need to exempt ASHA.

(2) Section 36.30.050 is amended to read:

- (c) The lists may be used by the chief procurement officer of an agency when issuing invitations to bid or requests for proposals under this chapter. The lists may be used by the Legislative Council, the court system, the Alaska State Housing Authority and the Alaska Railroad.

Rationale: See following reasons for exemption of ASHA from legislation.

(3) Section 36.30.735 is amended to read:

- (b) In this section, "state agency" means a state department or agency, whether the legislative, judicial or executive branch [including such entities as the Alaska State Housing Authority] but not including the University of Alaska, a municipality, or an agency of a municipality, or the Alaska State Housing Authority.

Rationale: See following reasons for exclusion of ASHA from legislation.

(4) Section 36.30.850 is amended to read:

- (d) Nothing in this chapter or in regulations adopted under this chapter prevents an agency or political subdivision from complying with the terms and conditions of a grant, gift, bequest, [or] cooperative agreement or federal assistance agreement.

Rationale: New language is needed to protect ability of agencies to participate in federal programs.

- (5) Section 36.30.890 should be amended to read: Federal assistance. If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or regulation adopted under a provision of this chapter and a federal statute, [or] regulation, policy or requirement, the federal statute [or] regulation, policy or requirement shall prevail.

Rationale: See below regarding HUD control of ASHA's use of federal funds.

- (6) Section 36.30.990 should be amended to read:

- (1) "Agency" means a department, institution, board, commission, division, authority, public corporation, the Alaska Pioneers' Home, or other administrative unit of the executive branch of state government, except for the University of Alaska, the Alaska State Housing Authority, and the Alaska Railroad Corporation; it does not include a regional Native housing authority created under AS 18.55.996, or a regional electrical authority created under AS 18.57.020;

- (7) Section 36.30.990 should be amended to read:

- (6) "Construction" means the process of building, altering, repairing, maintaining, improving, or demolishing a public highway, structure, building, or other public improvement of any kind to real property other than privately owned real property leased for the use of agencies; it includes services and professional services relating to planning and design required for the construction; it does not include the routine operation of a public improvement to real property; nor does it include the construction of public housing.

Rationale: Clarifies fact that ASHA's procurement practices regarding public housing are exempted.

- (8) Section 10 should be deleted in its entirety:

[Section 1. AS 18.55.100 is amended by adding a new subsection to read:

- (d) The authority's power to contract, lease, rent, construct, acquire, procure, and provide for services under this section is governed by AS 36.30.]

Rationale: ASHA should be excluded for all above stated reasons. In addition, it would be absurd to monitor ASHA's many thousands of residential leases thorough the Department of Administration or branch of state government other than ASHA.

II. Conflicts between SB 341 and federal funding requirements

- (1) Sections 36.30.005(b) and 36.30.040 will inevitably lead to serious conflict with ASHA and HUD regulations because there is no requirement that the adopted regulations be consistent with federal regulations or policy. These sections provide the most fertile ground for future conflicts.
- (2) Section 36.30.015(a) presents a potential conflict because it vests the Commissioner of DOT/PF with authority over construction while failing to recognize ASHA's expertise in the field of multifamily or senior citizen residential construction
- (3) Section 36.30.015(d) creates a conflict between HUD's right to select legal counsel where HUD funds are involved and the Department of Law.
- (4) Section 36.30.040(b)(8) through (13) is in conflict with HUD's current activities of directly monitoring and regulating the details of ASHA's procurement policies.
- (5) Section 36.30.050 is in conflict with federal policy promoting competition.
- (6) Section 36.30.115 is in conflict with the federal policy promoting competition because it fails to provide for the issuance of some types of contracts where the contractor need not be physically present in Alaska to perform its obligations.
- (7) Section 36.30.120(b)(1) and (2) conflict with HUD policy and good procurement practice by requiring an excessive bid bond.
- (8) Section 36.30.160(b) conflicts with HUD policy because it allows for the post bid opening withdrawal of a bid.
- (9) Section 36.30.170(b) conflicts with federal policy promoting competition and violates the U.S. Constitution because of its local preference.

- (10) Section 36.30.200(b) conflicts with HUD policy because it does not allow the delegation of the authority to determine that a contract should be let by non-competitive sealed bids. There is no HUD preference for sealed bids, per se. The section also conflicts with HUD policy and good construction contract procurement because it practically eliminates the "design-build"-option.
- (11) Section 36.30.250(b) conflicts with HUD policy and the U.S. constitution because of the local preference provision.
- (12) Section 36.30.340 conflicts with HUD policy because it provides for State Department of Law approval of contract provisions rather than approval of HUD counsel.
- (13) Section 36.30.370 is in conflict because it only recognizes the state's best interests -- not ASHA's or HUD's.
- (14) Section 36.30.380(1) and (2) conflict with HUD policies because the review contemplated is excessively burdensome.
- (15) Section 36.30.460(1) and (2) provide for conflict because they do not necessarily require certain HUD mandated contract terms such as Federal Davis-Bacon wage rates or Affirmative Action provisions.
- (16) Section 36.30.870 promotes conflict because it does not include ASHA as an authority to make regulations in respect to multifamily residential construction.
- (17) Section 36.30.890 does not resolve the federal/state conflicts as it purports to do.

In the first place, HUD requirements are not always in the form of statutes or regulations. They are more frequently in the form of contract provisions or handbooks. More importantly, perhaps, is the fact that any person aggrieved by ASHA procurement decisions would have standing to sue in court to litigate the issue of the presence of a supposed "conflict" between state and federal law. Far from accomplishing its stated purpose of "simplifying and clarifying" procurement, (Section 1(1) of the Act) the bill mandates the untenable task of sorting out the conflicting state and federal regulations from the harmonious ones.

III. Narrative

ASHA is as unique to the State of Alaska as Alaska is to the rest of the union. ASHA predates statehood by about 15 years. ASHA was incorporated by the Territorial Legislature in 1944 to act as a conduit to bring federal housing assistance funds to Alaska. From a procurement point of view, ASHA is much more a federal agency than it is a state agency because of the tight regulations and supervision provided by the Department of Housing and Urban Development. Other state agencies have not had the same relationship to the federal government as ASHA in Territorial days or now.

The imposition of a state procurement code on top of ASHA's established and comprehensive set of HUD and state approved procurement regulations will have a disruptive and adverse effect on ASHA as a practical, fiscal and legal matter. There would be no commensurate benefit to the state since ASHA's procurement practices are already tightly controlled by HUD, from which virtually all of ASHA's operating funds come. Instead, regulating ASHA in the manner contemplated by SB 341 would create an expensive headache for the State of Alaska, not to mention ASHA.

It has been represented to ASHA that upon passage of SB 341, ASHA will be given a delegation of authority under 36.30.015 to continue to administer its procurement programs. Unfortunately, those promising the delegation have no authority under the bill to make it. Even if the delegation of authority became a reality, there would still be conflicts between federal and state regulations to contend with, as well as increases in the funding necessary to administer ASHA's housing programs for low income and senior citizens. The costs would come at a time when the state and the beneficiaries of ASHA programs can least afford it. Only an exemption of the type granted to the Alaska Railroad or the University of Alaska can save ASHA and the state from the consequences of trying to apply state regulations to an agency which, for procurement purposes is governed at the federal level by the Department of Housing and Urban Development.

Since ASHA's procurement is already comprehensively regulated, every regulation promulgated under SB 341 will, necessarily, be either redundant or in conflict with an existing ASHA or HUD regulation or published policy. It does not remedy the situation to provide, as is attempted in 36.30.890, that state regulations or statutes are pre-empted by federal regulations to the extent that they are inconsistent. This attempt at resolving such conflicts creates a scenario that only a lawyer could love. Disappointed bidders in every type of contract will have standing to challenge State and ASHA procurement decisions on the ground that there is an inconsistency between federal requirements and Alaska statutes or regulations. The conflicts cannot be resolved by "federal pre-emption" clauses -- only an exemption for ASHA

will work. These inconsistencies will occur in even greater numbers with regard to the regulations to be adopted to implement the procurement code. There is no mechanism to insure that the adopted regulations address HUD requirements.

In addition, ASHA must follow more than just federal statutes and regulations -- ASHA must follow federal policy not contained in statutes or regulations to be eligible for federal funds. This policy is often promulgated as the result of HUD's practical experience and is most often contained in handbooks or contract provisions that do not amount to a statute or regulation. ASHA receipt of HUD funds could be seriously jeopardized. The only practical way to avoid that risk is to exempt ASHA in the same manner as the Railroad or University.

If an ASHA procurement practice results in a lawsuit, under the current arrangement ASHA's management of the litigation is handled under a detailed set of HUD regulations and all major decisions regarding the conduct of litigation are made by HUD. If a case involving HUD funds is decided adversely to ASHA, it is federal (HUD) money that pays the judgment or settlement. Under the provisions of SB 341, the state's role would be much more pervasive and successful litigants would look to the state for satisfaction. The bill does not describe how the people of Alaska would pay such a judgment. Presumably, the money would come from the Alaska legislature rather than the federal government.

At stake here is ASHA's ability to continue to serve the State of Alaska by bringing in federal funds at a time when they are desperately needed. HUD views SB 341 with alarm because it takes away ASHA's access to and control of federal funds. ASHA is under contract with HUD to manage its procurement in a manner precisely and comprehensively governed by HUD. HUD has unequivocally stated that it cannot approve of any arrangement where ASHA does not have total access to and control of funds supplied by HUD for procurement. The funds in question amount to approximately \$1,000,000 per month. While SB 341 is no doubt necessary for ordinary state agencies, the risk of losing those federal funds far exceeds any supposed benefits of the application of SB 341 to ASHA.

We, therefore, urge the committee to adopt the changes which will exempt ASHA from SB 341.

HOUSE CS FOR CS FOR SENATE BILL NO. 341 (Finance)

An Act relating to state procurement practices and procedures and providing for an effective date.

History of the Bill

Senate Resolution 6 established the Senate Select Interim Committee on Procurement Practices and Procedures.

Procurement Committee:

8 Statewide Public hearings

Mailing list over 250

Task force of State Procurement Personnel held numerous work sessions

SB 341

Based on the Model Procurement Code which has been adopted by 13 other states

The Model Procurement Code was modified to address Alaska's needs

Senate Judiciary Committee held 7 hearings

Senate Finance Committee held 2 hearings

House State Affairs Committee held 4 hearings

House Judiciary Committee held 3 hearings

House Finance Committee held 1 hearing

25 TOTAL PUBLIC HEARINGS HELD SINCE SEPTEMBER

BENEFITS UNDER THE BILL

Comprehensive, concise law

Exceptional guidelines for the development of solicitations and evaluation of bids and proposals

A clear, comprehensive and uniform appeals procedure which will benefit vendors

Noncompetitive procurement methods such as sole source contracts will be limited and must be supported by written justification

Bill creates a procurement system that addresses the deficiencies of the existing system.

ORGANIZATION OF THE BILL

Non-construction procurements under Department of Administration/Chief Procurement Officer

Construction procurements under the Department of Transportation and Public Facilities

Regulations will be adopted by the Department of Administration

University of Alaska is subject to the code, but will adopt its own regulations that must be substantially similar to those adopted by Department of Administration.

Alaska Railroad and Alaska State Housing Authority are not subject to the code, but must adopt procedures that are substantially equivalent to the procedures under the code.

Legislature and Court System are not subject to the code, but must adopt and publish procedures that are based on the competitive principles consistent with the code.

HOUSE CS FOR CS FOR SENATE BILL NO. 341 (Finance)

Changes made in the House other than technical/housekeeping:

The Legislature and the Court System shall adopt procedures which are based on the competitive principles consistent with this chapter. This is OK.

Subcontractors - Within 24 hours after opening of bids, the two apparent low bidders shall submit a list of subcontractors. This is OK with AGC and AFL-CIO.

Architectural, Engineering, and Land Surveying Contracts - made consistent with SB 204 Conference Committee Bill.

New provision for Alaska product preference.

New effective date. Bill become effective on July 1, 1987.
No fiscal notes. Gives Administration time to organize properly and let Legislature know what fiscal impact the code will have.

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HOUSE CS FOR CS FOR SENATE BILL NO. 341 (Finance)
SECTIONAL ANALYSIS

(Unless otherwise indicated, "commissioner" means commissioner of administration)

SECTION 1. The purposes of the act are outlined to include: simplification, clarification, modernization of the laws; consistency among the branches of government; increased public confidence; fair and equitable treatment of all vendors; increased economy in state procurement; broad-based competition; safeguards for the maintenance of a procurement system of quality and integrity; and elimination and prevention of discrimination in state contracting.

SECTION 2. A new chapter is added to AS 36 entitled "State Procurement Code."

Article 1. Organization of State Procurement.

Sec. 36.30.005. Centralization of procurement of supplies and services for state agencies is under the authority of the commissioner of administration and the chief procurement officer. Procurement of construction and procurements to or disposals from the state equipment fleet and the control over construction and the state equipment fleet is under the commissioner of transportation and public facilities.

The University of Alaska is subject to the requirements of SB 341, but has independent administrative authority and the ability to issue its own regulations implementing the chapter in conformance with state APA requirements.

Sec. 36.30.010. The chief procurement officer is selected by the commissioner; is responsible for procurement of supplies and services for agencies in the executive branch; is a partially exempt employee; must have a minimum of 5 years in public procurement; and may be removed by the commissioner only for cause. The term of office of the Chief Procurement Officer is 4 years. Duties of the Chief Procurement Officer are enumerated.

Sec. 36.30.015. The commissioner of transportation and public facilities may delegate to another agency the authority to contract for construction, after written determination has been made that the agency is capable of implementing the delegated authority. The commissioner of administration may delegate to an agency the authority to contract for its own supplies and services after a written

determination has been made that the agency is capable of implementing the delegated authority.

The authority to adopt regulations or dispose of surplus supplies may not be delegated. Agency contracts for the services of legal counsel must be approved by the department of law.

The Board of Directors of the Alaska Railroad Corporation and the Alaska State Housing Authority must adopt procedures substantially equivalent to the procurement code and regulations adopted by the commissioner.

Sec. 36.30.020. Legislative Council must adopt procedures which are based on the competitive principles consistent with this chapter.

Sec. 36.30.030. The administrative director of the court system must adopt procedures which are based on the competitive principles consistent with this chapter.

Sec. 36.30.040. Procurement regulations must be adopted by the commissioner.

Sec. 36.30.050. A list of persons who desire to provide supplies, services or construction items to the state will be established and maintained by the commissioner. Evidence of a valid Alaska business license and a statement of the contractor's qualifications must be submitted to be included on the list. Construction contractors must also submit a valid certificate of registration. A biennial fee will be charged to offset the cost of administering the list. The list may be used by the state agencies in providing notice of intent to make small purchases.

Sec. 36.30.060. Specification regulations must be adopted by the commissioner. Specifications must promote overall economy for the purposes intended, encourage competition in satisfying the state's needs, and may not be unduly restrictive.

Sec. 36.30.070. Supply management is under the authority of the commissioner and regulations must be adopted which govern management of supplies, surplus supplies and transfer of excess supplies.

Sec. 36.30.080. The department shall lease necessary space, and contract for the lease of space for the use of the state or an agency. A lease or contract for a lease may not be for a period of occupancy greater than 40 years. The department may enter into lease-financing agreements, which are subject to annual appropriation. If the department intends to enter into a lease or lease financing agreement with an annual rent anticipated to

exceed \$1,000,000, notice must be provided the legislature for approval.

Article 2. Competitive Sealed Bidding.

Sec. 36.30.100. Competitive sealed bidding is the preferred method of contracting. Competitive sealed bidding is not required for certain purchases, including professional services, which are itemized.

Sec. 36.30.110. When competitive sealed bidding is used, an invitation to bid is issued which must include the date by which the bid must be received, purchase description, and all contractual terms and conditions. Subcontractors must be listed. Evidence of a valid Alaska business license for all bidders and subcontractors must be submitted when responding to the ITB. A bidder for construction contracts must also submit evidence of the bidder's registration under AS 08.18 and evidence of registration for each listed subcontractor.

Sec. 36.30.115. Within 24 hours after the opening of bids, the two apparent low bidders shall submit a list of the subcontractors the bidder proposes to use in the performance of the contract. Conditions under which a bidder may substitute a subcontractor are listed. A bidder who violates this section may either have the contract cancelled, or after notice and a hearing, be assessed a penalty in an amount not exceeding 10% of the value of the subcontract at issue.

Sec. 36.30.120. Bid security shall be required for all competitive sealed bidding for construction contracts which exceed an amount established by regulation. Bid security may be required for other types of supplies and services.

Sec. 36.30.130. Public notice of the ITB must be provided 21 days before the date for the opening of the bid, unless otherwise determined in writing by the chief procurement officer, or the commissioner of transportation and public facilities for construction or state equipment bids. Notice of solicitations must be published in the Alaska Administrative Journal. The state is liable for failing to substantially comply with the notice requirements of this section.

Sec. 36.30.140. Bid opening must be public, in the presence of witnesses, and relevant information must be recorded, which is open to public inspection. The bids are not open for public inspection until after a notice of intent to award a contract has been issued.

Sec. 36.30.150. The procurement officer must evaluate bids based on the requirements set out in the ITB. The criteria used for the evaluation of an award must be objectively measurable. Criteria may not be used in bid evaluation if they are not set out in the ITB.

A contract based on total or life cycle costs may be awarded only when the chief procurement officer or the commissioner of transportation and public facilities determines in writing that the contract promotes overall economy for the purposes intended, encourages competition, is not unduly restrictive, and is in the best interest of the state.

Sec. 36.30.160. Bids received after the bid due date indicated on the ITB may not be accepted unless the delay was due to an error of the contracting agency.

Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on bid mistakes shall be permitted in accordance with regulations and supported by written justification.

Sec. 36.30.170. Awards to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the ITB shall be promptly made. The Alaska bidder preference is expanded to apply to all construction contracts. The lowest responsible and responsive Alaskan bidder with a bid not more than 5% higher than the lowest bid of a nonresident shall be awarded the contract. An Alaskan bidder who qualifies as an "employment program" shall be given a 10% preference.

Sec. 36.30.190. Multi-step sealed bidding is allowed when it is considered impractical to initially prepare a definitive purchase description to support an award based on price. Unpriced technical offers are submitted, followed by an ITB limited to the bidders whose offers are determined to be technically qualified under the criteria established.

Article 3. Competitive Sealed Proposals.

Sec. 36.30.200. Contracts may be awarded by competitive sealed proposals when the chief procurement officer, or the commissioner of transportation and public facilities for construction and state equipment fleet contracts, determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the state.

Sec. 36.30.210. Request for proposals must contain the same information required for ITBs. The same notice provisions for ITBs apply for RFPs. An offeror must list the subcontractors within 48 hours after the date by which the proposals must be received. The same duties of bidders under ITBs apply to competitive sealed proposals.

Sec. 36.30.220. Standard overhead rate established by agencies and applicable to contracts for supplies and services, must be included in a RFP.

Sec. 36.30.230. Proposals are to be opened in a manner which avoids disclosure of contents to competing offerors during the process of negotiation. A register of proposals containing the name and address of each offeror shall be prepared and open for public inspection after the the notice of intent to award a contract is issued.

Sec. 36.30.240. Discussions with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, may be conducted for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. Revisions may be permitted after submissions and before the award for the purpose of obtaining best and final offers. These discussions are exempted from the Alaska Open Meetings law.

Sec. 36.30.250. A contract under competitive sealed proposals shall be awarded to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price, the evaluation factors set out in the RFP, and whether the offeror qualifies as an Alaskan Bidder or is offering the services of an employment program.

Sec. 36.30.260. A contract awarded under competitive sealed proposals must contain: the amount of the contract; the date for supplies to be delivered or the term for services to be performed; a description of the services or supplies contracted for; and a certification that sufficient funds are available for the amount of the contract.

Sec. 36.30.270. Special procedures apply to contracts awarded to architects, engineers, and land surveyors.

Article 4. Other Procurement Methods.

Sec. 36.30.300. Sole source procurements may only be awarded if it is determined in writing that there is only one source for the required supply, service or construction. A sole source procurement may not be approved if a reasonable alternative source exists.

Sec. 36.30.310. Emergency procurements may be authorized under emergency conditions when there exists a threat to public health, welfare, or safety, and procurement through competitive sealed bids or competitive sealed proposals is impracticable, or contrary to the public interest, or to protect public or private property. A written determination of the basis for the emergency and for the selection of the particular contractor must be provided.

Sec. 36.30.320. Small procurements which do not exceed an aggregate amount of \$5,000 shall be made with competition that is practicable under the circumstances. A contract for professional services that does not exceed \$25,000 may be made in accordance with regulations adopted by the commissioner. Notice of small procurements shall be provided to Alaskan bidders designated by the commissioner under section 36.30.050(d).

Article 5. Preference for Alaska Products.

Sec. 36.30.322. Only timber, lumber, and manufactured lumber products originating in this state from local forests may be procured by an agency or used in construction projects unless manufacturers/suppliers are unable to supply the products at a cost that is within seven percent of the price offered by a manufacturer/supplier of non-Alaska forest products.

Sec. 36.30.324. Alaska products shall be used whenever practicable in procurements for an agency.

Sec. 36.30.326. Contract specifications must include a provision that a bidder or offeror that designates in a bid or proposal the use of Alaska products identified in the specifications will receive the preference granted under AS 36.15.328 in the evaluation of the bid or proposal if the products meet the contract specifications.

Sec. 36.30.328. In evaluation of a bid or proposal that designates the use of Alaska products is decreased by the percentage of the value of the designated Alaska products under AS 36.30.332.

Sec. 36.30.330. Failure to use the designated Alaska product for a reason within the control of the successful bidder or offeror will result in a penalty according to the schedule under this section.

Sec. 36.30.332. A classification system for Alaska products which is based on the manufacturer's quoted price, is contained in this section. A preference schedule is outlined.

Sec. 36.30.334. An agency may identify specific Alaska Products for use in making a procurement.

Sec. 36.30.336. Notwithstanding other provisions of this chapter, AS 36.30.322-36.30.338 apply to all procurements subject to this chapter, except as provided in AS 36.30.170(b) and 36.30.322(b).

Sec. 36.30.338. Definitions for this article.

Article 6. Contract Formation and Modification.

Sec. 36.30.340. If a contract contains a term that is in conflict with a state standard form contract term or if a standard term is deleted or modified by a term that is not standard, the contract must be approved by the Attorney General.

Sec. 36.30.350. Solicitations may be cancelled or any bids or proposals may be rejected, in whole or in part, or the date for opening bids or proposals may be delayed as may be specified in the solicitation, when it is in the best interest of the state. The reasons for cancellation, rejection, or delay in opening bids or proposals shall be made part of the contract file.

Sec. 36.30.360. A written determination of responsibility of a bidder or offeror shall be made by the procurement officer.

Sec. 36.30.362. The procurement officer must issue a written statement explaining the reasons a contract was awarded to a person who does not reside or maintain a place of business in Alaska, if the supplies, services, professional services or construction could have been obtained from in-state sources.

Sec. 36.30.365. At least 10 days before the formal award of a contract the procurement officer shall provide to each bidder or offeror notice of intent to award a contract.

Sec. 36.30.370. Any type of contract that will promote the best interests of the state may be used, except that the use of a cost-plus-a-percentage-of cost contract is prohibited.

Sec. 36.30.380. Except with respect to contracts awarded through competitive sealed bidding or firm fixed-price

contracts, a contract type may not be used unless it has been approved in writing by the procurement officer.

Sec. 36.30.390. Unless otherwise provided by law, multi-term contracts are permitted, but subject to availability and appropriation of funds. Written determination must support multi-term contracts.

When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal periods, the contract shall be cancelled. The contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred, but not amortized in the price of the supplies or services delivered under the contract that are not otherwise recoverable.

Sec. 36.30.400. Cost or pricing data must be submitted and certified by contractors. This does not apply when: the contract price is based on adequate price competition; the contract price is set by law or regulation; or it is determined in writing that the requirements of this section are waived and the reasons for waiver are stated in writing.

Sec. 36.30.410. The state has the right to inspect the plant or place of business of a contractor or subcontractor that is related to the performance of a contract awarded or to be awarded by the state.

Sec. 36.30.420. The state may audit books and records of a person who has submitted cost or pricing data or receives a contract.

Sec. 36.30.430. The commissioner shall adopt regulations permitting the inclusion of clauses providing for adjustments in prices, time of performance, or other contract provisions, and appropriate remedies.

Sec. 36.30.460. Standard clauses in state contract may be modified if supported by a written determination that states the circumstances justifying the variation.

Sec. 36.30.470. If the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget or the total contract budget, the procurement officer may not execute the contract modification, change order, or adjustment in contract price unless sufficient funds are available, or the scope of the project or contract is adjusted to permit the degree of completion that is feasible within the total project budget or total contract budget as it existed before the contract modification, change order, or adjustment in contract price.

Sec. 36.30.480. Cost principle regulations shall be adopted.

Article 7. Procurement Records and Reports.

Sec. 36.30.500. Procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the state archivist.

Sec. 36.30.510. A contract file open for public inspection must be kept by the commissioner and the contracting agency for each contract awarded under competitive sealed proposals. The file kept by the commissioner shall contain a summary of the information in the file of the contracting agency.

Sec. 36.30.520. The commissioner shall maintain for at least 5 years a record listing all sole source and emergency procurement contracts. An agency which has delegated procurement authority shall by October 1, of each year, submit records of all sole source and emergency procurement contracts to the commissioner.

Sec. 35.30.530. Procurement information is public except as otherwise provided by law.

Sec. 36.30.540. The commissioner shall biennially report to the legislature concerning procurements by agencies.

Article 8. Legal and Contractual Remedies.

Sec. 36.30.560. An interested party may protest the award of a contract, the proposed award of a contract, or a solicitation for goods, services or construction. The protest shall be filed with the procurement officer of the contracting agency in writing and must contain specified items.

Sec. 36.30.565. Time deadlines for filing protests are specified.

Sec. 36.30.570. Notice of a protest shall immediately be given to the contractor if a contract has been awarded or, if no award has been made, to all interested parties.

Sec. 36.30.575. If a protest is filed before a contract is awarded, the award may be made unless the procurement officer of the contracting agency determines in writing that: a reasonable probability exists that the protest will be sustained; or stay of the award is not contrary to the best interests of the state.

Sec. 36.30.580. A written decision by the procurement officer of the contracting agency shall be issued within 14 days after a protest has been filed, unless the time is extended up to 26 days for good cause. Notice shall be sent to the protester. If a decision is not made by the due date, the protester may proceed as if the procurement officer had issued a decision adverse to the protester.

Sec. 36.30.585. If the procurement officer sustains a protest the procurement officer shall implement an appropriate remedy.

Sec. 36.30.590. An appeal from a decision of a procurement officer on a protest must be filed with the appropriate commissioner within 5 days after the decision is received by the protester.

Sec. 36.30.595. The procurement officer shall immediately give notice of an appeal to the contractor if a contract has been awarded, or, if no award has been made, to all interested parties.

Sec. 36.30.600. If a protest appeal is filed before a contract is awarded and the award was stayed, the filing of the appeal automatically continues the stay until the commissioner of administration or transportation and public facilities makes a written determination that the award of the contract is necessary to protect substantial interests of the state.

Sec. 36.30.605. The procurement officer of the contracting agency shall file a complete report on the protest and decision with the commissioner of administration or transportation and public facilities within 7 days after a protest appeal is filed. The protester and all interested parties that have requested a copy of the appeal shall be furnished one. The protester may file comments on the protest report within 7 days after the report is received. Extensions may be granted.

Sec. 36.30.610. The commissioner of administration or transportation and public facilities shall dismiss a protest appeal before a hearing is held if it is determined in writing that the appeal is untimely. The appropriate commissioner may issue a decision on an appeal without a hearing if the appeal involves questions of law without genuine issues of fact.

Sec. 36.30.615. A hearing on a protest appeal shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.620. If a controversy, asserted by a contractor, concerning a contract awarded under this

chapter cannot be resolved by agreement, the procurement officer shall, after receiving a written request by the contractor, issue a written decision no more than 90 days after receipt of all necessary information from the contractor, unless the due date is extended for good cause.

The decision shall be sent to the contractor. If a decision is not made by the due date, the contractor may proceed as if the procurement officer had issued a decision adverse to the contractor. If a controversy asserted by the state concerning a contract awarded cannot be resolved by agreement, the matter shall be immediately referred to the commissioner of administration or transportation and public facilities.

Sec. 36.30.625. An appeal from a decision of the procurement officer on a contract controversy may be filed by the contractor with the commissioner of administration or transportation and public facilities. The appeal shall be filed within 14 days after the decision is received by the contractor.

Sec. 36.30.630. A hearing on a contract controversy appealed to the commissioner or referred to the commissioner shall be conducted according to AS 36.30.670 and regulations adopted.

Sec. 36.30.632. The commissioners of administration and transportation and public facilities may delegate responsibilities under Sec. 36.30.590 and Sec. 36.30.630 to the head of the contracting agency.

Sec. 36.30.635. The commissioners of administration and transportation and public facilities may debar or suspend a person from consideration for award of contracts. Notice and opportunity for a hearing are specified.

Sec. 36.30.640. Causes for debarment or suspension are enumerated.

Sec. 36.30.645. The commissioners of administration and transportation and public facilities shall issue a written decision to debar or suspend.

Sec. 36.30.650. A person suspended is entitled to a hearing if the person files a written request for a hearing within 7 days after receipt of the notice of suspension.

Sec. 36.30.655. The commissioner shall maintain a list of all persons debarred or suspended from consideration for award of contracts.

Sec. 36.30.660. The commissioner of administration or the commissioner of transportation and public facilities may, at any time after a final decision to debar a person, reinstate the person after determining that the cause for which the person was debarred no longer exists or has been substantially mitigated.

A debarred person may request reinstatement. A hearing may be held on a reinstatement petition. A decision on reinstatement shall be made in writing within 7 days after a reinstatement petition is submitted. A decision under this section is not subject to judicial appeal.

Sec. 36.30.665. The commissioner of administration or transportation and public facilities may permit a debarred person to participate in a contract on a limited basis during the debarment period.

Sec. 36.30.670. The commissioner of administration or transportation and public facilities shall act as a hearing officer or appoint a hearing officer for a hearing conducted under this chapter. The provisions of the Administrative Procedure Act do not apply to a hearing conducted under this chapter. The authority of a hearing officer is outlined.

Sec. 36.30.675. If the commissioner of administration or transportation and public facilities is not acting as hearing officer, the hearing officer shall recommend a decision to the appropriate commissioner based on the evidence presented. The recommendation shall include findings of fact and conclusions of law. The appropriate commissioner may affirm, modify or reject the hearing officer's recommendation or take any other appropriate action.

Sec. 36.30.680. A decision by the commissioner of administration is final, and shall be sent within 20 days after a hearing to all parties. A decision by the commissioner of transportation and public facilities involving procurement of construction shall be sent within 90 days after the hearing.

Sec. 36.30.685. A final decision of the commissioner of administration or transportation and public facilities may be appealed to the superior court in accordance with the Alaska Rules of Appellate Procedure.

Sec. 36.30.687. Civil and criminal sanctions are outlined for misrepresentations and fraudulent claims.

Sec. 36.30.690. This chapter and the regulations adopted under it are the exclusive procedures for asserting a claim against the state or an agency arising in relation to a procurement conducted under this chapter.

Sec. 36.30.695. The commissioner of administration may adopt by regulation additional rules of procedure.

Sec. 36.30.699. The definition of interested party is given.

Article 9. Intergovernmental Relations.

Sec. 36.30.700. Cooperative purchasing is authorized between public procurement units or external procurement activities in accordance with an agreement entered into between the participants.

Sec. 36.30.710. Sale, acquisition, or use of supplies among public procurement units or with external procurement activity may be done independent of certain requirements of this chapter.

Sec. 36.30.720. Joint use of facilities is allowable.

Sec. 36.30.730. A public procurement unit may provide personnel, information and technical services to a requesting public procurement unit or external procurement activity.

Sec. 36.30.735. Current Alaska law on restrictions of contracting with or employing experts on radiation hazards is retained.

Sec. 36.30.740. The commissioner may collect information concerning supplies, services or construction being procured or used by state public procurement units.

Sec. 36.30.750. Under a cooperative purchasing agreement, controversies arising between an administering public procurement unit and its bidders, offerors, or contractors shall be resolved in accordance with this chapter.

Sec. 36.30.790. Definitions for this article are provided.

Article 10. General Provisions.

Sec. 36.30.850. This chapter applies to contracts solicited or entered into after January 1, 1987, unless the parties agree to its application to a contract solicited or entered into before that date. This chapter applies to the disposal of state supplies and every expenditure of public funds irrespective of their sources, except as specified in AS 36.30.915.

This chapter does not apply to: grants; contracts for professional witnesses; contracts of the University of Alaska where the work is to be performed substantially by enrolled students; contracts for medical doctors and dentists; contracts for the purchase of residential child care services under AS 47.40; disposals of land or interest in land; disposals under AS 38.05; contracts for the preparation of ballots under AS 15.15.030; acquisitions or disposals of property and other contracts relating to airports; acquisitions of real property or disposals of obsolete property under AS 19.05.060, 19.05.100, 19.05.110 or 19.05.120; disposals of obsolete material or equipment under AS 35.20.060; leases of ferry terminal facilities under AS 19.60.010; contracts of the department of fish and game for non-point-to-point flights requiring specialized flying and piloting skills; or purchases of income-producing assets for the state treasury or a public corporation of the state.

Except for AS 36.30.700-36.30.895, this chapter does not apply to contracts between two or more agencies, the state and its political subdivisions, or the state and other governments.

Sec. 36.30.860. Unless displaced by the particular provision of this chapter, all other principles of law and equity shall supplement the provisions of this chapter.

Sec. 36.30.870. Regulations under this chapter shall be adopted in accordance with the Administrative Procedure Act. Regulations applicable to procurements of construction or procurements for or disposal of property of the state equipment fleet shall be adopted by the commissioner of administration only after consultation with the commissioner of transportation and public facilities.

Sec. 36.30.880. This chapter requires all parties involved in the negotiation, performance, or administration of state contracts to act in good faith.

Sec. 36.30.890. If a procurement involves the expenditure of federal funds or federal assistance and there is a conflict between a provision of this chapter or a regulation adopted under a provision, the federal statute or regulation shall prevail.

Sec. 36.30.900. This chapter does not modify, amend, or alter laws regarding preference for Alaska forest products or preference to producers or dealers in Alaska, except as provided in AS 36.30.170(b) and (c).

Sec. 36.30.910. This chapter does not prevent purchasing through the general services administration as provided by law.

Sec. 36.30.920. Suspected anticompetitive practices are to be reported to the attorney general.

Sec. 36.30.930. In addition to penalties prescribed for unethical conduct, civil and criminal penalties are provided for violations of this chapter.

Sec. 36.30.940. The attorney general on behalf of the state shall enforce the provisions of this chapter.

Sec. 36.30.950. Severability clause is included.

Sec. 36.30.990. Definitions.

Sec. 36.30.995. This chapter may be cited as the State Procurement Code.

SECTION 3 through SECTION 64 amend other Alaska statutes to reflect the provisions of this chapter.

SECTION 65. The commissioner must report to the legislature by December 1, 1988, concerning procurements by state agencies during the fiscal year 1987.

SECTION 66. The commissioner of administration shall adopt the regulations required under this chapter by July 1, 1987.

SECTION 67. This is the repealer section.

SECTION 68. Section 66 of this Act takes effect immediately.

SECTION 69. Except as provided in sec. 68, this Act takes effect July 1, 1987.

COMMITTEE REPORT SENATE

FURTHER: FINANCE

1/14/86

Date 3/18/86

Mr. President

The Committee on JUDICIARY considered SB 341
relating to state procurement practices and procedures; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- ☒ do pass
- ☐ do pass with attached amendment(s)
- ☒ replace with/or adopt CS for SB 341 (Jud)
- ☐ new title
- ☒ same title and recommends _____
- ☐ and attached a "LETTER OF INTENT" ☐ NEW FISCAL NOTE
- ☐ reports it back without recommendation
- ☐ recommends referral to _____ Committee

MEMBERS SIGNING

DO PASS

John Luki

Tim Kelly

High - DO PASS, but

only if ASHA is excluded

from bill

MEMBERS HAVING

OTHER RECOMMENDATIONS

Rick Hatford NO REC

Patrick Brady

Chairman

Do Pass

Chairman recommendation

COMMITTEE REPORT
SENATE

FURTHER:

3/19/86

Date 4/1/86

Mr. President

The Committee on FINANCE considered SB 341
relating to state procurement and practices and procedures; efd.

and (a majority of the committee) (the committee) reports it back with
the following recommendations:

- ☐ do pass
- ☒ ~~do pass~~ with attached amendment(s)
- ☒ replace with/or adopt CS for SB 341 (Jud.)
☐ new title
- ☒ same title and recommends _____
- ☐ and attached a "LETTER OF INTENT" ☒ NEW FISCAL NOTE
- ☒ reports it back without recommendation
- ☐ recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Yutzy No Rec
Rick Halford No Rec
Paul Fink No Rec
John Fink - " "

Co-Chairman

do pass
Chairman recommendation

Rule



U.S. Department of Housing and Urban Development
COMMUNITY PLANNING AND DEVELOPMENT

Special Attention of:

CPD Staff
CDBG Grantees

Transmittal Handbook No.: 1300.17

Issued: March 1, 1982

1. This Transmits : Handbook 1300.17, Uniform Requirements for Assistance to State and Local Governments, OMB Circular A-102
2. Purpose: The Office of Management and Budget (OMB) has promulgated Uniform administrative requirements for grants-in-aid to State and local governments in its Circular A-102 (Revised), January 1981. This Handbook is a reprint of that Circular.
3. Filing Instructions: Insert Handbook 1300.17, dated March 1, 1982



Program Participants and Departmental Staff

March 1982

Uniform Requirements for Assistance to State and Local Governments (A reprint of Office of Management and Budget Circular A-102 (Revised))

FOREWORD

This Handbook, reprinted from the Office of Management and Budget (OMB) Circular A-102, sets forth the uniform administrative requirements for grants-in-aid to state and local governments. Compliance with those requirements in the Circular which apply to the Community Development Block Grant (CDBG) Program are mandatory and may not be deviated therefrom without prior Headquarters approval, concurred in by the Office of Management and Budget.

Attachment P, Audit Requirements, of this Handbook should be used in conjunction with Guidelines for Financial Compliance Audits of Federally Assisted Programs published by the U.S. General Accounting Office, and Standards for Audit of Governmental Organizations, Programs, Activities and Functions issued by the Comptroller General of the United States. Both publications are available by purchase from the Superintendent of Documents, United States Government Printing Office (USGPO), Washington, D.C., 20420. USGPO Stock Number for the former is 020-000-00181-0; for the latter, the Stock Number is 2000-00110.

Additional copies of this Handbook may be obtained in limited quantities from the appropriate HUD Area Office upon request.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

CIRCULAR NO. A-102
Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Uniform administrative requirements for grants-in-aid
to State and local governments

1. Purpose. This Circular promulgates standards for establishing consistency and uniformity among Federal agencies in the administration of grants to State, local, and federally recognized Indian tribal governments. Also included in the Circular are standards to insure the consistent implementation of sections 202, 203, and 204 of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1101).

2. Supersession. The President by Executive Order 11717 transferred the functions covered by OMB Circular No. A-102 dated October 19, 1971, from the Office of Management and Budget to the General Services Administration. OMB Circular No. A-102 was revised and issued as Federal Management Circular 74-7 dated September 13, 1974. On December 31, 1975, the President superseded this order by Executive Order 11893 and transferred the functions covered by this Circular back to the Office of Management and Budget. FMC 74-7 is revised and reissued under its original designation of OMB Circular No. A-102.

3. Summary of significant changes. The revised Circular contains changes that bring it into general agreement with the more recent Circular A-110 which covers grants to universities, hospitals, and nonprofit organizations.

The more significant changes include:

a. An amendment to the basic Circular to make it clear that the provisions of the attachments shall be applied to subgrantees except where they are specifically excluded.

b. A provision that Federal agencies may accept the bonding policies and requirements of the grantee for construction contracts over \$100,000 provided that the Government's interest is adequately protected.

c. A revision to the criterion for the valuation of donated real and personal property to provide that the value of such property shall be based on fair market value. The original Circular provided that property should be based on the cost of the property less depreciation or fair market value, whichever was less.

d. A provision that grantee audits should be made in accordance with generally accepted auditing standards, including Standards for Audit of Governmental Organizations, Programs, Activities & Functions, published by the General Accounting Office.

e. A provision to require Federal agencies to pay within 30 days after the receipt of billing when the reimbursement method is used.

f. A revision to the criterion for issuance of a letter of credit from \$250,000 to \$120,000.

g. Deletion of the requirements for grantees to obtain prior approvals for budget revisions to grants under \$100,000.

h. Provision that title to real property funded partly or wholly by the Federal Government shall vest in the recipient.

i. A revision to the criteria governing when a grantee may keep nonexpendable property without reimbursement to the Federal Government when it is no longer needed for any Federal program.

4. Background. The standards included in the attachments to this Circular replace the multitude of varying and oftentimes conflicting requirements in the same subject matter which have been burdensome to the State and local governments. Inherent in this standardization process is the concept of placing greater reliance on State and local governments. In addition, the Intergovernmental Cooperation Act of 1968 was passed, in part, for the purposes of: (a) achieving the fullest cooperation and coordination of activities among levels of government; (b) improving the administration of grants-in-aid to the States; and (c) establishing coordinated intergovernmental policy and administration of Federal assistance programs. This Act provided

certain basic policies pertaining to administrative requirements to be imposed upon the States as a condition to receiving Federal grants. The implementing instructions of these policies were initially issued in Circular A-96. These instructions are modified herein in the interest of achieving further consistency in implementing that Act.

5. Applicable provisions of the Intergovernmental Cooperation Act of 1968. Federal agencies shall continue to follow the provisions of the Act, quoted below:

"DEPOSIT OF GRANTS-IN-AID

"Sec. 202. No grant-in-aid to a State shall be required by Federal law or administrative regulation to be deposited in a separate bank account apart from other funds administered by the State. All Federal grant-in-aid funds made available to the States shall be properly accounted for as Federal funds in the accounts of the State. In each case the State agency concerned shall render regular authenticated reports to the appropriate Federal agency covering the status and the application of the funds, the liabilities and obligations on hand, and such other facts as may be required by said Federal agency. The head of the Federal agency and the Comptroller General of the United States or any of their duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to the grant-in-aid received by the States."

"SCHEDULING OF FEDERAL TRANSFERS TO THE STATES

"Sec. 203. Heads of Federal departments and agencies responsible for administering grant-in-aid programs shall schedule the transfer of grant-in-aid funds consistent with program purposes and applicable Treasury regulations, so as to minimize the time elapsing between the transfer of such funds from the United States Treasury and the disbursement thereof by a State, whether such disbursement occurs prior to or subsequent to such transfer of funds, or subsequent to such transfer of funds. [Sic] States shall not be held accountable for interest earned on grant-in-aid funds, pending their disbursement for program purposes."

"ELIGIBLE STATE AGENCY

"Sec. 204. Notwithstanding any other Federal law which provides that a single State agency or multimember board or commission must be established or designated to administer or supervise the administration of any grant-in-aid program, the head of any Federal department or agency administering such program may, upon request of the Governor or other appropriate executive or legislative authority of the State responsible for determining or revising the organizational structure of State government, waive the single State agency or multimember board or commission provision upon adequate showing that such provision prevents the establishment of the most effective and efficient organizational arrangements within the State government and approve other State administrative structure or arrangements: Provided, That the head of the Federal department or agency determines that the objectives of the Federal statute authorizing the grant-in-aid program will not be endangered by the use of such other State structure or arrangements."

Some of the above provisions require implementing instructions and they are provided in several of the attachments to this Circular which deal with the specific subject matter.

6. Applicability and scope. The standards promulgated by this Circular apply to all Federal agencies responsible for administering programs that involve grants to State and local governments and federally recognized Indian tribal governments. However, agencies are encouraged to apply the standards to loan and loan guarantee programs to the extent practicable. If the enabling legislation for a specific grant program prescribes policies or requirements that differ from the standards provided herein, the provisions of the enabling legislation shall govern. Except where they are specifically excluded, the provisions of the attachments of this Circular shall be applied to subgrantees performing substantive work under grants that are passed through or awarded by the primary grantee if such subgrantees are States, local governments or federally recognized Indian tribal governments as defined in paragraph 7.

7. Definitions. For the purposes of this Circular:

a. The term "grant" or "grant-in-aid" means money, or property in lieu of money, paid or furnished by the Federal

Government to a State, local, or federally recognized Indian tribal government under programs that provide financial assistance through grant or contractual arrangements. The term does not include technical assistance programs which provide services instead of money or other assistance in the form of general revenue sharing, loans, loan guarantees, insurance, or contracts which are entered into and administered under procurement laws and regulations.

b. The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of State institutions of higher education and hospitals.

c. The term "local government" means a local unit of government including specifically a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments, sponsor group representative organization (as defined in 7 CFR 620.2, 40 F.R. 12472, March 19, 1975) and other regional or interstate government entity, or any agency or instrumentality of a local government exclusive of institutions of higher education and hospitals.

d. The term "federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

8. Attachments. The standards promulgated by this Circular are set forth in the attachments, which are:

Attachment A - Cash depositories

Attachment B - Bonding and insurance

Attachment C - Retention and custodial requirements for records

Attachment D - Waiver of "single" State agency requirements

Attachment E - Program income

- Attachment F - Matching share
- Attachment G - Standards for grantee financial management systems
- Attachment H - Financial reporting requirements
- Attachment I - Monitoring and reporting program performance
- Attachment J - Grant payment requirements
- Attachment K - Budget revision procedures
- Attachment L - Grant closeout procedures
- Attachment M - Standard forms for applying for Federal assistance
- Attachment N - Property management standards
- Attachment O - Procurement standards
- Attachment P - Audit Requirements

9. Requests for exceptions. The Office of Management and Budget may grant exceptions from the requirements of this Circular when permissible under existing laws. However, in the interest of keeping uniformity to the maximum extent, deviations from the requirements of this Circular will be permitted only in exceptional cases.

10. Exceptions for certain recipients. Notwithstanding the provisions of paragraph 9 if an applicant/recipient has a history of poor performance, is not financially stable, or its management system does not meet the standards prescribed in the Circular, Federal agencies may impose additional requirements as needed provided that such applicant/recipient is notified in writing as to:

- a. Why the additional standards are being imposed;
- b. what corrective action is needed.

Copies of such notifications shall be sent to the Office of Management and Budget and other agencies funding that recipient at the same time the recipient is notified.

11. Responsibilities. Agencies responsible for administering programs that involve grants to State and local governments shall issue the appropriate regulations necessary to implement the provisions of this Circular. All portions of such regulations that involve recordkeeping and/or reporting requirements subject to the provisions of the Federal Reports Act and OMB Circular A-40 must be submitted to OMB for clearance before being used. Upon request all regulations and instructions implementing this Circular shall be furnished to the Office of Management and Budget. Agencies shall also designate an official to serve as the agency representative on matters relating to the implementation of this Circular. If the name and title were previously transmitted, notification to the Office of Management and Budget is required only when there is a change in the designated representative.

12. Inquiries. Further information concerning this Circular may be obtained by contacting the Financial Management Branch, Budget Review Division, Office of Management and Budget, Washington, D.C. 20503, telephone 395-4773.

Bert Lance
Director

Attachments

ATTACHMENT A
Circular No. A-102

CASH DEPOSITORIES

1. This attachment sets forth standards governing the use of banks and other institutions as depositories of funds advanced under grants.
2. Except for situations described in paragraphs 3, 4, and 5, no grantor agency shall:
 - a. Require physical segregation of cash depositories for funds which are provided to a grantee.
 - b. Establish any eligibility requirements for cash depositories for funds which are provided to a grantee.
3. A separate bank account shall be required when applicable letter-of-credit agreements provide that drawdowns will be made when the grantee's checks are presented to the bank for payment.
4. Any moneys advanced to a grantee which are subject to the control or regulation of the United States or any of its officers, agents or employees (public moneys as defined in Treasury Circular No. 176, as amended) must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage and the balance exceeding the FDIC coverage must be collaterally secured.
5. Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees shall be encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Office of Minority Business Enterprise, Department of Commerce, Washington, D. C. 20230.

Attachment B
Circular No. A-102

BONDING AND INSURANCE

1. This Attachment sets forth bonding and insurance requirements for grants. No other bonding and insurance requirements shall be imposed other than those normally required by the grantee.

2. Except as otherwise required by law, a grant that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the grantee to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or subcontracts exceeding \$100,000, the Federal agency may accept the bonding policy and requirements of the grantee provided the Federal agency has made a determination that the Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

3. Where the Federal Government guarantees or insures the repayment of money borrowed by the grantee, the Federal agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the grantee are not deemed adequate to protect the interest of the Federal Government.

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Attachment B

4. Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR 223).

ATTACHMENT C
Circular No. A-102

RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS

1. This attachment sets forth record retention requirements for grants. Federal grantor agencies shall not impose any record retention requirements upon grantees other than those described below.

2. Financial records, supporting documents, statistical records, and all other records pertinent to a grant shall be retained for a period of three years, with the following qualifications:

a. If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

b. Records for nonexpendable property acquired with Federal funds shall be retained for 3 years after its final disposition.

c. When records are transferred to or maintained by the Federal sponsoring agency, the 3-year retention requirement is not applicable to the grantee.

3. The retention period starts from the date of the submission of the final expenditure report or, for grants that are renewed annually, from the date of the submission of the annual financial status report.

4. Grantees should be authorized by the Federal grantor agency, if they so desire, to substitute microfilm copies in lieu of original records.

5. The Federal grantor agency shall request transfer of certain records to its custody from grantees when it determines that the records possess long-term retention value. However, in order to avoid duplicate record-keeping, a Federal grantor agency may make arrangements with grantees to retain any records that are continuously needed for joint use.

6. The head of the Federal grantor agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of grantees and subgrantees to make audits, examinations, excerpts and transcripts.

7. Unless otherwise required by law, no Federal grantor agency shall place restrictions on grantees that will limit public access to the records of grantees that are pertinent to a grant except when the agency can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the grantor agency.

ATTACHMENT D
Circular No. A-102

WAIVER OF "SINGLE" STATE AGENCY REQUIREMENTS

1. Requests to Federal grantor agencies from the Governors, or other duly constituted State authorities, for waiver of the "single" State agency requirements in accordance with section 204 of the Intergovernmental Cooperation Act of 1968 should be given expeditious handling and, whenever possible, an affirmative response should be made to such requests.
2. When it is necessary to refuse a request for waiver of the "single" State agency requirements under section 204, the Federal grantor agency handling such request will so advise the Office of Management and Budget prior to informing the State that the request cannot be granted. Such advice should indicate the reasons for the denial of the request.
3. Future legislative proposals embracing grant-in-aid programs should avoid inclusion of proposals for "single" State agencies in the absence of compelling reasons to do otherwise. In addition, existing "single" State agency requirements in present grant-in-aid programs should be reviewed and legislative proposals should be developed for the removal of these restrictive provisions.

ATTACHMENT E
Circular No. A-102

PROGRAM INCOME

1. Federal grantor agencies shall apply the standards set forth in this Attachment in requiring grantees to account for program income related to projects financed in whole or in part with Federal grant funds. Program income means gross income earned by the grantee from grant-supported activities. Such earnings exclude interest earned on advances and may include, but will not be limited to, income from service fees, sale of commodities, usage or rental fees, and royalties on patents and copyrights.

2. Interest earned on advances of Federal funds shall be remitted to the Federal agency except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Public Law 90-577) and advances made to tribal organizations pursuant to section 102, 103, or 104 of the Indian Self Determination Act (Public Law 93-638).

3. Proceeds from the sale of real and personal property, either provided by the Federal Government or purchased in whole or in part with Federal funds, shall be handled in accordance with Attachment N to this Circular pertaining to Property Management.

4. Unless the grant agreement provides otherwise, grantees shall have no obligation to the Federal Government with respect to royalties received as a result of copyrights or patents produced under the grant or other agreement. (See paragraph 7, Attachment N.)

5. All other program income earned during the grant period shall be retained by the grantee and, in accordance with the grant agreement, shall be:

a. Added to funds committed to the project^o by the grantor and grantee and be used to further eligible program objectives.

b. Used to finance the non-Federal share of the project when approved by the Federal Sponsoring agency; or

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c. Deducted from the total project costs for the purpose of determining the net costs on which the Federal share of costs will be based.

6. Federal grantor agencies shall require the grantees to record the receipt and expenditure of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant project transactions when such revenues are specifically earmarked for a grant project in accordance with grant agreements.

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ATTACHMENT F
Circular No. A-102

MATCHING SHARE

This Attachment sets forth criteria and procedures for the allowability of cash and in-kind contributions made by grantees, subgrantees or third parties in satisfying cost sharing and matching requirements of Federal grantor agencies.

2. The following definitions apply for the purpose of this Attachment:

a. Project costs. Project costs are all allowable costs as set forth in Office of Management and Budget (OMB) Circular A-87 incurred by a grantee or third parties in accomplishing the objectives of the grant during the project or program period.

b. Cost sharing and matching. In general, cost sharing and matching represents that portion of project costs not borne by the Federal Government. Usually, a minimum percentage for matching share is prescribed by program legislation, and matching share requirements are included in the grant agreements.

c. Cash contributions. Cash contributions represent the grantee's cash outlay, including the outlay of money contributed to the grantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other grants may be considered as grantees' cash contributions.

d. In-kind contributions. In-kind contributions represent the value of noncash contributions provided by the grantee, and non-Federal parties. Only when authorized by Federal legislation may property purchased with Federal funds be considered as the grantee's in-kind contributions. In-kind contributions may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefiting and specifically identifiable to the project or program.

3. General guidelines for computing cost sharing or matching are as follows:

a. Cost sharing or matching share may consist of:

Attachment F

(1) Charges incurred by the grantee as project costs. (Not all charges require cash outlays during the grant period by the grantee; examples are depreciation and use charges for buildings and equipment.)

(2) Project costs financed with cash contributed or donated to the grantee by other non-Federal public agencies and institutions, and private organizations and individuals.

(3) Project costs represented by services and real or personal property, or use thereof, donated by other public agencies and institutions, and private organizations and individuals.

b. All contributions, both cash and in-kind, shall be accepted as part of the grantee's matching share when such contributions meet all of the following criteria:

(1) Are verifiable from the grantee's records;

(2) Are not included as contributions for any other federally-assisted program;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives;

(4) Are types of charges that would be allowable under OMB Circular A-87.

(5) Are not paid by the Federal Government under another assistance agreement unless authorized under the other agreement and the laws and regulations it is subject to.

(6) Are provided for in the approved budget when required by the Federal agency; and

(7) Conform to other provisions of this Attachment.

4. Values for grantee in-kind contributions will be established at the grantee's actual cost in accordance with OMB Circular A-87.

5. Specific procedures for the grantees in establishing the value of in-kind contributions from non-Federal third parties are set forth below:

a. Valuation of volunteer services. Volunteer services may be furnished by professional and technical personnel, consultants, and other skilled and unskilled labor. Volunteered

service may be counted as cost sharing or matching if the service is an integral and necessary part of an approved program.

(1) Rates for volunteer services. Rates for volunteers should be consistent with those paid for similar work in other activities of the State or local government. In those instances in which the required skills are not found in the grantee organization, rates should be consistent with those paid for similar work in the labor market in which the grantee competes for the kind of services involved.

(2) Volunteers employed by other organizations. When an employer other than the grantee furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and overhead cost) provided these services are in the same skill for which the employee is normally paid.

b. Valuation of donated expendable personal property. Donated expendable personal property includes such items as expendable equipment, office supplies, laboratory supplies, or workshop and classroom supplies. Values assessed to expendable personal property included in the cost or matching share should be reasonable and should not exceed the fair market value of the property at the time of the donation.

c. Valuation of donated nonexpendable personal property, buildings and land or use thereof.

(1) The method used for charging matching share for donated nonexpendable personal property, buildings, and land may differ depending upon the purpose of the grant as follows:

(a) If the purpose of the grant is to furnish equipment, buildings, or land to the grantee or otherwise provide a facility, the total value of the donated property may be claimed as a matching share.

(b) If the purpose of the grant is to support activities that require the use of equipment, buildings, or land on a temporary or part-time basis, depreciation or use charges for equipment and buildings may be made. The full value of equipment or other capital assets and fair rental charges for land may be made provided that the grantor agency has approved the charges.

(2) The value of donated property will be determined in accordance with the usual accounting policies of the grantee with the following qualifications:

(a) Land and buildings. The value of donated land and buildings may not exceed its fair market value, at the time of donation to the grantee as established by an independent appraiser (e.g., certified real property appraiser or GSA representatives) and certified by a responsible official of the grantee.

(b) Nonexpendable personal property. The value of donated nonexpendable personal property shall not exceed the fair market value of equipment and property of the same age and condition at the time of donation.

(c) Use of space. The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(d) Loaned equipment. The value of loaned equipment shall not exceed its fair rental value.

6. The following requirements pertain to the grantee's supporting records for in-kind contributions from non-Federal third parties.

a. Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the grantee for its employees.

b. The basis for determining the valuation for personal services, material, equipment, buildings, and land must be documented.

ATTACHMENT G
Circular No. A-102

STANDARDS FOR GRANTEE FINANCIAL MANAGEMENT SYSTEMS

1. This Attachment prescribes standards for financial management systems of grant-supported activities of State, local, and federally recognized Indian tribal governments. Federal grantor agencies shall not impose additional standards on grantees unless specifically provided for in other Attachments to this Circular. However, grantor agencies are encouraged to make suggestions and assist the grantees in establishing or improving financial management systems when such assistance is needed or requested.
2. Grantee financial management systems shall provide for:
 - a. Accurate, current, and complete disclosure of the financial results of each grant program in accordance with reporting requirements set forth in Attachment H to this Circular. When a Federal grantor agency requires reporting on an accrual basis, the grantee shall not be required to establish an accrual accounting system but shall develop such accrual data on its reports on the basis of an analysis of the documentation on hand.
 - b. Records that identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to Federal awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.
 - c. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.
 - d. Comparison of actual outlays with budgeted amounts for each grant. Also, relation of financial information with performance or productivity data, including the production of unit cost information whenever appropriate and required by the grantor agency.
 - e. Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee, whenever funds are advanced by

Attachment G

the Federal Government. When advances are made by a letter-of-credit method, the grantee shall make drawdowns from the U.S. Treasury as close as possible to the time of making the disbursements. Advances made by primary recipient organizations (those which receive payments directly from the Federal Government) to secondary recipients shall conform substantially to the same standards of timing and amount as apply to advances by Federal agencies to primary recipient organizations.

f. Procedures for determining reasonableness, allowability and allocability of costs in accordance with the provisions of Office of Management and Budget (OMB) Circular A-87.

g. Accounting records that are supported by source documentation.

h. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

3. Primary grantees shall require subgrantees to adopt the standards in paragraph 2, above, except for the requirement in subparagraph 2a, regarding reporting forms and frequencies prescribed in Attachment H to this Circular.

ATTACHMENT H
Circular No. A-102

FINANCIAL REPORTING REQUIREMENTS

1. This Attachment prescribes uniform reporting procedures for grantees to: summarize expenditures made and Federal funds unexpended for each award, report the status of Federal cash advanced, request advances and reimbursement when the letter-of-credit method is not used; and promulgates standard forms incident thereto. Grantees when obtaining financial information required by Federal agencies from subgrantees are not required to use the forms contained in this Attachment.

2. The following definitions apply for purposes of this Attachment:

a. Accrued expenditures. Accrued expenditures are the charges incurred by the grantee during a given period requiring the provision of funds for: (1) goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required such as annuities, insurance claims, and other benefit payments.

b. Accrued income. Accrued income is the sum of (1) earnings during a given period from (i) services performed by the grantee; and (ii) goods and other tangible property delivered to purchasers; and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

c. Federal funds authorized. Federal funds authorized are the total amount of Federal funds obligated by the Federal Government for use by the grantee. This amount may include any authorized carryover of unobligated funds from prior fiscal years when permitted by law or agency regulation.

d. In-kind contributions. In-kind contributions are defined in Attachment F to this Circular.

e. Obligations. Obligations are the amounts of orders placed, contracts and grants awarded, services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

f. Outlays. Outlays or expenditures represent charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subgrantees. For reports prepared on an accrual basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees and other payees and other amounts becoming owed under programs for which no current services or performance are required such as annuities, insurance claims, and other benefit payments.

g. Program income. Program income is defined in Attachment E of this Circular. It may be reported on a cash or accrual basis, whichever is used for reporting outlays.

h. Unobligated balance. The unobligated balance is the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

i. Unliquidated obligations. For reports prepared on a cash basis, unliquidated obligations represent the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

3. Only the following forms will be authorized for obtaining financial information from grantees.

a. Financial Status Report (Exhibit 1).

(1) Each Federal agency shall require grantees to use the standardized Financial Status Report to report the status of funds for all nonconstruction projects or programs. The Federal agencies may, however, have the option of not requiring the Financial Status Report when the Request for Advance or Reimbursement (paragraph 4a) or Report of Federal Cash Transactions (paragraph 3b) is determined to provide adequate information to meet their needs, except that a final Financial Status Report shall be required at the completion of the project

when the Request for Advance or Reimbursement form is used only for advances.

(2) The Federal agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system, but shall develop such accrual information through an analysis of the documentation on hand.

(3) The Federal agency shall determine the frequency of the Financial Status Report for each project or program considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually except as provided in subparagraph 3a(1) above. A final report shall be required at the completion of the grant.

(4) Federal agencies shall require grantees to submit the Financial Status Report (original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 days for annual and final reports. Extensions to reporting due dates may be granted upon request of the recipient.

b. Report of Federal Cash Transactions (Exhibit 2).

(1) When funds are advanced to grantees through letters of credit or with direct Treasury checks, the Federal agencies shall require each grantee to submit a Report of Federal Cash Transactions. The Federal agency shall use this report to assist them in monitoring advances to grantees and to obtain disbursement information for each agreement from the grantee. Grantees under the Regional Disbursing Office (RDO) system shall not be required to submit a Report of Federal Cash Transactions. For these grantees Federal agencies shall use information contained in the Request for Payment to monitor grantee cash balances and to get disbursement information.

(2) Federal agencies may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(3) When practical and deemed necessary, the Federal agencies may require grantees to report in the "Remarks" section the amount of excess cash advances in the hands of subgrantees

and to provide short narrative explanations of actions taken by the grantees to reduce the excess balances.

(4) Grantees shall be required to submit not more than the original and two copies of the Report of Federal Cash Transactions 15 working days following the end of each quarter. The Federal agencies may require a monthly report from those grantees receiving advances totaling \$1 million or more per year.

(5) Federal agencies may waive the requirement for submission of the Report of Federal Cash Transactions when monthly advances do not exceed \$10,000 per grantee, provided that such advances are monitored through other forms contained in this Attachment, or if, in the Federal agency's opinion, the grantee's accounting controls are adequate to minimize excessive Federal advances.

4. Except as noted below, only the following forms will be authorized for grantees in requesting advances and reimbursements.

a. Request for Advance or Reimbursement (Exhibit 3).

(1) Each Federal agency shall adopt the Request for Advance or Reimbursement as a standardized form for all nonconstruction programs when letters-of-credit or predetermined advance methods are not used. Federal agencies, however, have the option of using this form for construction programs in lieu of the Outlay Report and Request for Reimbursement for Construction Programs (subparagraph 4b).

(2) Grantees shall be authorized to submit requests for advances and reimbursements at least monthly when letters-of-credit are not used. Federal agencies shall not require the submission of more than the original and two copies of the Request for Advance or Reimbursement.

b. Outlay report and request for reimbursement for construction programs (Exhibit 4).

(1) Each Federal agency shall adopt the Outlay Report and Request for Reimbursement for Construction Programs as the standardized format to be used for requesting reimbursement for construction programs. The Federal agencies may, however, have the option of substituting the Request for Advance or Reimbursement Form (subparagraph 4a) when the Federal agencies

determine that it provides adequate information to meet their needs.

(2) Grantees shall be authorized to submit requests for reimbursement at least monthly when letters-of-credit are not used. Federal agencies shall not require more than the original and two copies of the Outlay Report and Request for Reimbursement for Construction Programs.

5. When the Federal agencies need additional information in using these forms or more frequent reports, the following shall be observed:

a. When additional information is needed to comply with legislative requirements, Federal agencies shall issue instructions to require grantees to submit such information under the "Remarks" section of the reports.

b. When a Federal agency has determined that a grantee's accounting system does not meet the standards for financial management contained in Attachment G to this Circular, additional pertinent information to further monitor grants and other agreements may be obtained upon written notice to the grantee until such time as the system is brought up to standard.

c. The Federal agency, in obtaining information as in paragraphs a and b above, must comply with reports clearance requirements of the Office of Management and Budget Circular No. A-40, as revised.

6. Federal agencies have the option of shading out any line item on any report that is unnecessary for decision-making purposes.

7. Federal agencies should accept the identical information from the grantees in machine usable format or computer printouts in lieu of prescribed formats.

8. Federal agencies may provide computer outputs to grantees when it will expedite or contribute to the accuracy of reporting.

9. The standard forms can be obtained from the General Services Administration.

FINANCIAL STATUS REPORT (Follow instructions on the back)				1. FEDERAL AGENCY AND ORIGINATING ELEMENT TO WHICH REPORT IS SUBMITTED		2. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER		OMB Approved No. 30-RO180		PAGE OF	
3. RESPONDENT ORGANIZATION (Name and complete address, including ZIP code)				4. EMPLOYER IDENTIFICATION NUMBER		5. RESPONDENT ACCOUNT NUMBER OR IDENTIFYING NUMBER		6. FINAL REPORT ☐ YES ☐ NO		7. BASIS ☐ CASH ☐ ACCRUAL	
				8. PERIOD/GRANT PERIOD (See instructions) FROM (Month, day, year) TO (Month, day, year)		9. PERIOD COVERED BY THIS REPORT FROM (Month, day, year) TO (Month, day, year)					
10. STATUS OF FUNDS											
PROGRAMS/FUNCTIONS/ACTIVITIES ▶		(a)	(b)	(c)	(d)	(e)	(f)	TOTAL (g)			
a. Net outlays previously reported		\$	\$	\$	\$	\$	\$	\$			
b. Total outlays this report period											
c. Less: Program income credits											
d. Net outlays this report period (Line b minus line c)											
e. Net outlays to date (Line a plus line d)											
f. Less: Non-Federal share of outlays											
g. Total Federal share of outlays (Line e minus line f)											
h. Total unliquidated obligations											
i. Less: Non-Federal share of unliquidated obligations shown on line h											
j. Federal share of unliquidated obligations											
k. Total Federal share of outlays and unliquidated obligations											
l. Total cumulative amount of Federal funds authorized											
m. Unobligated balance of Federal funds											
11. FUNDING EXPENDITURE		a. TYPE OF RATE (Place "X" in appropriate box) ☐ PROVISIONAL ☐ PREDETERMINED ☐ FINAL ☐ FIXED		12. CERTIFICATION I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.				SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		DATE REPORT SUBMITTED	
		b. RATE	c. BASE								
13. REMARKS: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation.						TYPED OR PRINTED NAME AND TITLE				TELEPHONE (Area code, number and extension)	

INSTRUCTIONS

Please type or print legibly. Items 1, 2, 3, 6, 7, 9, 10d, 10e, 10g, 10i, 10l, 11a, and 12 are self-explanatory, specific instructions for other items are as follows:

Item	Entry	Item	Entry
4	Enter the employer identification number assigned by the U.S. Internal Revenue Service or FICE (institution) code, if required by the Federal sponsoring agency.	10c	Enter the amount of all program income realized in this period that is required by the terms and conditions of the Federal award to be deducted from total project costs. For reports prepared on a cash basis, enter the amount of cash income received during the reporting period. For reports prepared on an accrual basis, enter the amount of income earned since the beginning of the reporting period. When the terms or conditions allow program income to be added to the total award, explain in remarks, the source, amount and disposition of the income.
5	This space is reserved for an account number or other identifying numbers that may be assigned by the recipient.	10f	Enter amount pertaining to the non-Federal share of program outlays included in the amount on line e.
8	Enter the month, day, and year of the beginning and ending of this project period. For formula grants that are not awarded on a project basis, show the grant period.	10h	Enter total amount of unliquidated obligations for this project or program, including unliquidated obligations to subgrantees and contractors. Unliquidated obligations are: Cash basis—obligations incurred but not paid; Accrued expenditure basis—obligations incurred but for which an outlay has not been recorded. Do not include any amounts that have been included on lines a through g. On the final report, line h should have a zero balance.
10	The purpose of vertical columns (a) through (f) is to provide financial data for each program, function, and activity in the budget as approved by the Federal sponsoring agency. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the totals of all programs, functions or activities should be shown in column (g) of the first page. For agreements pertaining to several Catalog of Federal Domestic Assistance programs that do not require a further functional or activity classification breakdown, enter under columns (a) through (f) the title of the program. For grants or other assistance agreements containing multiple programs where one or more programs require a further breakdown by function or activity, use a separate form for each program showing the applicable functions or activities in the separate columns. For grants or other assistance agreements containing several functions or activities which are funded from several programs, prepare a separate form for each activity or function when requested by the Federal sponsoring agency.	10j	Enter the Federal share of unliquidated obligations shown on line h. The amount shown on this line should be the difference between the amounts on lines h and i.
10a	Enter the net outlay. This amount should be the same as the amount reported in Line 10a of the last report. If there has been an adjustment to the amount shown previously, please attach explanation. Show zero if this is the initial report.	10k	Enter the sum of the amounts shown on lines g and j. If the report is final the report should not contain any unliquidated obligations.
10b	Enter the total gross program outlays (less rebates, refunds, and other discounts) for this report period, including disbursements of cash realized as program income. For reports that are prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contractors, subgrantees, and other payees.	10m	Enter the unobligated balance of Federal funds. This amount should be the difference between lines k and i.
		11b	Enter rate in effect during the reporting period.
		11c	Enter amount of the base to which the rate was applied.
		11d	Enter total amount of indirect cost charged during the report period.
		11e	Enter amount of the Federal share charged during the report period. If more than one rate was applied during the project period, include a separate schedule showing bases against which the indirect cost rates were applied, the respective indirect rates the month, day, and year the indirect rates were in effect, amounts of indirect expense charged to the project, and the Federal share of indirect expense charged to the project to date.

1300.17

Attachment H

FEDERAL CASH TRANSACTIONS REPORT

(See instructions on the back. If report is for more than one grant or assistance agreement, attach completed Standard Form 272-A.)

Approved by Office of Management and Budget, No. 60-10182

1. Federal accounting agency and organizational element to which this report is submitted

2. RECIPIENT ORGANIZATION

Name :

Number and Street :

City, State and ZIP Code:

4. Federal grant or other identification number

5. Recipient's account number or identifying number

6. Letter of credit number

7. Last payment voucher number

Give total number for this period

8. Payment Vouchers credited to your account

9. Treasury checks received (whether or not deposited)

3. FEDERAL EMPLOYER IDENTIFICATION NO.**10. PERIOD COVERED BY THIS REPORT**

FROM (month, day, year)

TO (month, day, year)

11. STATUS OF

FEDERAL

CASH

(See specific instructions on the back)

a. Cash on hand beginning of reporting period

\$

b. Letter of credit withdrawals

c. Treasury check payments

d. Total receipts (Sum of lines b and c)

e. Total cash available (Sum of lines a and d)

f. Gross disbursements

g. Federal share of program income

h. Net disbursements (Line f minus line g)

i. Adjustments of prior periods

j. Cash on hand end of period

\$

12. THE AMOUNT SHOWN ON LINE 11J, ABOVE, REPRESENTS CASH REQUIREMENTS FOR THE ENSUING

Days

13. OTHER INFORMATION

a. Interest income

\$

b. Advances to subgrantees or subcontractors

\$

14. REMARKS (Attach additional sheets of plain paper, if more space is required)**15.****CERTIFICATION**

I certify to the best of my knowledge and belief that this report is true in all respects and that all disbursements have been made for the purpose and conditions of the grant or agreement

AUTHORIZED
CERTIFYING
OFFICIAL

SIGNATURE

DATE REPORT SUBMITTED

TYPED OR PRINTED NAME AND TITLE

TELEPHONE

(Area Code)

(Number)

(Extension)

THIS SPACE FOR AGENCY USE

272-101 EXHIBIT 2

STANDARD FORM 272 (7-76)
Prescribed by Office of Management and Budget
CIRCULARS NO. A-102 AND A-110

INSTRUCTIONS

Please type or print legibly. Items 1, 2, 8, 9, 10, 11d, 11e, 11h, and 15 are self explanatory, specific instructions for other items are as follows:

Item	Entry	Entry	Item
3	Enter employer identification number assigned by the U.S. Internal Revenue Service or the FICE (institution) code. If this report covers more than one grant or other agreement, leave items 4 and 5 blank and provide the information on Standard Form 272-A, Report of Federal Cash Transactions—Continued; otherwise;	employee's share of benefits if treated as a direct cost, interdepartmental charges for supplies and services, and the amount to which the recipient is entitled for indirect costs.	
4	Enter Federal grant number, agreement number, or other identifying numbers if requested by sponsoring agency.	11g	Enter the Federal share of program income that was required to be used on the project or program by the terms of the grant or agreement.
5	This space reserved for an account number or other identifying number that may be assigned by the recipient.	11i	Enter the amount of all adjustments pertaining to prior periods affecting the ending balance that have not been included in any lines above. Identify each grant or agreement for which adjustment was made, and enter an explanation for each adjustment under "Remarks." Use plain sheets of paper if additional space is required.
6	Enter the letter of credit number that applies to this report. If all advances were made by Treasury check, enter "NA" for not applicable and leave items 7 and 8 blank.	11j	Enter the total amount of Federal cash on hand at the end of the reporting period. This amount should include all funds on deposit, imprest funds, and undeposited funds (line e, less line h, plus or minus line i).
7	Enter the voucher number of the last letter-of-credit payment voucher (Form TUS 5401) that was credited to your account.	12	Enter the estimated number of days until the cash on hand, shown on line 11j, will be expended. If more than three days cash requirements are on hand, provide an explanation under "Remarks" as to why the drawdown was made prematurely, or other reasons for the excess cash. The requirement for the explanation does not apply to prescheduled or automatic advances.
11a	Enter the total amount of Federal cash on hand at the beginning of the reporting period including all of the Federal funds on deposit, imprest funds, and undeposited Treasury checks.	13a	Enter the amount of interest earned on advances of Federal funds but not remitted to the Federal agency. If this includes any amount earned and not remitted to the Federal sponsoring agency for over 60 days, explain under "Remarks." Do not report interest earned on advances to States.
11b	Enter total amount of Federal funds received through payment vouchers (Form TUS 5401) that were credited to your account during the reporting period.	13b	Enter amount of advance to secondary recipients included in item 11h.
11c	Enter the total amount of all Federal funds received during the reporting period through Treasury checks, whether or not deposited.	14	In addition to providing explanations as required above, give additional explanation deemed necessary by the recipient and for information required by the Federal sponsoring agency in compliance with governing legislation. Use plain sheets of paper if additional space is required.
11f	Enter the total Federal cash disbursements, made during the reporting period, including cash received as program income. Disbursements as used here also include the amount of advances and payments less refunds to subgrantees or contractors, the gross amount of direct salaries and wages, including the		

(This form is completed and attached to Standard Form 278 only when reporting more than one grant or assistance agreement.)

1. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED

3. PERIOD COVERED BY THIS REPORT (As shown on SF 278)

FROM (Month, day, year)

TO (Month, day, year)

4. List information below for each grant or other agreement covered by this report. Use additional forms if more space is required.

5. TOTALS (Should correspond with amounts shown on SF 272 as follows: column (c) the same as line 11h; column (d) the sum of lines 11h and 11i, of this SF 272 and cumulative disbursements shown on last report. Attach explanation of any differences.)

STANDARD FORM 272-A (7-76)
Prescribed by Office of Management and Budget
CIRCULARS NO. A-102 AND A-110

REQUEST FOR ADVANCE OR REIMBURSEMENT		Approved by Office of Management and Budget, No. 01-55433		PAGE OF	
(See instructions on back)		1. TYPE OF PAYMENT REQUESTED ☐ ADVANCE ☐ REIMBURSEMENT ☐ CASH ☐ OTHER 2. BASIS OF REQUEST ☐ CASH ☐ OTHER		3. BASIS OF REQUEST ☐ CASH ☐ OTHER	
4. PROGRAM, FUNCTION, ACTIVITY, OR OBJECTIVE TO WHICH THIS REPORT IS SUBMITTED		5. PERIOD COVERED BY THIS REQUEST FROM (month, day, year) TO (month, day, year)		6. REPORTING PERIOD FROM (month, day, year) TO (month, day, year)	
7. REPORTING PERIOD FROM (month, day, year) TO (month, day, year)		8. FUNDING SOURCE FROM (month, day, year) TO (month, day, year)		9. FUNDING SOURCE FROM (month, day, year) TO (month, day, year)	
10. REPORTING PERIOD FROM (month, day, year) TO (month, day, year)		11. REPORTING PERIOD FROM (month, day, year) TO (month, day, year)		12. REPORTING PERIOD FROM (month, day, year) TO (month, day, year)	
11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED					
PROGRAMS/FUNCTIONS/ACTIVITIES -	(a)	(b)	(c)	TOTAL	
a. Total program outlays to date (As of date)	\$	\$	\$	\$	
b. Less: Cumulative program income					
c. Net program outlays (Line a minus line b)					
d. Estimated net cash outlays for advance period					
e. Total (Sum of lines c & d)					
f. Non-Federal share of amount on line e					
g. Federal share of amount on line e					
h. Federal payments previously requested					
i. Federal share now requested (Line g minus line h)					
j. Advances required by month, when requested by Federal grantor agency for use in making pre-scheduled advances					
1st month					
2nd month					
3rd month					
12. ALTERNATE COMPUTATION FOR ADVANCES ONLY					
a. Estimated Federal cash outlays that will be made during period covered by the advance					\$
b. Less: Estimated balance of Federal cash on hand as of beginning of advance period					
c. Amount requested (Line a minus line b)					\$
13. CERTIFICATION					
SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL			DATE REQUEST SUBMITTED		
I certify that to the best of my knowledge and belief the data above are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.					
TYPED OR PRINTED NAME AND TITLE					
TELEPHONE		Area Code		Extension	

This space for agency use

Attachment H

INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11c, 11e, 11f, 11g, 11i, 12 and 13 are self-explanatory; specific instructions for other items are as follows:

Item	Entry	Item	Entry
2	Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis.		use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.
4	Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.	11a	Enter in "as of date", the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays to date (net of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees.
6	Enter the employer identification number assigned by the U.S. Internal Revenue Service, or the FICE (institution) code if requested by the Federal agency.	11b	Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement.
7	This space is reserved for an account number or other identifying number that may be assigned by the recipient.	11d	Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance.
8	Enter the month, day, and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested.	13	Complete the certification before submitting this request.
Note: The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports.			
11	The purpose of the vertical columns (a), (b), and (c), is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional columns are needed,		

OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS

(See instructions on back)

Approved by Office of Management and Plan of Budget, No. 80-00181

PAGE

3. FEDERAL SPONSORING AGENCY AND ORGANISATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED

1. TYPE OF REQUEST
☐ FINAL ☐ PARTIAL

2. BASIS OF REQUEST
☐ CASH ☐ DEFERRED

4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY

5. PARTIAL PAYMENT REQUEST NO.

6. EMPLOYER IDENTIFICATION NUMBER

7. RECIPIENT ACCOUNT OR OTHER IDENTIFYING NUMBER

PERIOD COVERED BY THIS REPORT

FROM (Month, day, year)

TO (Month, day, year)

8. RECIPIENT ORGANIZATION

Name :

10. PAYEE (Where check should be sent if different than item 8)

Name :

No. and Street :

City :

State and ZIP Code :

No. and Street :

City :

State and ZIP Code :

II.				
CLASSIFICATION	STATUS OF FUNDS			TOTAL
	PROGRAMS—FUNCTIONS—ACTIVITIES			
	(a)	(b)	(c)	
a. Administrative expense	\$	\$	\$	\$
b. Preliminary expense				
c. Land, structures, right-of-way				
d. Architectural engineering basic fees				
e. Other architectural engineering fees				
f. Project inspection fees				
g. Land development				
h. Relocation expense				
Relocation payments to individuals and businesses				
Demolition and removal				
Construction and project improvement cost				
Equipment				
i. Miscellaneous cost				
Total cumulative to date (sum of lines a thru m)				
Deductions for program income				
Net cumulative to date (Line n minus line o)				
Federal share to date				
Rehabilitation grants (100% reimbursement)				
Total Federal share (sum of lines q and r)				
Federal payments previously requested				
Amount requested for reimbursement	\$	\$	\$	\$
Percentage of physical completion of project	%	%	%	%

12. CERTIFICATION I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.	a. RECIPIENT	SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE REPORT SUBMITTED
		TYPED OR PRINTED NAME AND TITLE	TELEPHONE (Area code, number and extension)
	b. Representative certifying to line 11v.	SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE SIGNED
		TYPED OR PRINTED NAME AND TITLE	TELEPHONE (Area code, number and extension)

571-101 EXHIBIT 4

STANDARD FORM 571 (7-75)
Prescribed by Office of Management and Budget
CIRCULARS NO. A-102 AND A-110

INSTRUCTIONS

Please type or print legibly. Items 3, 4, 5, 6, 9, 10, 11a, and 11v are self-explanatory; specific instructions for other items are as follows:

Item	Entry	Item	Entry
1	Mark the appropriate box. If the request is final, the amounts billed should represent the final cost of the project.	11j	Enter gross salaries and wages of employees of the recipient and payments to third party contractors directly engaged in performing demolition or removal of structures from developed land. All proceeds from the sale of salvage or the removal of structures should be credited to this account; thereby reflecting net amounts if required by the Federal agency.
2	Show whether amounts are computed on an accrued expenditure or cash disbursement basis.	11k	Enter those amounts associated with the actual construction of, addition to, or restoration of a facility. Also, include in this category, the amounts for project improvements such as sewers, streets, landscaping, and lighting.
6	Enter the employer identification number assigned by the U.S. Internal Revenue Service (or FICE (institution) code if requested by the Federal agency).	11l	Enter amounts for all equipment, both fixed and movable, exclusive of equipment used for construction. For example, permanently attached laboratory tables, built-in audio visual systems, movable desks, chairs, and laboratory equipment.
7	This space is reserved for an account number or other identifying number that may be assigned by the recipient.	11m	Enter the amounts for all items not specifically mentioned above.
11	The purpose of vertical columns (a) through (c) is to provide space for separate cost breakdowns when a large project has been planned and budgeted by program, function or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page. All amounts are reported on a cumulative basis.	11n	Enter the total cumulative amount to date which should be the sum of lines a through m.
11a	Enter amounts expended for such items as travel, legal fees, rental, of vehicles and any other administrative expenses. Include the amount of interest expense when authorized by program legislation. Also show the amount of interest expense on a separate sheet.	11o	Enter the total amount of program income applied to the grant or contract agreement except income included on line j. Identify on a separate sheet of paper the sources and types of the income.
11b	Enter amounts pertaining to the work of locating and designing, making surveys and maps, sinking test holes, and all other work required prior to actual construction.	11p	Enter the net cumulative amount to date which should be the amount shown on line n minus the amount on line o.
11c	Enter all amounts directly associated with the acquisition of land, existing structures and related right-of-way.	11q	Enter the Federal share of the amount shown on line p.
11d	Enter basic fees for services of architectural engineers.	11r	Enter the amount of rehabilitation grant payments made to individuals when program legislation provides 100 percent payment by the Federal agency.
11e	Enter other architectural engineering services. Do not include any amounts shown on line d.	11t	Enter the total amount of Federal payments previously requested, if this form is used for requesting reimbursement.
11f	Enter inspection and audit fees of construction and related programs.	11u	Enter the amount now being requested for reimbursement. This amount should be the difference between the amounts shown on lines s and t. If different, explain on a separate sheet.
11g	Enter all amounts associated with the development of land where the primary purpose of the grant is land improvement. The amount pertaining to land development normally associated with major construction should be excluded from this category and entered on line k.	12a	To be completed by the recipient official who is responsible for the operation of the program. The date should be the actual date the form is submitted to the Federal agency.
11h	Enter the dollar amounts used to provide relocation advisory assistance and net costs of replacement housing (last resort). Do not include amounts needed for relocation administrative expenses; these amounts should be included in amounts shown on line s.	12b	To be completed by the official representative who is certifying to the percent of project completion as provided for in the terms of the grant or agreement.
11i	Enter the amount of relocation payments made by the recipient to displaced persons, farms, business concerns, and nonprofit organizations.		

ATTACHMENT I
Circular No. A-102

MONITORING AND REPORTING OF PROGRAM PERFORMANCE

1. This Attachment sets forth the procedures for monitoring and reporting program performance under Federal grants. These procedures are designed to place greater reliance on grantees to manage the day-to-day operations of the grant-supported activities.

2. Grantees shall constantly monitor the performance under grant-supported activities to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity of each grant as set forth in the approved grant application or award document.

3. Grantees shall submit a performance report for each grant which briefly presents the following for each program, function, or activity involved as prescribed by the Federal agency:

a. A comparison of actual accomplishments to the goals established for the period. Where the output of grant programs can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

b. Reasons why established goals were not met.

c. Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

4. Except as provided in a and b below, and in subparagraph 3a(1), of Attachment H, grantees shall submit the performance or technical reports to Federal agencies and the Financial Status Reports covering the same period in the frequency established by Attachment H of this Circular and, where appropriate, a final technical or performance report after completion of the project on a date specified by the Federal agency. The Federal agency shall prescribe the frequency with which the performance reports will be submitted with the request for advance or reimbursement when that form is used in lieu of the Financial Status Report. Except as provided for in paragraph 5 below, performance reports shall not be required more frequently than quarterly or less frequently than annually. Federal agencies may waive the

requirement for grantees to submit performance reports with the financial reports under the following circumstances:

a. When the grantee is required to submit a performance report with a continuation or renewal application.

b. When the Federal agency determines that on-site technical inspections and certified completion data will be sufficient to evaluate construction projects.

c. When the Federal agency requests annual financial reports on a fiscal year basis but it is necessary to get annual progress reports on a calendar year basis.

5. Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the grantee shall inform the grantor agency as soon as the following types of conditions become known:

a. Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

b. Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

6. If any performance review conducted by the grantee discloses the need for change in the budget estimates in accordance with the criteria established in Attachment K to this Circular, the grantee shall submit a request for budget revision.

7. The grantor agency shall make site visits as frequently as practicable to:

a. Review program accomplishments and management control systems.

b. Provide such technical assistance as may be required.

8. Federal agencies shall submit proposed technical and performance reports to the Office of Management and Budget for

1300.17

Attachment I

approval in accordance with the report clearance requirements of
OMB Circular No. A-40 as revised.

ATTACHMENT J
Circular No. A-102

GRANT PAYMENT REQUIREMENTS

1. This Attachment establishes required methods of making payments to grantees. These methods will minimize the time elapsing between the disbursement by a grantee and the transfer of funds from the United States Treasury to the grantee, whether such disbursement occurs prior to or subsequent to the transfer of funds.

2. Grant payments are made to grantees through a letter of credit, an advance by Treasury check, or a reimbursement by Treasury check. The following definitions apply for the purpose of this Attachment:

a. Letter of credit. A letter of credit is an instrument certified by an authorized official of a grantor agency which authorizes a grantee to draw funds needed for immediate disbursement in accordance with the provisions of Treasury Circular No. 1075.

b. Advance by Treasury check. An advance by Treasury check is a payment made by a Treasury check to a grantee upon its request before cash outlays are made by the recipient or through the use of predetermined payment schedules before payments are made by the grantee.

c. Reimbursement by Treasury check. A reimbursement by Treasury check is a payment made to a grantee with a Treasury check upon request for reimbursement from the grantee.

3. Except for construction grants for which optional payment methods are authorized, the letter-of-credit funding method shall be used by grantor agencies where all of the following conditions exist:

a. When there is or will be a continuing relationship between a grantee and a Federal grantor agency for at least a 12-month period and the total amount of advances to be received within that period from the grantor agency is \$120,000 or more.

b. When the grantee has established or demonstrated to the grantor the willingness and ability to establish procedures that

Attachment J

will minimize the time elapsing between the transfer of funds and their disbursement by the grantee.

c. When the grantee's financial management system meets the standards for fund control and accountability prescribed in Attachment G to this Circular, "Standards for Grantee Financial Management Systems."

4. The method of advancing funds by Treasury check shall be used, in accordance with the provisions of Treasury Circular No. 1075, when the grantee meets all of the requirements specified in paragraph 3 above except those in 3.a.

5. The reimbursement by Treasury check method shall be the preferred method when the grantee does not meet the requirements specified in either or both of paragraphs 3.b. and 3.c. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and when the Federal grant assistance constitutes a minor portion of the program. When the reimbursement method is used the Federal agencies shall make payment within thirty days after receipt of the billing unless the billing is improper. With respect to payments to contractors, recipients shall not be reimbursed for amounts that are to be withheld to assure satisfactory completion of the work. These amounts will be paid when recipients make final payment including amounts withheld.

6. When the letter-of-credit procedure is used, the grantee shall be issued one consolidated letter-of-credit whenever possible to cover anticipated cash needs for all grants awarded by the Federal agency. Likewise, to the extent possible, when the advance by Treasury check method is used, advances should be consolidated (pooled) for all grants made by the Federal agency to the grantee.

7. Unless otherwise required by law, grantor agencies shall not withhold payments for proper charges made by State and local governments at any time during the grant period unless (a) a grantee has failed to comply with the program objectives, grant award conditions, or Federal reporting requirements, or (b) the grantee is indebted to the United States and collection of the indebtedness will not impair accomplishment of the objectives of any grant program sponsored by the United States. Under such conditions, the grantor may, upon reasonable notice, inform the grantee that payments will not be made for obligations incurred

after a specified date until the conditions are corrected or the indebtedness to the Federal government is liquidated.

8. Attachment H of this Circular, "Financial Reporting," provides for the procedures and forms for requesting advances or reimbursements.

ATTACHMENT K
Circular No. A-102

BUDGET REVISION PROCEDURES

1. This Attachment sets forth criteria and procedures to be followed by Federal grantor agencies in requiring grantees to report deviations from grant budgets and to request approvals for budget revisions.

2. The grant budget as used in this Attachment means the approved financial plan for both the Federal and non-Federal shares to carry out the purpose of the grant. This plan is the financial expression of the project or program as approved during the grant application and award process. It should be related to performance for program evaluation purposes whenever appropriate and required by the grantor agency.

3. For nonconstruction grants, grantees shall request prior approvals promptly from grantor agencies when there is reason to believe that a revision will be necessary for the following reasons:

a. Changes in the scope or the objective of the grant-supported project or program.

b. The need for additional Federal funding.

c. The revisions involve the transfer of amounts budgeted for indirect costs to absorb increases in direct costs if approval is required by the Federal agency.

d. The revisions pertain to the addition of items requiring approval in accordance with the provisions of OMB Circular A-87.

e. Recipients plan to transfer funds allotted for training allowances (direct payments to trainees) to other categories of expense.

4. For nonconstruction grants the Federal agency may also, at its option, restrict transfers of funds among direct cost categories for awards in which the Federal share exceeds \$100,000 when the cumulative amount of such transfers exceeds or is expected to exceed five percent of the total budget. The same criteria shall apply to the cumulative amount of transfers among programs, functions, and activities when budgeted separately for an award, except that the Federal agency shall permit no transfer

that would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended.

5. All other changes to nonconstruction grant budgets, except for the changes described in paragraph 7, do not require approval. These changes include (a) the use of grantee funds in furtherance of program objectives over and above the grantee minimum share included in the approved grant budget, and (b) the transfer of amounts budgeted for direct costs to absorb authorized increases in indirect costs.

6. For construction grants, grantees shall request prior approvals promptly from grantor agencies for budget revisions whenever:

a. The revision results from changes in the scope or the objective of the project or program.

b. The revision increases the budgeted amounts of Federal funds needed to complete the project.

7. When a grantor agency awards a grant which provides support for both construction and nonconstruction work, the grantor agency may require the grantee to request prior approval from the grantor agency before making any fund or budget transfers between the two types of work supported.

8. For both construction and nonconstruction grants, grantor agencies shall require State and local governments to notify the grantor agency promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the grantee by more than \$5,000 or 5 percent of the Federal grant, whichever is greater. This notification will not be required when applications for additional funding are submitted for continuing grants.

9. When requesting approval for budget revisions, grantees shall use the budget forms which were used in the grant application. However, grantees may request by letter the approvals required by the provisions of OMB Circular A-87.

10. Within 30 days from the date of receipt of the request for budget revisions, grantor agencies shall review the request and notify the grantee whether or not the budget revisions have been approved. If the revision is still under consideration at the end of 30 days, the grantor shall inform the grantee in writing as to when the grantee may expect the decision.

ATTACHMENT L
Circular No. A-102

GRANT CLOSEOUT PROCEDURES

1. This Attachment prescribes uniform closeout procedures for grantees.

2. The following definitions shall apply for the purpose of this Attachment:

a. Grant closeout. The closeout of a grant is the process by which a Federal grantor agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the grantor.

b. Date of completion. The date when all work under a grant is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends.

c. Termination. The termination of a grant means the cancellation of Federal assistance, in whole or in part, under a grant at any time prior to the date of completion.

d. Suspension. The suspension of a grant is an action by a Federal grantor agency which temporarily suspends Federal assistance under the grant pending corrective action by the grantee or pending a decision to terminate the grant by the grantor agency.

e. Disallowed costs. Disallowed costs are those charges to a grant which the grantor agency or its representative determines to be unallowable. (See Federal Management Circular No. 74-4.)

3. All Federal grantor agencies shall establish grant closeout procedures which include the following requirements:

a. Upon request, the Federal grantor agency shall make prompt payments to a grantee for allowable reimbursable costs under the grant being closed out.

b. The grantee shall immediately refund to the grantor agency any balance of unobligated (unencumbered) cash

advanced to the grantee that is not authorized to be retained by the grantee for use on other grants.

c. The grantor agency shall obtain from the grantee within 90 days after the date of completion of the grant all financial, performance, and other reports required as a condition of the grant. The agency may grant extensions when requested by the grantee.

d. When authorized by the grant the grantor agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.

e. The grantee shall account for any property acquired with grant funds, or received from the Government in accordance with the provisions of Attachment N to this Circular.

f. In the event a final audit has not been performed prior to the closeout of the grant, the grantor agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

4. All Federal grantor agencies shall provide procedures to be followed when a grantee has failed to comply with the grant award stipulations, standards, or conditions. When that occurs, the grantor agency may, on reasonable notice to the grantee, suspend the grant, and withhold further payments, or prohibit the grantee from incurring additional obligations of grant funds, pending corrective action by the grantee or a decision to terminate in accordance with paragraph 5.a. The grantor agency shall allow all necessary and proper costs which the grantee could not reasonably avoid during the period of suspension provided that they meet the provisions of Federal Management Circular No. 74-4.

5. Subject to the provisions of paragraph 5 of the basic Circular, of which this Attachment is a part, all Federal grantor agencies shall provide for the systematic settlement of terminated grants including the following:

a. Termination for cause. The grantor agency may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of the

grant. The grantor agency shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date. Payments made to grantees or recoveries by the grantor agencies under grants terminated for cause shall be in accord with the legal rights and liabilities of the parties.

b. Termination for convenience. The grantor agency or grantee may terminate grants in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Federal agency shall allow full credit to the grantee for the Federal share of the noncancellable obligations, properly incurred by the grantee prior to termination.

ATTACHMENT M
Circular No. A-102

STANDARD FORMS FOR APPLYING FOR FEDERAL ASSISTANCE

1. This Attachment promulgates standard forms to be used by State, local, and federally recognized Indian tribal governments in applying for all Federal grants except those Federal formula grant programs which do not require grantees to apply for Federal funds on a project basis. When applying for joint funded projects see OMB Circular No. A-111. The use of the standard forms by grantees in obtaining necessary information from subgrantees is optional.

2. The standard forms and their purposes are briefly described in the following paragraphs:

a. Preapplication for Federal Assistance (Exhibit 1). Preapplication for Federal Assistance is used to: (1) establish communication between the Federal grantor agency and the applicant; (2) determine the applicant's eligibility; (3) determine how well the project can compete with similar applications from others; and (4) eliminate any proposals which have little or no chance for Federal funding before applicants incur significant expenditures for preparing an application. Preapplication forms shall be required for all construction, land acquisition and land development projects or programs for which the need for Federal funding exceeds \$100,000. The Federal grantor agency may require the use of the preapplication form for other types of grant programs or for those for which the Federal fund request is for \$100,000 or less. In addition, Federal agencies shall establish procedures allowing State and local government applicants to submit, if they so desire, the preapplication form when mandatory requirements for preapplication do not exist.

b. Notice of Review Action (Exhibit 2). The purpose of the Notice of Review Action is to inform the applicant of the results of the review of the preapplication forms which were submitted to Federal grantor agencies. The Federal grantor agency shall send a notice to the applicant within 45 days of the receipt of the preapplication form. When the review cannot be made within 45 days, the applicant shall be informed by letter as to when the review will be completed.

c. Federal Assistance Application for Nonconstruction Programs (Exhibit 3). The Federal Assistance Application for

Nonconstruction Programs form is designed to accommodate several programs and shall be used by the applicant for all actions covered by this Attachment except where the major purpose of the grant involves construction, land acquisition, or development or single-purpose and one-time grant applications for less than \$10,000 which do not require clearinghouse approval, an environmental impact statement, or the relocation of persons, businesses, or farms.

d. Federal Assistance Application for Construction Programs (Exhibit 4). The Federal Assistance Application for Construction Programs form shall be used for all grants where the major purpose of the program involves construction, land acquisition, and land development, except when the Application for Federal Assistance-Short Form (paragraph 2e) is used.

e. Application for Federal Assistance--Short Form (Exhibit 5). The Application for Federal Assistance-Short Form shall be used for all grants for single-purpose and one-time grant applications for less than \$10,000 not requiring clearinghouse approval, an environmental impact statement, or the relocation of persons, businesses, or farms. Federal grantor agencies may, at their discretion, authorize the use of this form for applications for larger amounts.

3. For all forms described herein all requests by grantees for changes, continuations, and supplementals to approved grants shall be submitted on the same form as the original application. For these purposes, only the required pages of the forms should be submitted.

4. Federal agencies may specify and describe the programs, functions, or activities which will be used to plan, budget, and evaluate the work under the grant programs.

5. When additional information is needed to comply with legislative requirements or to meet specific program needs Federal agencies must comply with the reports clearance requirements of Office and Management Budget Circular No. A-40 as revised.

6. Additional assurances shall not be added to the standard assurances contained in the Circular unless specifically required by law.

7. Federal agencies have the option of shading out any line item on any form that is unnecessary for decisionmaking purposes or for meeting the requirements of other circulars or laws except for the Standard Form 424. This form should not be altered. If an item is not applicable, write or overprint "NA" in the space provided for each item.

8 Grantees shall submit the original and two copies of the application.

9. Federal grantor agencies are authorized to reproduce these forms. The forms for reproduction purposes can be obtained from the Office of Management and Budget. The Standard Form 424 can be obtained from the General Services Administration.

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Attachment M

OMB Approval No. 05-90100

FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION		3. STATE APPLICATION IDENTIFIER	
1. TYPE OF ACTION (Mark appropriate box) ☐ PREAPPLICATION ☐ APPLICATION ☐ NOTIFICATION OF INTENT (NFI) ☐ REPORT OF FEDERAL ACTION		a. NUMBER		b. DATE Year month day 19	
		c. COUNTY		d. ZIP CODE	
4. LEGAL APPLICANT/RECIPIENT a. Applicant Name b. Organization Unit c. Street/P.O. Box d. City e. State f. Contact Person (Name & telephone No.)		5. FEDERAL EMPLOYER IDENTIFICATION NO. a. NUMBER b. TITLE (From Federal Catalog)			
7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT		8. TYPE OF APPLICANT/RECIPIENT A- State B- Interstate C- Federal D- County E- City F- School District G- Special Purpose District H- Community Action Agency I- Higher Educational Institution J- Indian Tribe K- Other (Specify): Enter appropriate letter ☐		9. TYPE OF ASSISTANCE A- Basic Grant B- Supplemental Grant C- Loan D- Insurance E- Other Enter appropriate letter(s) ☐	
10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)		11. ESTIMATED NUMBER OF PERSONS BENEFITING		12. TYPE OF APPLICATION A- New B- Renewal C- Revision D- Augmentation Enter appropriate letter ☐	
13. PROPOSED FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00		14. CONGRESSIONAL DISTRICTS OF: a. APPLICANT b. PROJECT 16. PROJECT START DATE Year month day 19 17. PROJECT DURATION Months 18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY Year month day 19		15. TYPE OF CHANGE (For 12 c or 12 d) A- Increase Dollars B- Decrease Dollars C- Increase Duration D- Decrease Duration E- Cancellation F- Other (Specify): Enter appropriate letter(s) ☐	
20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)		21. REMARKS ADDED ☐ Yes ☐ No			
22. THE APPLICANT CERTIFIES THAT: a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved. b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached: (1) ☐ (2) ☐ (3) ☐		23. CERTIFYING REPRESENTATIVE a. TYPED NAME AND TITLE b. SIGNATURE c. DATE SIGNED Year month day 19		24. AGENCY NAME 25. ORGANIZATIONAL UNIT 26. ADDRESS 27. ACTION TAKEN ☐ a. AWARDED ☐ b. REJECTED ☐ c. RETURNED FOR AMENDMENT ☐ d. DEFERRED ☐ e. WITHDRAWN 28. FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00 29. ACTION DATE Year month day 19 30. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number) 31. STARTING DATE Year month day 19 32. ENDING DATE Year month day 19 33. REMARKS ADDED ☐ Yes ☐ No	
28. FEDERAL AGENCY A-95 ACTION a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made. b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)					

Exhibit M-1. Preapplication for Federal Assistance
(page 1 of 6)STANDARD FORM 484 PAGE 1 (Rev. 4-77)
Prescribed by OMB Circular A-102

1300.17

Attachment M

Attachment M

SECTION IV—REMARKS (Please reference the proper item number from Sections I, II or III, if applicable)

Attachment M

GENERAL INSTRUCTIONS

This is a multi-purpose standard form. First, it will be used by applicants as a required facesheet for pre-applications and applications submitted in accordance with OMB Circular A-102. Second, it will be used by Federal agencies to report to clearinghouses on major actions taken on applications reviewed by clearinghouses in accordance with OMB Circular A-95. Third, it will be used by Federal agencies to notify States of grants-in-aid awarded in accordance with Treasury Circular 1082. Fourth, it may be used, on an optional basis, as a notification of intent from applicants to clearinghouses, as an early initial notice that Federal assistance is to be applied for (clearinghouse procedures will govern).

APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk "*" and use the remarks section on the back of the form. An explanation follows for each item:

- | Item | Item |
|--|---|
| 1. Mark appropriate box. Pre-application and application guidance is in OMB Circular A-102 and Federal agency program instructions. Notification of intent guidance is in Circular A-95 and procedures from clearinghouse. Applicant will not use "Report of Federal Action" box. | 10. Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit affected, list it rather than subunits. |
| 2a. Applicant's own control number, if desired. | 11. Estimated number of persons directly benefiting from project. |
| 2b. Date Section I is prepared. | 12. Use appropriate code letter. Definitions are: |
| 3a. Number assigned by State clearinghouse, or if delegated by State, by areawide clearinghouse. All requests to Federal agencies must contain this identifier if the program is covered by Circular A-95 and required by applicable State/areawide clearinghouse procedures. If in doubt, consult your clearinghouse. | A. New. A submittal for the first time for a new project. |
| 3b. Date applicant notified of clearinghouse identifier. | B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year. |
| 4a-4h. Legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request. | C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease). |
| 5. Employer identification number of applicant as assigned by Internal Revenue Service. | D. Continuation. An extension for an additional funding/budget period for a project the agency initially agreed to fund for a definite number of years. |
| 6a. Use Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint-funding) write "multiple" and explain in remarks. If unknown, cite Public Law or U.S. Code. | E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged. |
| 6b. Program title from Federal Catalog. Abbreviate if necessary. | 13. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of the change. For decreases enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakdowns in remarks. Item definitions: 13a, amount requested from Federal Government; 13b, amount applicant will contribute; 13c, amount from State, if applicant is not a State; 13d, amount from local government, if applicant is not a local government; 13e, amount from any other sources, explain in remarks. |
| 7. Brief title and appropriate description of project. For notification of intent, continue in remarks section if necessary to convey proper description. | 14a. Self explanatory. |
| 8. Mostly self-explanatory. "City" includes town, township or other municipality. | 14b. The district(s) where most of actual work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide." |
| 9. Check the type(s) of assistance requested. The definitions of the terms are: | 15. Complete only for revisions (item 12c), or augmentations (item 12e). |
| A. Basic Grant. An original request for Federal funds. This would not include any contribution provided under a supplemental grant. | 16. Approximate date project expected to begin (usually associated with estimated date of availability of funding). |
| B. Supplemental Grant. A request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share). | 17. Estimated number of months to complete project after Federal funds are available. |
| C. Loan. Self explanatory. | 18. Estimated date pre-application/application will be submitted to Federal agency if this project requires clearinghouse review. If review not required, this date would usually be same as date in item 2b. |
| D. Insurance. Self explanatory. | |
| E. Other. Explain on remarks page. | |

- | Item | Item |
|--|---|
| 19. Existing Federal identification number if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA". | 20. Indicate Federal agency to which this request is addressed. Street address not required, but do use ZIP. |
| | 21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached. |

APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete items 22a, 22b, and 23c. If clearinghouse review is required, item 22b must be fully completed. An explanation follows for each item:

- | Item | Item |
|--|---|
| 22b. List clearinghouses to which submitted and show in appropriate blocks the status of their responses. For more than three clearinghouses, continue in remarks section. All written comments submitted by or through clearinghouses must be attached. | 23b. Self explanatory. |
| 23a. Name and title of authorized representative of legal applicant. | 23c. Self explanatory. |
| | Note: Applicant completes only Sections I and II. Section III is completed by Federal agencies. |

FEDERAL AGENCY PROCEDURES FOR SECTION III

If applicant-supplied information in Sections I and II needs no updating or adjustment to fit the final Federal action, the Federal agency will complete Section III only. An explanation for each item follows:

- | Item | Item |
|---|---|
| 24. Executive department or independent agency having program administration responsibility. | 35. Name and telephone no. of agency person who can provide more information regarding this assistance. |
| 25. Self explanatory. | 36. Date after which funds will no longer be available. |
| 26. Primary organizational unit below department level having direct program management responsibility. | 37. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks. |
| 27. Office directly monitoring the program. | 38. For use with A-95 action notices only. Name and telephone of person who can assure that appropriate A-95 action has been taken—If same as person shown in item 35, write "same". If not applicable, write "NA". |
| 28. Use to identify non-award actions where Federal grant identifier in item 30 is not applicable or will not suffice. | |
| 29. Complete address of administering office shown in item 26. | |
| 30. Use to identify award actions where different from Federal application identifier in item 28. | |
| 31. Self explanatory. Use remarks section to amplify where appropriate. | |
| 32. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 32a, amount awarded by Federal Government; 32b, amount applicant will contribute; 32c, amount from State, if applicant is not a State; 32d, amount from local government if applicant is not a local government; 32e, amount from any other sources, explain in remarks. | |
| 33. Date action was taken on this request. | |
| 34. Date funds will become available. | |

Federal Agency Procedures—special considerations

- A. *Treasury Circular 1082 compliance.* Federal agency will assure proper completion of Sections I and III. If Section I is being completed by Federal agency, all applicable items must be filled in. Addresses of State Information Reception Agencies (SCIRA's) are provided by Treasury Department to each agency. This form replaces SF 240, which will no longer be used.
- B. *OMB Circular A-95 compliance.* Federal agency will assure proper completion of Sections I, II, and III. This form is required for notifying all reviewing clearinghouses of major actions on all programs reviewed under A-95. Addresses of State and area-wide clearinghouses are provided by OMB to each agency. Substantive differences between applicant's request and/or clearinghouse recommendations, and the project as finally awarded will be explained in A-95 notifications to clearinghouses.
- C. *Special note.* In most, but not all States, the A-95 State clearinghouse and the (TC 1082) SCIRA are the same office. In such cases, the A-95 award notice to the State clearinghouse will fulfill the TC 1082 award notice requirement to the State SCIRA. Duplicate notification should be avoided.

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Attachment M

OMB Approval No. 00-20107

PREAPPLICATION FOR FEDERAL ASSISTANCE

PART II

1. Does this assistance request require State, local, regional or other priority rating? _____ Yes _____ No
2. Does this assistance require State or local advisory, educational or health clearance? _____ Yes _____ No
3. Does this assistance request require Clearinghouse review? _____ Yes _____ No
4. Does this assistance request require State, local, regional or other planning approval? _____ Yes _____ No
5. Is the proposed project covered by an approved comprehensive plan? _____ Yes _____ No
6. Will the assistance requested serve a Federal installation? _____ Yes _____ No
7. Will the assistance requested be on Federal land or installation? _____ Yes _____ No
8. Will the assistance requested have an effect on the environment? _____ Yes _____ No
9. Will the assistance requested cause the displacement of individuals, families, businesses, or farms? _____ Yes _____ No
10. Is there other related assistance for this project previous, pending, or anticipated? _____ Yes _____ No

PART III - PROJECT BUDGET

FEDERAL CATALOG NUMBER (a)	TYPE OF ASSISTANCE LOAN, GRANT, ETC. (b)	FIRST BUDGET PERIOD (c)	BALANCE OF PROJECT (d)	TOTAL (e)
1.				
2.				
3.				
4.				
5.				
6. Total Federal Contribution		\$	\$	\$
7. State Contribution				
8. Applicant Contribution				
9. Other Contributions				
10. Totals		\$	\$	\$

PART IV - PROGRAM NARRATIVE STATEMENT

(Attach per instruction)

INSTRUCTIONS

PART II

Negative answers will not require an explanation unless the Federal agency requests more information at a later date. All "Yes" answers must be explained on a separate page in accordance with the instructions.

Item 1 - Provide the name of the governing body establishing the priority system and the priority rating assigned to this project. If the priority rating is not available, give the approximate date that it will be obtained.

Item 2 - Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval. If the clearance is not available, give the date it will be obtained.

Item 3 - Attach the clearinghouse comments for the pre-application in accordance with the instructions contained in Office of Management and Budget Circular No. A-95.

Item 4 - Furnish the name of the approving agency and the approval date. If the approval has not been received, state approximately when it will be obtained.

Item 5 - Show whether the approved comprehensive plan is State, local or regional; or, if none of these, explain the scope of the plan. Give the location where the approved plan is available for examination, and state whether this project is in conformance with the plan. If the plan is not available, explain why.

Item 6 - Show the population residing or working on the Federal installation who will benefit from this project.

Item 7 - Show the percentage of the project work that will be conducted on federally-owned or leased land. Give the name of the Federal installation and its location.

Item 8 - Briefly describe the possible beneficial and/or harmful effect on the environment because of the proposed project. If an adverse environmental effect is anticipated, explain what action will be taken to minimize it. Federal agencies will provide separate instructions, if additional data is needed.

Item 9 - State the number of individuals, families, businesses, or farms this project will displace. Federal agencies

will provide separate instructions, if additional data is needed.

Item 10 - Show the Federal Domestic Assistance Catalog number, the program name, the type of assistance, the status, and amount of each project where there is related previous, pending, or anticipated assistance.

PART III

Complete: Lines 1-5 - Columns (a)-(e). Enter the catalog numbers shown in the Catalog of Federal Domestic Assistance in Column (a) and the type of assistance in Column (b). For each line entry in Columns (a) and (b), enter in Columns (c), (d), and (e), the estimated amounts of Federal funds needed to support the project. Columns (c) and (d) may be left blank, if not applicable.

Line 6 - Show the totals for Lines 1-5 for Columns (c), (d), and (e).

Line 7 - Enter the estimated amounts of State assistance, if any, including the value of in-kind contributions, in Columns (c), (d), and (e). Applicants which are States or State agencies should leave Line 7 blank.

Line 8 - Enter the estimated amounts of funds and value of in-kind contributions the applicant will provide to the program or project in Columns (c), (d), and (e).

Line 9 - Enter the amount of assistance including the value of in-kind contributions, expected from all other contributors in Columns (c), (d), and (e).

Line 10 - Enter the totals of Columns (c), (d), and (e).

PART IV

The program narrative statement should be brief and describe the need, objectives, method of accomplishment, the geographical location of the project, and the benefits expected to be obtained from the assistance. The statement should be typed on a separate sheet of paper and submitted with the preapplication. Also attach any data that may be needed by the grantor agency to establish the applicant's eligibility for receiving assistance under the Federal program(s).

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Attachment M

NOTICE OF PREAPPLICATION REVIEW ACTION

From: _____
(Department, bureau, or establishment)

Agency Number _____

To: _____

Reference Your Preapplication

Number _____

Dated: _____

1. We have reviewed your preapplication for Federal assistance under _____ and have determined that your proposal is:
_____ eligible for funding by this agency and can compete with similar applications from other grantees.
_____ eligible but does not have the priority necessary for further consideration at this time.
_____ not eligible for funding by this agency.
2. Therefore, we suggest that you:
_____ file a formal application with us by (date) _____.
_____ file an application with _____ (Suggested Federal agency).
_____ find other means of funding this project.
3. Based upon the funds available for this program over the last two fiscal years and the number of applications reviewed, or pending, we anticipate that funds for which you are competing will be available after (month, year) _____.
4. You requested \$ _____ Federal funding in your preapplication form, and we:
_____ are agreeable to consideration of approximately this amount in the formal application.
_____ will need to analyze the amount requested in more detail.
5. A preapplication conference will be _____ necessary _____ not necessary. We are recommending that it be held at _____, on _____, at _____ a.m./p.m. Please contact the undersigned for confirmation.
6. Enclosures: _____ Forms _____ Instructions _____ Other (Specify) _____
7. Other Remarks: _____

Signature	Title	Date
Organisational Unit	Administrative Office	Telephone Number
Address		

NOTE: This form will be used by Federal agencies to inform applicants of the results of a review of their preapplication request for Federal assistance. When the review cannot be performed within 45 days, the applicant shall be informed by letter as to when the review will be completed. When Federal agencies determine that the proposal is not eligible for Federal assistance, specific reasons should be provided in Item 7 Other Remarks.

1300.17

Attachment M

OMB Approval No. 05-90100

FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION	3. STATE APPLICATION IDENTIFIER	4. FEDERAL EMPLOYER IDENTIFICATION NO.
1. TYPE OF ACTION (Mark appropriate box) ☐ PREAPPLICATION ☐ APPLICATION ☐ NOTIFICATION OF INTENT (NFI) ☐ REPORT OF FEDERAL ACTION		a. NUMBER b. DATE Year month day 19	a. NUMBER b. DATE ASSIGNED Year month day 19	
4. LEGAL APPLICANT/RECIPIENT a. Applicant Name b. Organization Unit c. Street/P.O. Box d. City e. State f. Contact Person (Name & telephone No.)		a. County b. ZIP Code	5. FEDERAL EMPLOYER IDENTIFICATION NO. a. NUMBER b. TITLE (From Federal Catalog)	
7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT		8. TYPE OF APPLICANT/RECIPIENT A- State B- Interstate C- Substate D- County E- City F- School District G- Special Purpose District H- Community Action Agency I- Higher Educational Institution J- Indian Tribe K- Other (Specify): Enter appropriate letter ☐		
10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)		9. TYPE OF ASSISTANCE A- Basic Grant B- Supplemental Grant C- Loan D- Insurance E- Other Enter appropriate letter(s) ☐		
11. ESTIMATED NUMBER OF PERSONS BENEFITING		12. TYPE OF APPLICATION A- New B- Renewal C- Revision D- Continuation E- Augmentation Enter appropriate letter ☐		
13. PROPOSED FUNDING a. FEDERAL \$.00 b. APPLICANT \$.00 c. STATE \$.00 d. LOCAL \$.00 e. OTHER \$.00 f. TOTAL \$.00		14. CONGRESSIONAL DISTRICTS OF: a. APPLICANT b. PROJECT 16. PROJECT START DATE Year month day 19 17. PROJECT DURATION Months 18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY Year month day 19		
15. TYPE OF CHANGE (For 12 c or 12 e) A- Increase Dollars B- Decrease Dollars C- Increase Duration D- Decrease Duration E- Cancellation F- Other (Specify): Enter appropriate letter(s) ☐		19. EXISTING FEDERAL IDENTIFICATION NUMBER		
20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)		21. REMARKS ADDED ☐ Yes ☐ No		
22. THE APPLICANT CERTIFIES THAT: a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurance if the assistance is approved. b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached: (1) ☐ (2) ☐ (3) ☐		23. CERTIFYING REPRESENTATIVE a. TYPED NAME AND TITLE b. SIGNATURE c. DATE SIGNED Year month day 19		
24. AGENCY NAME		25. APPLICATION RECEIVED 19		
26. ORGANIZATIONAL UNIT		27. ADMINISTRATIVE OFFICE		
28. ADDRESS		29. FEDERAL APPLICATION IDENTIFICATION		
30. FEDERAL GRANT IDENTIFICATION		31. ACTION TAKEN ☐ a. AWARDED ☐ b. REJECTED ☐ c. RETURNED FOR AMENDMENT ☐ d. DEFERRED ☐ e. WITHDRAWN		
32. FUNDING a. FEDERAL \$.00 b. APPLICANT \$.00 c. STATE \$.00 d. LOCAL \$.00 e. OTHER \$.00 f. TOTAL \$.00		33. ACTION DATE Year month day 19 34. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number) 35. STARTING DATE Year month day 19 36. ENDING DATE Year month day 19 37. REMARKS ADDED: ☐ Yes ☐ No		
38. FEDERAL AGENCY A-95 ACTION a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provision of Part 1, OMB Circular A-95, it has been or is being made. b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)				

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Attachment M

SECTION IV—REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

GENERAL INSTRUCTIONS

This is a multi-purpose standard form. First, it will be used by applicants as a required facesheet for pre-applications and applications submitted in accordance with OMB Circular A-102. Second, it will be used by Federal agencies to report to clearinghouses on major actions taken on applications reviewed by clearinghouses in accordance with OMB Circular A-95. Third, it will be used by Federal agencies to notify States of grants-in-aid awarded in accordance with Treasury Circular 1082. Fourth, it may be used, on an optional basis, as a notification of intent from applicants to clearinghouses, as an early initial notice that Federal assistance is to be applied for (clearinghouse procedures will govern).

APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk "*" and use the remarks section on the back of the form. An explanation follows for each item:

- | Item | Item |
|---|--|
| 1. Mark appropriate box. Pre-application and application guidance is in OMB Circular A-102 and Federal agency program instructions. Notification of intent guidance is in Circular A-95 and procedures from clearinghouse. Applicant will not use "Report of Federal Action" box. | 10. Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit affected, list it rather than subunits. |
| 2a. Applicant's own control number, if desired | 11. Estimated number of persons directly benefiting from project. |
| 2b. Date Section I is prepared. | 12. Use appropriate code letter. Definitions are: |
| 3a. Number assigned by State clearinghouse, or if delegated by State, by areawide clearinghouse. All requests to Federal agencies <i>must</i> contain this identifier if the program is covered by Circular A-95 and required by applicable State/areawide clearinghouse procedures. If in doubt, consult your clearinghouse. | A. New. A submittal for the first time for a new project. |
| 3b. Date applicant notified of clearinghouse identifier. | B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year. |
| 4a-4h. Legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request. | C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease). |
| 5. Employer identification number of applicant as assigned by Internal Revenue Service. | D. Continuation. An extension for an additional funding/budget period for a project the agency initially agreed to fund for a definite number of years. |
| 6a. Use Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint-funding) write "multiple" and explain in remarks. If unknown, cite Public Law or U.S. Code. | E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged. |
| 6b. Program title from Federal Catalog. Abbreviate if necessary. | 13. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of the change. For decreases enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 13a, amount requested from Federal Government; 13b, amount applicant will contribute; 13c, amount from State, if applicant is not a State; 13d, amount from local government, if applicant is not a local government; 13e, amount from any other sources, explain in remarks. |
| 7. Brief title and appropriate description of project. For notification of intent, continue in remarks section if necessary to convey proper description. | 14a. Self explanatory. |
| 8. Mostly self-explanatory. "City" includes town, township or other municipality. | 14b. The district(s) where most of actual work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide." |
| 9. Check the type(s) of assistance requested. The definitions of the terms are: | 15. Complete only for revisions (Item 12c), or augmentations (Item 12e). |
| A. Basic Grant. An original request for Federal funds. This would not include any contribution provided under a supplemental grant. | 16. Approximate date project expected to begin (usually associated with estimated date of availability of funding). |
| B. Supplemental Grant. A request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share). | 17. Estimated number of months to complete project after Federal funds are available. |
| C. Loan. Self explanatory. | 18. Estimated date pre-application/application will be submitted to Federal agency if this project requires clearinghouse review. If review not required, this date would usually be same as date in Item 2b. |
| D. Insurance. Self explanatory. | |
| E. Other. Explain on remarks page. | |

Attachment M

- | Item | Item |
|--|---|
| 19. Existing Federal identification number if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA". | 20. Indicate Federal agency to which this request is addressed. Street address not required, but do use ZIP. |
| | 21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached. |

APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete items 23a, 23b, and 23c. If clearinghouse review is required, item 22b must be fully completed. An explanation follows for each item:

- | Item | Item |
|--|---|
| 22b. List clearinghouses to which submitted and show in appropriate blocks the status of their responses. For more than three clearinghouses, continue in remarks section. All written comments submitted by or through clearinghouses must be attached. | 23b. Self explanatory. |
| 23a. Name and title of authorized representative of legal applicant. | 23c. Self explanatory. |
| | Note: Applicant completes only Sections I and II. Section III is completed by Federal agencies. |

FEDERAL AGENCY PROCEDURES FOR SECTION III

If applicant-supplied information in Sections I and II needs no updating or adjustment to fit the final Federal action, the Federal agency will complete Section III only. An explanation for each item follows:

- | Item | Item |
|--|---|
| 24. Executive department or independent agency having program administration responsibility. | 35. Name and telephone no. of agency person who can provide more information regarding this assistance. |
| 25. Self explanatory. | 36. Date after which funds will no longer be available. |
| 26. Primary organizational unit below department level having direct program management responsibility. | 37. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks. |
| 27. Office directly monitoring the program. | 38. For use with A-95 action notices only. Name and telephone of person who can assure that appropriate A-95 action has been taken—If same as person shown in item 35, write "same". If not applicable, write "NA". |
| 28. Use to identify non-award actions where Federal grant identifier in item 30 is not applicable or will not suffice. | |
| 29. Complete address of administering office shown in item 26. | |
| 30. Use to identify award actions where different from Federal application identifier in item 28. | |
| 31. Self explanatory. Use remarks section to amplify where appropriate. | |
| 32. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakdowns in remarks. Item definitions: 32a, amount awarded by Federal Government; 32b, amount applicant will contribute; 32c, amount from State, if applicant is not a State; 32d, amount from local government if applicant is not a local government; 32e, amount from any other sources, explain in remarks. | |
| 33. Date action was taken on this request. | |
| 34. Date funds will become available. | |

Federal Agency Procedures—special considerations

- A. *Treasury Circular 1082 compliance.* Federal agency will assure proper completion of Sections I and III. If Section I is being completed by Federal agency, all applicable items must be filled in. Addresses of State Information Reception Agencies (SCIRA's) are provided by Treasury Department to each agency. This form replaces SF 240, which will no longer be used.
- B. *OMB Circular A-95 compliance.* Federal agency will assure proper completion of Sections I, II, and III. This form is required for notifying all reviewing clearinghouses of major actions on all programs reviewed under A-95. Addresses of State and areawide clearinghouses are provided by OMB to each agency. Substantive differences between applicant's request and/or clearinghouse recommendations, and the project as finally awarded will be explained in A-95 notifications to clearinghouses.
- C. *Special note.* In most, but not all States, the A-95 State clearinghouse and the (TC 1082) SCIRA are the same or 'ce. In such cases, the A-95 award notice to the State clearinghouse will fulfill the TC 1082 award notice requirement to the State SCIRA. Duplicate notification should be avoided.

PART II

OMB NO. 50-106 186

PROJECT APPROVAL INFORMATION

Item 1.	
Does this assistance request require State, local, regional, or other priority rating?	Name of Governing Body _____ Priority Rating _____
_____ Yes _____ No	
Item 2.	
Does this assistance request require State, or local advisory, educational or health clearances?	Name of Agency or Board _____
_____ Yes _____ No	(Attach Documentation)
Item 3.	
Does this assistance request require clearinghouse review in accordance with OMB Circular A-95?	(Attach Comments)
_____ Yes _____ No	
Item 4.	
Does this assistance request require State, local, regional or other planning approval?	Name of Approving Agency _____ Date _____
_____ Yes _____ No	
Item 5.	
Is the proposed project covered by an approved comprehensive plan?	Check one: State ☐ Local ☐ Regional ☐ Location of Plan _____
_____ Yes _____ No	
Item 6.	
Will the assistance requested serve a Federal installation?	Name of Federal Installation _____ Federal Population benefiting from Project _____
_____ Yes _____ No	
Item 7.	
Will the assistance requested be on Federal land or installation?	Name of Federal Installation _____ Location of Federal Land _____ Percent of Project _____
_____ Yes _____ No	
Item 8.	
Will the assistance requested have an impact or effect on the environment?	See instructions for additional information to be provided.
_____ Yes _____ No	
Item 9.	
Will the assistance requested cause the displacement of individuals, families, businesses, or farms?	Number of: Individuals _____ Families _____ Businesses _____ Farms _____
_____ Yes _____ No	
Item 10.	
Is there other related assistance on this project previous, pending, or anticipated?	See instructions for additional information to be provided.
_____ Yes _____ No	
Item 11.	
Is the project in a designated flood hazard area?	See instructions for additional information to be provided.
_____ Yes _____ No	

Exhibit M-3. Application for Federal Assistance (Nonconstruction Programs)

INSTRUCTIONS

PART II

Negative answers will not require an explanation unless the Federal agency requests more information at a later date. Provide supplementary data for all "Yes" answers in the space provided in accordance with the following instructions:

Item 1 - Provide the name of the governing body establishing the priority system and the priority rating assigned to this project.

Item 2 - Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval.

Item 3 - Attach the clearinghouse comments for the application in accordance with the instructions contained in Office of Management and Budget Circular No. A-95. If comments were submitted previously with a preapplication, do not submit them again but any additional comments received from the clearinghouse should be submitted with this application.

Item 4 - Furnish the name of the approving agency and the approval date.

Item 5 - Show whether the approved comprehensive plan is State, local or regional, or if none of these, explain the

scope of the plan. Give the location where the approved plan is available for examination and state whether this project is in conformance with the plan.

Item 6 - Show the population residing or working on the Federal installation who will benefit from this project.

Item 7 - Show the percentage of the project work that will be conducted on federally-owned or leased land. Give the name of the Federal installation and its location.

Item 8 - Describe briefly the possible beneficial and harmful impact on the environment of the proposed project. If an adverse environmental impact is anticipated, explain what action will be taken to minimize the impact. Federal agencies will provide separate instructions if additional data is needed.

Item 9 - State the number of individuals, families, businesses, or farms this project will displace. Federal agencies will provide separate instructions if additional data is needed.

Item 10 - Show the Federal Domestic Assistance Catalog number, the program name, the type of assistance, the status and the amount of each project where there is related previous, pending or anticipated assistance. Use additional sheets, if needed.

PART III - BUDGET INFORMATION

SECTION A - BUDGET SUMMARY

Grant Program, Function or Activity (a)	Federal Catalog No. (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	- Grant Program, Function or Activity				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges					
j. Indirect Charges					
k. TOTALS	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

Exhibit M-3. Application for Federal Assistance (Nonconstruction Programs)

Attachment M

INSTRUCTIONS

PART III

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may not require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary

Lines 1-4, Columns (a) and (b).

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to *multiple* programs where *none* of the programs *require* a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g).

For *new* applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For *continuing* grant program applications, submit these forms before the end of each funding period as required by

the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period *only* if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes to existing grants*, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should *not* equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets were prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-h - Show the estimated amount for each direct cost budget (object class) category for each column with program, function or activity heading.

Line 6i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost. Refer to FMC 74-4.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5. When additional sheets were prepared, the last two sentences apply only to the first page with summary totals.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) APPLICANT	(c) STATE	(d) OTHER SOURCES	(e) TOTALS
8.	\$	\$	\$	\$
9.				
10.				
11.				
12. TOTALS	\$	\$	\$	\$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$	\$	\$	\$	\$
14. Non-Federal					
15. TOTAL	\$	\$	\$	\$	\$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) FIRST	(c) SECOND	(d) THIRD	(e) FOURTH
16.	\$	\$	\$	\$
17.				
18.				
19.				
20. TOTALS	\$	\$	\$	\$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets If Necessary)

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

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PART IV PROGRAM NARRATIVE (Attach per instruction)

Exhibit M-3. Application for Federal Assistance (Nonconstruction Programs)

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Attachment M

INSTRUCTIONS

PART III
(continued)

Section C. Source of Non-Federal Resources

Line 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet. (See Attachment F, FMC 74-7. *

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the amount of cash and in-kind contributions to be made by the applicant as shown in Section A. (See also Attachment F, FMC 74-7.

Column (c) - Enter the State contribution if the applicant is *not* a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuing grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This Section need not be completed for amendments, changes, or supplements to funds for the current year of existing grants.

If more than four lines are needed to list the program titles submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F - Other Budget Information.

Line 21 - Use this space to explain amounts for individual direct object cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, pre-determined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations required herein or any other comments deemed necessary.

INSTRUCTIONS

**PART IV
PROGRAM NARRATIVE**

Prepare the program narrative statement in accordance with the following instructions for all new grant programs. Requests for continuation or refunding and changes on an approved project should respond to item 5b only. Requests for supplemental assistance should respond to question 5c only.

1. OBJECTIVES AND NEED FOR THIS ASSISTANCE.

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

2. RESULTS OR BENEFITS EXPECTED.

Identify results and benefits to be derived. For example, when applying for a grant to establish a neighborhood health center provide a description of who will occupy the facility, how the facility will be used, and how the facility will benefit the general public.

3. APPROACH.

- a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program, function or activity, provided in the budget. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.
- b. Provide for each grant program, function or activity, quantitative monthly or quarterly projections of the accomplishments to be achieved in such terms as the number of jobs created; the number of people served; and the number of patients treated. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

- c. Identify the kinds of data to be collected and maintained and discuss the criteria to be used to evaluate the results and successes of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in item 2 are being achieved.

- d. List organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

4. GEOGRAPHIC LOCATION.

Give a precise location of the project or area to be served by the proposed project. Maps or other graphic aids may be attached.

5. IF APPLICABLE, PROVIDE THE FOLLOWING INFORMATION:

- a. For research or demonstration assistance requests, present a biographical sketch of the program director with the following information; name, address, phone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project.
- b. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location approach, or time delays, explain and justify. For other requests for changes or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded, or if individual budget items have changed more than the prescribed limits contained in Attachment K to Office of Management and Budget Circular No. A-102, explain and justify the change and its effect on the project.
- c. For supplemental assistance requests, explain the reason for the request and justify the need for additional funding.

Exhibit M-3. Application for Federal Assistance (Nonconstruction Programs)

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PART V

ASSURANCES

The Applicant hereby assures and certifies that he will comply with the regulations, policies, guidelines and requirements, including OMB Circulars No. A-95, A-102 and No. A-87, as they relate to the application, exceptance and use of Federal funds for this federally-assisted project. Also the Applicant assures and certifies to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.
4. It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.
5. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.
7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
8. It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.
9. It will comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.
10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

PART V (Continued)

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

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Attachment M

OMB Approval No. 05-90109

FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION	3. STATE APPLICATION IDENTIFIER	4. NUMBER
1. TYPE OF ACTION (Mark appropriate box) ☐ PREAPPLICATION ☐ APPLICATION ☐ NOTIFICATION OF INTENT (SPL) ☐ REPORT OF FEDERAL ACTION		a. NUMBER b. DATE Year month day 19	a. NUMBER b. DATE ASSIGNED Year month day 19	
4. LEGAL APPLICANT/RECIPIENT a. Applicant Name b. Organization Unit c. Street/P.O. Box d. City e. County f. State g. Contact Person (Name & telephone No.)		5. FEDERAL EMPLOYER IDENTIFICATION NO.		
7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT		6. PROGRAM (From Federal Catalog) a. NUMBER b. TITLE		
10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)		8. TYPE OF APPLICANT/RECIPIENT A—State B—County C—City D—School District E—Special Purpose District F—Community Action Agency G—Higher Educational Institution H—Indian Tribe I—Other (Specify): Enter appropriate letter ☐		
11. ESTIMATED NUMBER OF PERSONS BENEFITING		9. TYPE OF ASSISTANCE A—Basic Grant B—Supplemental Grant C—Loan D—Insurance E—Other (Specify): Enter appropriate letter(s) ☐		
12. TYPE OF APPLICATION A—New B—Renewal C—Revision D—Continuation E—Augmentation F—Other (Specify): Enter appropriate letter ☐		13. PROPOSED FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00		
14. CONGRESSIONAL DISTRICTS OF: a. APPLICANT b. PROJECT		15. TYPE OF CHANGE (For 12 c or 12 d) A—Increase Dollars B—Decrease Dollars C—Increase Duration D—Decrease Duration E—Cancellation F—Other (Specify): Enter appropriate letter(s) ☐		
16. PROJECT START DATE Year month day 19		17. PROJECT DURATION Months		
18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY Year month day 19		19. EXISTING FEDERAL IDENTIFICATION NUMBER		
20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)		21. REMARKS ADDED ☐ Yes ☐ No		
22. THE APPLICANT CERTIFIES THAT: a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurance if the assistance is approved. b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached: (1) (2) (3)		No response ☐ Response attached ☐		
23. CERTIFYING REPRESENTATIVE a. TYPED NAME AND TITLE b. SIGNATURE c. DATE SIGNED Year month day 19		24. AGENCY NAME		
25. ORGANIZATIONAL UNIT		26. ADMINISTRATIVE OFFICE		
27. ADDRESS		28. FEDERAL APPLICATION IDENTIFICATION		
29. ACTION TAKEN ☐ a. AWARDED ☐ b. REJECTED ☐ c. RETURNED FOR AMENDMENT ☐ d. DEFERRED ☐ e. WITHDRAWN		30. FEDERAL GRANT IDENTIFICATION		
31. FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00		32. ACTION DATE Year month day 19		
33. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)		34. STARTING DATE Year month day 19		
35. ENDING DATE Year month day 19		36. REMARKS ADDED ☐ Yes ☐ No		
37. FEDERAL AGENCY A-95 ACTION a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made. b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)				

Exhibit M-4. Application for Federal Assistance (For Construction Programs)

(Page 1 of 14)

STANDARD FORM 424 PAGE 1 (Rev. 4-77)
Prescribed by OMB Circular A-102

1300.17

Attachment M

SECTION IV—REMARKS (Please reference the proper item number from Sections I, II or III, if applicable)

GENERAL INSTRUCTIONS

This is a multi-purpose standard form. First, it will be used by applicants as a required facesheet for pre-applications and applications submitted in accordance with OMB Circular A-102. Second, it will be used by Federal agencies to report to clearinghouses on major actions taken on applications reviewed by clearinghouses in accordance with OMB Circular A-95. Third, it will be used by Federal agencies to notify States of grants-in-aid awarded in accordance with Treasury Circular 1082. Fourth, it may be used, on an optional basis, as a notification of intent from applicants to clearinghouses, as an early initial notice that Federal assistance is to be applied for (clearinghouse procedures will govern).

APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk and use the remarks section on the back of the form. An explanation follows for each item:

- | Item | Item |
|--|--|
| 1. Mark appropriate box. Pre-application and application guidance is in OMB Circular A-102 and Federal agency program instructions. Notification of intent guidance is in Circular A-95 and procedures from clearinghouse. Applicant will not use "Report of Federal Action" box. | 10. Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit affected, list it rather than subunits. |
| 2a. Applicant's own control number, if desired. | 11. Estimated number of persons directly benefiting from project. |
| 2b. Date Section I is prepared | 12. Use appropriate code letter. Definitions are: |
| 3a. Number assigned by State clearinghouse, or if delegated by State, by areawide clearinghouse. All requests to Federal agencies must contain this identifier if the program is covered by Circular A-95 and required by applicable State/areawide clearinghouse procedures. If in doubt, consult your clearinghouse. | A. New. A submittal for the first time for a new project. |
| 3b. Date applicant notified of clearinghouse identifier. | B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year. |
| 4a-4h. Legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request. | C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease). |
| 5. Employer identification number of applicant as assigned by Internal Revenue Service. | D. Continuation. An extension for an additional funding/budget period for a project the agency initially agreed to fund for a definite number of years. |
| 6a. Use Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint-funding) write "multiple" and explain in remarks. If unknown, cite Public Law or U.S. Code. | E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged. |
| 6b. Program title from Federal Catalog. Abbreviate if necessary. | 13. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of the change. For decreases enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 13a, amount requested from Federal Government; 13b, amount applicant will contribute; 13c, amount from State, if applicant is not a State; 13d, amount from local government, if applicant is not a local government; 13e, amount from any other sources, explain in remarks. |
| 7. Brief title and appropriate description of project. For notification of intent, continue in remarks section if necessary to convey proper description. | 14a. Self explanatory. |
| 8. Mostly self-explanatory. "City" includes town, township or other municipality. | 14b. The district(s) where most of actual work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide." |
| 9. Check the type(s) of assistance requested. The definitions of the terms are: | 15. Complete only for revisions (Item 12c), or augmentations (Item 12e). |
| A. Basic Grant. An original request for Federal funds. This would not include any contribution provided under a supplemental grant. | 16. Approximate date project expected to begin (usually associated with estimated date of availability of funding). |
| B. Supplemental Grant. A request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share). | 17. Estimated number of months to complete project after Federal funds are available. |
| C. Loan. Self explanatory. | 18. Estimated date pre-application/application will be submitted to Federal agency if the project requires clearinghouse review. If review not required, this date would usually be same as date in Item 2b. |
| D. Insurance. Self explanatory. | |
| E. Other. Explain on remarks page. | |

Attachment M

- | Item | Item |
|--|---|
| 19. Existing Federal identification number if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA". | 20. Indicate Federal agency to which this request is addressed. Street address not required, but do use ZIP. |
| | 21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached. |

APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete items 22a, 22b, and 23c. If clearinghouse review is required, item 22b must be fully completed. An explanation follows for each item:

- | Item | Item |
|--|---|
| 22b. List clearinghouses to which submitted and show in appropriate blocks the status of their responses. For more than three clearinghouses, continue in remarks section. All written comments submitted by or through clearinghouses must be attached. | 23b. Self explanatory. |
| 23a. Name and title of authorized representative of legal applicant. | 23c. Self explanatory. |
| | Note: Applicant completes only Sections I and II. Section III is completed by Federal agencies. |

FEDERAL AGENCY PROCEDURES FOR SECTION III

If applicant-supplied information in Sections I and II needs no updating or adjustment to fit the final Federal action, the Federal agency will complete Section III only. An explanation for each item follows:

- | Item | Item |
|--|---|
| 24. Executive department or independent agency having program administration responsibility. | 35. Name and telephone no. of agency person who can provide more information regarding this assistance. |
| 25. Self explanatory. | 36. Date after which funds will no longer be available. |
| 26. Primary organizational unit below department level having direct program management responsibility. | 37. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks. |
| 27. Office directly monitoring the program. | 38. For use with A-95 action notices only. Name and telephone of person who can assure that appropriate A-95 action has been taken—If same as person shown in item 35, write "same". If not applicable, write "NA". |
| 28. Use to identify non-award actions where Federal grant identifier in item 30 is not applicable or will not suffice. | |
| 29. Complete address of administering office shown in item 26. | |
| 30. Use to identify award actions where different from Federal application identifier in item 26. | |
| 31. Self explanatory. Use remarks section to amplify where appropriate. | |
| 32. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakdowns in remarks. Item definitions: 32a, amount awarded by Federal Government; 32b, amount applicant will contribute; 32c, amount from State, if applicant is not a State; 32d, amount from local government if applicant is not a local government; 32e, amount from any other sources, explain in remarks. | |
| 33. Date action was taken on this request. | |
| 34. Date funds will become available. | |

Federal Agency Procedures—special considerations

- A. *Treasury Circular 1082 compliance.* Federal agency will assure proper completion of Sections I and III. If Section I is being completed by Federal agency, all applicable items must be filled in. Addressees of State Information Reception Agencies (SCIRA's) are provided by Treasury Department to each agency. This form replaces SF 240, which will no longer be used.
- B. *OMB Circular A-95 compliance.* Federal agency will assure proper completion of Sections I, II, and III. This form is required for notifying all reviewing clearinghouses of major actions on all programs reviewed under A-95. Addressees of State and areawide clearinghouses are provided by OMB to each agency. Substantive differences between applicant's request and/or clearinghouse recommendations, and the project as finally awarded will be explained in A-95 notifications to clearinghouses.
- C. *Special note.* In most, but not all States, the A-95 State clearinghouse and the (TC 1082) SCIRA are the same office. In such cases, the A-95 award notice to the State clearinghouse will fulfill the TC 1082 award notice requirement to the State SCIRA. Duplicate notification should be avoided.

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Attachment M

PART II

OMB NO. 50-R0 100

PROJECT APPROVAL INFORMATION

Item 1.

Does this assistance request require State, local, regional, or other priority rating?

____ Yes ____ No

Name of Governing Body _____

Priority Rating _____

Item 2.

Does this assistance request require State, or local advisory, educational or health clearances?

____ Yes ____ No (Attach Documentation)

Name of Agency or Board _____

Item 3.

Does this assistance request require clearinghouse review in accordance with OMB Circular A-95?

____ Yes ____ No

(Attach Comments)

Item 4.

Does this assistance request require State, local, regional or other planning approval?

____ Yes ____ No

Name of Approving Agency _____

Date _____

Item 5.

Is the proposed project covered by an approved comprehensive plan?

____ Yes ____ No

Check one: State ☐Local ☐Regional ☐

Location of Plan _____

Item 6.

Will the assistance requested serve a Federal installation?

____ Yes ____ No

Name of Federal Installation _____

Federal Population benefiting from Project _____

Item 7.

Will the assistance requested be on Federal land or installation?

____ Yes ____ No

Name of Federal Installation _____

Location of Federal Land _____

Percent of Project _____

Item 8.

Will the assistance requested have an impact or effect on the environment?

____ Yes ____ No

See instructions for additional information to be provided.

Item 9.

Will the assistance requested cause the displacement of individuals, families, businesses, or farms?

____ Yes ____ No

Number of:

Individuals _____

Families _____

Businesses _____

Farms _____

Item 10.

Is there other related assistance on this project previous, pending, or anticipated?

____ Yes ____ No

See instructions for additional information to be provided.

Item 11.

Is the project in a designated flood hazard area?

____ Yes ____ No

See instructions for additional information to be provided.

Exhibit M-4. Application for Federal Assistance (for Construction Programs)

(Page 5 of 14)

INSTRUCTIONS

PART II - SECTION A

Negative answers will not require an explanation unless the Federal agency requests more information at a later date. Provide supplementary data for all "Yes" answers in the space provided in accordance with the following instructions.

Item 1 - Provide the name of the governing body establishing the priority system and the priority rating assigned to this project.

Item 2 - Provide the name of the agency or board which issued the clearance and attach the documentation of status or approval.

Item 3 - Attach the clearinghouse comments for the application in accordance with the instructions contained in Office of Management and Budget Circular No. A-95. If comments were submitted previously with a preapplication, do not submit them again but any additional comments received from the clearinghouse should be submitted with this application.

Item 4 - Furnish the name of the approving agency and the approval date.

Item 5 - Show whether the approved comprehensive plan is State, local or regional, or if none of these, explain the

scope of the plan. Give the location where the approved plan is available for examination and state whether this project is in conformance with the plan.

Item 6 - Show the Federal population residing or working on the federal installation who will benefit from this project.

Item 7 - Show the percentage of the project work that will be conducted on federally-owned or leased land. Give the name of the Federal installation and its location.

Item 8 - Briefly describe the possible beneficial and/or harmful impact on the environment because of the proposed project. If an adverse environmental impact is anticipated, explain what action will be taken to minimize the impact. Federal agencies will provide separate instructions if additional data is needed.

Item 9 - State the number of individuals, families, businesses, or farms this project will displace. Federal agencies will provide separate instructions if additional data is needed.

Item 10 - Show the Federal Domestic Assistance Catalog number, the program name, the type of assistance, the status and amount of each project where there is related previous, pending, or anticipated assistance. Use additional sheets, if needed.

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Attachment M

OMB Approval No. 09-00104

INSTRUCTION

PART II - SECTION B

11. SITES AND IMPROVEMENTS: _____ Not required. _____ Attached as exhibits Applicant intends to acquire the site through: _____ Eminent domain _____ Negotiated purchase. _____ Other means (specify)
12. TITLE OR OTHER INTEREST IN THE SITE IS OR WILL BE VESTED IN: _____ Applicant. _____ Agency or institution operating the facility. _____ Other (specify)
13. INDICATE WHETHER APPLICANT/OPERATOR HAS: _____ Fee simple title _____ Leasehold interest. _____ Other (specify)
14. IF APPLICANT/OPERATOR HAS LEASEHOLD INTEREST, GIVE THE FOLLOWING INFORMATION: a. Length of lease or other estate interest _____, and number of years to run _____ b. Is lease renewable? _____ Yes _____ No c. Current appraised value of land \$ _____ d. Annual rental rate \$ _____
15. ATTACH AN OPINION FROM ACCEPTABLE TITLE COUNSEL DESCRIBING THE INTEREST APPLICANT/OPERATOR HAS IN THE SITE AND CERTIFYING THAT THE ESTATE OR INTEREST IS LEGAL AND VALID.
16. WHERE APPLICABLE, ATTACH SITE SURVEY, SOIL INVESTIGATION REPORTS AND COPIES OF LAND APPRAISALS.
17. WHERE APPLICABLE, ATTACH CERTIFICATION FROM ARCHITECT ON THE FEASIBILITY OF IMPROVING EXISTING SITE TOPOGRAPHY.
18. ATTACH PLOT PLAN.
19. CONSTRUCTION SCHEDULE ESTIMATES: _____ Not required. _____ Being prepared, _____ Attached as exhibits Percentage of completion of drawings and specifications at application date: Schematics _____ % Preliminary _____ % Final _____ %
20. TARGET DATES FOR: Bid Advertisement _____ Contract Award _____ Construction Completion _____ Occupancy _____
21. DESCRIPTION OF FACILITY: _____ Not required _____ Attached as exhibits Drawings - Attach any drawings which will assist in describing the project. Specifications - Attach copies of completed outline specifications. (If drawings and specifications have not been fully completed, please attach copies or working drawings that have been completed.)

NOTE: ITEMS ON THIS SHEET ARE SELF-EXPLANATORY. THEREFORE, NO INSTRUCTIONS ARE PROVIDED.

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Attachment M

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OMB NO. 50-R0184

PART III - BUDGET INFORMATION - CONSTRUCTION**SECTION A - GENERAL**

1. Federal Domestic Assistance Catalog No.
2. Functional or Other Breakout

SECTION B - CALCULATION OF FEDERAL GRANT

Cost Classification	Use only for revisions		Total Amount Required
	Latest Approved Amount	Adjustment + or (-)	
1. Administration expense	\$	\$	\$
2. Preliminary expense			
3. Land, structures, right-of-way			
4. Architectural engineering basic fees			
5. Other architectural engineering fees			
6. Project inspection fees			
7. Land development			
8. Relocation Expenses			
9. Relocation payments to individuals and Businesses			
10. Demolition and removal			
11. Construction and project improvement			
12. Equipment			
13. Miscellaneous			
14. Total (Lines 1 through 13)			
15. Estimated Income (if applicable)			
16. Net Project Amount (Line 14 minus 15)			
17. Less: Ineligible Exclusions			
18. Add: Contingencies			
19. Total Project Amt. (Excluding Rehabilitation Grants)			
20. Federal Share requested of Line 19			
21. Add Rehabilitation Grants Requested (100 Percent)			
22. Total Federal grant requested (Lines 20 & 21)			
23. Grantee share			
24. Other shares			
25. Total project (Lines 22, 23 & 24)	\$	\$	\$

Exhibit M-4. Application for Federal Assistance (for Construction Programs)

(Page 8 of 14)

Attachment M

INSTRUCTIONS

PART III

Section A. General

1. Show the Federal Domestic Assistance Catalog Number from which the assistance is requested. When more than one program or Catalog Number is involved and the amount cannot be distributed to the Federal grant program or catalog number on an overall percentage basis, prepare a separate set of Part III forms for each program or Catalog Number. However, show the total amounts for all programs in Section B of the basic application form.
2. Show the functional or other categorical breakdowns, if required by the Federal grantor agency. Prepare a separate set of Part III forms for each category.

Section B. Calculation of Federal Grant

When applying for a new grant, use the Total Amount Column only. When requesting revisions of previously awarded amounts, use all columns.

Line 1 - Enter amounts needed for administration expenses including such items as travel, legal fees, rental of vehicles and any other expense items expected to be incurred to administer the grant. Include the amount of interest expense when authorized by program legislation and also show this amount under Section E Remarks.

Line 2 - Enter amounts pertaining to the work of locating and designing, making surveys and maps, sinking test holes, and all other work required prior to actual construction.

Line 3 - Enter amounts directly associated with the acquisition of land, existing structures, and related right-of-way.

Line 4 - Enter basic fees for architectural engineering services.

Line 5 - Enter amounts for other architectural engineering services, such as surveys, tests, and borings.

Line 6 - Enter fees for inspection and audit of construction and related programs.

Line 7 - Enter amounts associated with the development of land where the primary purpose of the grant is land improvement. Site work normally associated with major construction should be excluded from this category and shown on Line 11.

Line 8 - Enter the dollar amounts needed to provide relocation advisory assistance, and the net amounts for replacement (last resort) housing. Do not include relocation administration expenses on this Line; include them on Line 1.

Line 9 - Enter the estimated amount of relocation payments to be made to displaced persons, business concerns and non-profit organizations for moving expenses and replacement housing.

Line 10 - Enter the gross salaries and wages of employees of the grantees who will be directly engaged in performing demolition or removal of structures from developed land. This line should show also the cost of demolition or

removal of improvements on developed land under a third party contract. Reduce the costs on this line by the amount of expected proceeds from the sale of salvage, if so instructed by the Federal grantor agency. Otherwise, show the proceeds on Line 15.

Line 11 - Enter amounts for the actual construction of, addition to, or restoration of a facility. Also include in this category the amounts of project improvements such as sewers, streets, landscaping and lighting.

Line 12 - Enter amounts for equipment both fixed and movable exclusive of equipment used for construction. For example, include amounts for permanently attached laboratory tables, built-in audio visual systems, movable desks, chairs, and laboratory equipment.

Line 13 - Enter amounts for items not specifically mentioned above.

Line 14 - Enter the sum of Lines 1-13.

Line 15 - Enter the estimated amount of program income that will be earned during the grant period and applied to the program.

Line 16 - Enter the difference between the amount on Line 14 and the estimated income shown on Line 15.

Line 17 - Enter amounts for those items which are part of the project but not subject to Federal participation (See Section C, Line 26g, Column (1)).

Line 18 - Enter the estimated amount for contingencies. Compute this amount as follows. Subtract from the net project amount shown on Line 16 the ineligible project exclusions shown on Line 17 and the amount which is excluded from the contingency provisions shown in Section C, Line 26g, Column (2). Multiply the computed amount by the percentage factor allowed by the grantor agency in accordance with the Federal program guidance. For those grants which provide for a fixed dollar allowance in lieu of a percentage allowance, enter the dollar amount of this allowance.

Line 19 - Show the total amount of Lines 16, 17, and 18. (This is the amount to which the matching share ratio prescribed in program legislation is applied.)

Line 20 - Show the amount of Federal funds requested exclusive of funds for rehabilitation purposes.

Line 21 - Enter the estimated amounts needed for rehabilitation expense if rehabilitation grants to individuals are made for which grantees are reimbursed 100 percent by the Federal grantor agency in accordance with program legislation. If the grantees share in part of this expense show the total amount on Line 13 instead of on Line 21 and explain in Section E.

Line 22 - Show the total amount of the Federal grant requested.

Line 23 - Show the amount from Section D, Line 27h.

Line 24 - Show the amount from Section D, Line 28c.

Line 25 - Self-explanatory.

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Attachment M

OMB Approval No. 00-20184

SECTION C - EXCLUSIONS

Classification	Ineligible for Participation (1)	Excluded from Contingency Provision (2)
26		
a	\$	\$
b		
c		
d		
e		
f		
g		
Totals	\$	\$

SECTION D - PROPOSED METHOD OF FINANCING NON-FEDERAL SHARE

27. Grantee Share	\$
a. Securities	
b. Mortgages	
c. Appropriations (By Applicant)	
d. Bonds	
e. Tax Levies	
f. Non Cash	
g. Other (Explain)	
h. TOTAL - Grantee share	
28. Other Shares	
a. State	
b. Other	
c. Total Other Shares	
29. TOTAL	\$

SECTION E - REMARKS

PART IV PROGRAM NARRATIVE (Attach - See Instructions)
 Exhibit M-4. Application for Federal Assistance (for Construction Programs)

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Attachment M

INSTRUCTIONS

PART III

Section C. Exclusions

Line 26 a-g - Identify and list those costs in Column (1) which are part of the project cost but are not subject to Federal participation because of program legislation or Federal grantor agency instructions. The total amount on Line g should agree with the amount shown on Line 17 of Section B. Show in Column (2) those project costs that are subject to Federal participation but are not eligible for inclusion in the amount used to compute contingency amounts as provided in the Federal grantor agency instructions.

Section D. Proposed Method of Financing Non-Federal Share

Line 27 a-g - Show the source of the grantee's share. If cash is not immediately available, specify the actions completed to date and those actions remaining to make cash available under Section E Remarks. Indicate also the period of time that will be required after execution of the grant agreement to obtain the funds. If there is a noncash contribution, explain what this contribution will consist of.

Line 27 h - Show the total of Lines 27 a-g. This amount must equal the amount shown in Section B, Line 23.

Line 28 a - Show the amount that will be contributed by a State or state agency, *only* if the applicant is *not* a State or state agency. If there is a noncash contribution, explain what the contribution will consist of under Section E Remarks.

Line 28 b - Show the amount that will be contributed from other sources. If there is a noncash contribution, explain what this contribution will consist of under Section E Remarks.

Line 28 c - Show the total of Lines 28a and 28b. This amount must be the same as the amount shown in Section B, line 24.

Line 29 - Enter the totals of Line 27h and Line 28c.

Section E. Other Remarks

Make any remarks pertinent to the project and provide any other information required by these instructions or the grantor agency. Attach additional sheets, if necessary.

PART IV
PROGRAM NARRATIVE

Prepare the program narrative statement in accordance with the following instructions for all new grant programs. Requests for supplemental assistance should be responsive to Item 5b only. Requests for continuation or refunding or other changes of an approved project should be responsive to Item 5c only.

1. OBJECTIVES AND NEED FOR THIS ASSISTANCE.

Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

2. RESULTS OR BENEFITS EXPECTED.

Identify results and benefits to be derived. For example, include a description of who will occupy the facility and show how the facility will be used. For land acquisition or development projects, explain how the project will benefit the public.

3. APPROACH.

- a. Outline a plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each grant program. Cite factors which might accelerate or decelerate the work and your reason for taking this approach as opposed to others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements.
- b. Provide for each grant program monthly or quarterly quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and their target dates.
- c. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the

needs identified and discussed are being met and if the results and benefits identified in Item 2 are being achieved.

- d. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

4. GEOGRAPHIC LOCATION.

Give a precise location of the project and area to be served by the proposed project. Maps or other graphic aids may be attached.

5. IF APPLICABLE, PROVIDE THE FOLLOWING INFORMATION:

- a. Describe the relationship between this project and other work planned, anticipated, or underway under the Federal Assistance listed under Part II, Section A, Item 10.
- b. Explain the reason for all requests for supplemental assistance and justify the need for additional funding.
- c. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach or time delays, explain and justify. For other requests for changes or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded or if individual budget items have changed more than the prescribed limits contained in Attachment K, ~~Exhibit A-7a~~ explain and justify the change and its effect on the project.

Attachment M

PART V

ASSURANCES

The applicant hereby assures and certifies that he will comply with the regulations, policies, guidelines and requirements, including Office of Management and Budget Circulars Nos. A-87, A-88, and A-102, as they relate to the application, acceptance and use of Federal funds for this federally-assisted project. Also, the applicant gives assurance and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with the provisions of: Executive Order 11298, relating to evaluation of flood hazards, and Executive Order 11298, relating to the prevention, control, and abatement of water pollution.
3. It will have sufficient funds available to meet the non-Federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes constructed.
4. It will obtain approval by the appropriate Federal agency of the final working drawings and specifications before the project is advertised or placed on the market for bidding; that it will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved plans and specifications; that it will submit to the appropriate Federal agency for prior approval changes that alter the costs of the project, use of space, or functional layout; that it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the construction grant program(s) have been met.
5. It will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the Federal grantor agency may require.
6. It will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable Federal, State and local agencies for the maintenance and operation of such facilities.
7. It will give the grantor agency and the Comptroller General through any authorized representative access to and the right to examine all records, books, papers, or documents related to the grant.
8. It will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A117.1-1961, as modified (41 CFR 101-17.703). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.
9. It will cause work on the project to be commenced within a reasonable time after receipt of notification from the approving Federal agency that funds have been approved and that the project will be prosecuted to completion with reasonable diligence.
10. It will not dispose of or encumber its title or other interests in the site and facilities during the period of Federal interest or while the Government holds bond, whichever is the longer.
11. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
12. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
13. It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.
14. It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with Office of Management and Budget Circular No. A-102.
15. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
16. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.

Exhibit M-4. Application for Federal Assistance (For Construction Programs)

(Page 13 of 14)

PART V

ASSURANCES CONTINUED

17. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be utilized in the project is under consideration for listing by the EPA.
18. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
19. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

1300.17

Attachment M

OMB Approval No. 05-P011

FEDERAL ASSISTANCE		2. APPLICANT'S APPLICATION	3. STATE APPLICATION IDENTIFIER	4. NUMBER	5. DATE
1. TYPE OF ACTION (Mark appropriate box.)	☐ PREAPPLICATION ☐ APPLICATION ☐ NOTIFICATION OF INTENT (Opt.) ☐ REPORT OF FEDERAL ACTION	a. NUMBER b. DATE Year month day 19	a. NUMBER b. DATE Year month day 19		
4. LEGAL APPLICANT/BENEFICIARY			5. FEDERAL EMPLOYER IDENTIFICATION NO.		
a. Applicant Name b. Organization Unit c. Street/P.O. Box d. City e. State f. Contact Person (Name & telephone No.)			a. County b. ZIP Code		
7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT			6. PROGRAM (From Federal Catalog)		
10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)			8. TYPE OF APPLICANT/BENEFICIARY		
11. ESTIMATED NUMBER OF PERSONS BENEFITING			A—State B—Territory C—County D—City E—School District F—Special Purpose District G—Community Action Agency H—Higher Educational Institution I—Indian Tribe J—Other (Specify):		
13. PROPOSED FUNDING			9. TYPE OF ASSISTANCE		
a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00			A—Basic Grant B—Supplemental Grant C—Loan D—Insurance E—Other (Specify):		
14. CONGRESSIONAL DISTRICTS OF:			12. TYPE OF APPLICATION		
a. APPLICANT b. PROJECT 16. PROJECT START DATE Year month day 17. PROJECT DURATION Months 18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY Year month day 19			A—New B—Renewal C—Revision D—Continuation E—Augmentation		
20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)			15. TYPE OF CHANGE (For 12 c or 12 a)		
21. REMARKS ADDED			A—Increase Dollars B—Decrease Dollars C—Increase Duration D—Decrease Duration E—Cancellation F—Other (Specify):		
22. THE APPLICANT CERTIFIES THAT:			23. CERTIFYING REPRESENTATIVE		
a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved. b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached.			a. TYPED NAME AND TITLE b. SIGNATURE c. DATE SIGNED Year month day 19		
24. AGENCY NAME			25. APPLICATION RECEIVED 19		
26. ORGANIZATIONAL UNIT			27. ADMINISTRATIVE OFFICE		
29. ADDRESS			28. FEDERAL APPLICATION IDENTIFICATION		
31. ACTION TAKEN			30. FEDERAL GRANT IDENTIFICATION		
☐ a. AWARDED ☐ b. REJECTED ☐ c. RETURNED FOR AMENDMENT ☐ d. DEFERRED ☐ e. WITHDRAWN			32. FUNDING a. FEDERAL \$.00 b. APPLICANT .00 c. STATE .00 d. LOCAL .00 e. OTHER .00 f. TOTAL \$.00		
33. ACTION DATE Year month day 19			34. STARTING DATE Year month day 19		
35. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)			36. ENDING DATE Year month day 19		
38. FEDERAL AGENCY A-95 ACTION			37. REMARKS ADDED		
a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made.			b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)		

STANDARD FORM 604 PAGE 1 (Rev. 4-77)
Prescribed by OMB Circular A-102

1300.17

Attachment M

SECTION IV—REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

GENERAL INSTRUCTIONS

This is a multi-purpose standard form. First, it will be used by applicants as a required facesheet for pre-applications and applications submitted in accordance with OMB Circular A-102. Second, it will be used by Federal agencies to report to clearinghouses on major actions taken on applications reviewed by clearinghouses in accordance with OMB Circular A-95. Third, it will be used by Federal agencies to notify States of grants-in-aid awarded in accordance with Treasury Circular 1062. Fourth, it may be used, on an optional basis, as a notification of intent from applicants to clearinghouses, as an early initial notice that Federal assistance is to be applied for (clearinghouse procedures will govern).

APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I. If an item is not applicable, write "NA". If additional space is needed, insert an asterisk "*" and use the remarks section on the back of the form. An explanation follows for each item.

- | Item | Item |
|--|---|
| 1. Mark appropriate box. Pre-application and application guidance is in OMB Circular A-102 and Federal agency program instructions. Notification of intent guidance is in Circular A-95 and procedures from clearinghouse. Applicant will not use "Report of Federal Action" box. | 10. Governmental unit where significant and meaningful impact could be observed. List only largest unit or units affected, such as State, county, or city. If entire unit affected, list it rather than subunits. |
| 2a. Applicant's own control number, if desired. | 11. Estimated number of persons directly benefiting from project. |
| 2b. Date Section I is prepared. | 12. Use appropriate code letter. Definitions are: |
| 3a. Number assigned by State clearinghouse, or if delegated by State, by area-wide clearinghouse. All requests to Federal agencies must contain this identifier if the program is covered by Circular A-95 and required by applicable State/area-wide clearinghouse procedures. If in doubt, consult your clearinghouse. | A. New. A submittal for the first time for a new project. |
| 3b. Date applicant notified of clearinghouse identifier. | B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year. |
| 4a-4h. Legal name of applicant/recipient, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of person who can provide further information about this request. | C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease). |
| 5. Employer identification number of applicant as assigned by Internal Revenue Service. | D. Continuation. An extension for an additional funding/budget period for a project the agency initially agreed to fund for a definite number of years. |
| 6a. Use Catalog of Federal Domestic Assistance number assigned to program under which assistance is requested. If more than one program (e.g., joint-funding) write "multiple" and explain in remarks. If unknown, cite Public Law or U.S. Code. | E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged. |
| 6b. Program title from Federal Catalog. Abbreviate if necessary. | 13. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of the change. For decreases enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakdowns in remarks. Item definitions: 13a, amount requested from Federal Government; 13b, amount applicant will contribute; 13c, amount from State, if applicant is not a State; 13d, amount from local government, if applicant is not a local government; 13e, amount from any other sources, explain in remarks. |
| 7. Brief title and appropriate description of project. For notification of intent, continue in remarks section if necessary to convey proper description. | 14a. Self explanatory. |
| 8. Mostly self-explanatory. "City" includes town, township or other municipality. | 14b. The district(s) where most of actual work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide." |
| 9. Check the type(s) of assistance requested. The definitions of the terms are: | 15. Complete only for revisions (item 12c), or augmentations (item 12e). |
| A. Basic Grant. An original request for Federal funds. This would not include any contribution provided under a supplemental grant. | 16. Approximate date project expected to begin (usually associated with estimated date of availability of funding). |
| B. Supplemental Grant. A request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share). | 17. Estimated number of months to complete project after Federal funds are available. |
| C. Loan. Self explanatory. | 18. Estimated date pre-application/application will be submitted to Federal agency if this project requires clearinghouse review. If review not required, this date would usually be same as date in item 2b. |
| D. Insurance. Self explanatory. | |
| E. Other. Explain on remarks page. | |

Attachment M

- | Item | Item |
|--|---|
| 19. Existing Federal identification number if this is not a new request and directly relates to a previous Federal action. Otherwise write "NA". | 20. Indicate Federal agency to which this request is addressed. Street address not required, but do use ZIP. |
| | 21. Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached. |

APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete items 23a, 23b, and 23c. If clearinghouse review is required, item 22b must be fully completed. An explanation follows for each item:

- | Item | Item |
|--|---|
| 22b. List clearinghouses to which submitted and show in appropriate blocks the status of their responses. For more than three clearinghouses, continue in remarks section. All written comments submitted by or through clearinghouses must be attached. | 23b. Self explanatory. |
| 23a. Name and title of authorized representative of legal applicant. | 23c. Self explanatory. |
| | Note: Applicant completes only Sections I and II. Section III is completed by Federal agencies. |

FEDERAL AGENCY PROCEDURES FOR SECTION III

If applicant-supplied information in Sections I and II needs no updating or adjustment to fit the final Federal action, the Federal agency will complete Section III only. An explanation for each item follows:

- | Item | Item |
|---|---|
| 24. Executive department or independent agency having program administration responsibility. | 35. Name and telephone no. of agency person who can provide more information regarding this assistance. |
| 25. Self explanatory. | 36. Date after which funds will no longer be available. |
| 26. Primary organizational unit below department level having direct program management responsibility. | 37. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks. |
| 27. Office directly monitoring the program. | 38. For use with A-95 action notices only. Name and telephone of person who can assure that appropriate A-95 action has been taken—If same as person shown in item 35, write "same". If not applicable, write "NA". |
| 28. Use to identify non-award actions where Federal grant identifier in item 30 is not applicable or will not suffice. | |
| 29. Complete address of administering office shown in item 26. | |
| 30. Use to identify award actions where different from Federal application identifier in item 26. | |
| 31. Self explanatory. Use remarks section to amplify where appropriate. | |
| 32. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, break out in remarks. For multiple program funding, use totals and show program breakouts in remarks. Item definitions: 32a, amount awarded by Federal Government; 32b, amount applicant will contribute; 32c, amount from State, if applicant is not a State; 32d, amount from local government if applicant is not a local government; 32e, amount from any other sources, explain in remarks. | |
| 33. Date action was taken on this request. | |
| 34. Date funds will become available. | |

Federal Agency Procedures—special considerations

- A. *Treasury Circular 1082 compliance.* Federal agency will assure proper completion of Sections I and III. If Section I is being completed by Federal agency, all applicable items must be filled in. Addresses of State Information Reception Agencies (SIRAs) are provided by Treasury Department to each agency. This form replaces SF 240, which will no longer be used.
- B. *OMB Circular A-95 compliance.* Federal agency will assure proper completion of Sections I, II, and III. This form is required for notifying all reviewing clearinghouses of major actions on all programs reviewed under A-95. Addresses of State and area-wide clearinghouses are provided by OMB to each agency. Substantive differences between applicant's request and/or clearinghouse recommendations, and the project as finally awarded will be explained in A-95 notifications to clearinghouses.
- C. *Special note.* In most, but not all States, the A-95 State clearinghouse and the (TC 1082) SCIRA are the same office. In such cases, the A-95 award notice to the State clearinghouse will fulfill the TC 1082 award notice requirement to the State SCIRA. Duplicate notification should be avoided.

1300.17

Attachment M

3

OMB NO. 50-R0105

APPLICATION FOR FEDERAL ASSISTANCE (Short Form)

PART II - BUDGET DATA

Object Class Categories	Current Approved Budget (a)	Change Requested (b)	New or Revised Budget (c)
1. Personnel			
2. Fringe Benefits			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Construction			
8. Other			
9. Total Direct Charges			
10. Indirect Charges			
11. TOTAL			
12. Federal Share			
13. Non-Federal Share			
14. Program Income			
15. Detail on Indirect Costs:			
Type of Rate (Mark one box)	☐ Provisional	☐ Predetermined	
	☐ Final	☐ Fixed	
Rate _____ % Base \$ _____ Total Amount \$ _____			

PART III

Program Narrative Statement

(Attach additional sheets, if necessary)

1300.17

Attachment M

INSTRUCTIONS

PART II

Items 1-11 - Enter on Lines 1-11 in Column (c) the total amounts needed for the project. If this is an application for new grants, leave Columns (a) and (b) blank. If this is an application for amendments, changes or supplements, show the current approved budget in Column (a); enter in Column (b) on the appropriate line(s) the amount of the change, amendment or supplement, add each line entry in Column (a) to the line entries in Column (b); and enter the total for each line in Column (c). The amounts shown in Column (c) represent the amount of the new or revised grant budget.

Item 12 - Enter the Federal share of the amount on Line 11.

Line 13 - Enter the non-Federal share of the amount on Line 11.

Item 14 - Enter the amount of estimated income, if any, which will be applied to the grant. Do not add or subtract

this amount from the total project amount. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant award.

Item 15 - Enter the type of indirect cost rate (provisional, predetermined, final or fixed), the rate that will be in effect during the funding period, and the amount of the base to which the rate is applied.

INSTRUCTIONS

PART III

The program narrative statement should be brief, preferably one or two paragraphs which show the need, objectives, approach, the geographical location of the project and the benefits expected to be obtained from the assistance. Also attach any data that may be needed to establish the applicant's eligibility for receiving assistance under the Federal program.

Attachment M

PART IV

ASSURANCES

The Applicant hereby assures and certifies that he will comply with the regulations, policies, guidelines, and requirements including OMB Circulars Nos. A-87, A-86, and A-102, as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. Also the Applicant assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.
3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.
4. It will comply with requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.
5. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
6. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.
7. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
8. It will give the grantor agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.
9. It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with Office of Management and Budget Circular No. A-102.
10. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
11. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

Exhibit M-5. Application for Federal Assistance (Short Form)

PART V (Continued)

The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

12. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.0) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

Exhibit M-5. Application for Federal Assistance (Short Form)

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ATTACHMENT N
Circular No. A-102

PROPERTY MANAGEMENT STANDARDS

1. This Attachment prescribes uniform standards governing the utilization and disposition of property furnished by the Federal Government or acquired in whole or in part with Federal funds or whose cost was charged to a project supported by a Federal grant. Federal grantor agencies shall require grantees to observe these standards under grants from the Federal Government and shall not impose additional requirements unless specifically required by Federal law. The grantees shall be authorized to use their own property management standards and procedures as long as the provisions of this Attachment are included.

2. The following definitions apply for the purpose of this Attachment:

a. Real property. Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

b. Personal property. Personal property of any kind except real property. It may be tangible -- having physical existence, or intangible -- having no physical existence, such as patents, inventions, and copyrights.

c. Nonexpendable personal property. Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that such definition would at least include all tangible personal property as defined above.

d. Expendable personal property. Expendable personal property refers to all tangible personal property other than nonexpendable property.

e. Excess property. Excess property means property under the control of any Federal agency which, as determined by the head thereof, is no longer required for its needs or discharge of its responsibilities.

f. Acquisition cost of purchased nonexpendable personal property. Acquisition cost of an item of purchased nonexpendable personal property means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

g. Exempt property. Exempt property means tangible personal property acquired in whole or in part with Federal funds, and title to which is vested in the recipient without further obligation to the Federal Government except as provided in subparagraph 6a below. Such unconditional vesting of title will be pursuant to any Federal legislation that provides the Federal sponsoring agency with adequate authority.

3. Real property. Each Federal grantor agency shall prescribe requirements for grantees concerning the use and disposition of real property funded partly or wholly by the Federal Government. Unless otherwise provided by statute, such requirements, as a minimum, shall contain the following:

a. Title to real property shall vest in the recipient subject to the condition that the grantee shall use the real property for the authorized purpose of the original grant as long as needed.

b. The grantee shall obtain approval by the grantor agency for the use of the real property in other projects when the grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs, or programs that have purposes consistent with those authorized for support by the grantor.

c. When the real property is no longer needed as provided in a and b above, the grantee shall request disposition instructions from the Federal agency or its successor Federal agency. The Federal agency shall observe the following rules in the disposition instructions:

(1) The grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by

applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(2) The grantee may be directed to sell the property under guidelines provided by the Federal agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the grantee shall be entitled to compensation computed by applying the grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

4. Federally-owned nonexpendable personal property. Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal agency. Upon completion of the agreement or when the property is no longer needed, the grantee shall report the property to the Federal agency for further agency utilization.

If the Federal agency has no further need for the property, it shall be declared excess and reported to the General Services Administration. Appropriate disposition instructions will be issued to the recipient after completion of the Federal agency review.

5. Exempt property. When statutory authority exists title to nonexpendable personal property acquired with project funds shall be vested in the recipient upon acquisition unless it is determined that to do so is not in the furtherance of the objectives of the Federal sponsoring agency. When title is vested in the recipient the recipient shall have no other obligation or accountability to the Federal Government for its use or disposition except as provided in 6a below.

6. Other nonexpendable property. When other nonexpendable tangible property is acquired by a grantee with project funds

title shall not be taken by the Federal Government but shall vest in the grantee subject to the following conditions:

a. Right to transfer title. For items of nonexpendable personal property having a unit acquisition cost of \$1,000 or more, the Federal agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such reservation shall be subject to the following standards:

(1) The property shall be appropriately identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal agency shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal agency fails to issue disposition instructions within the 120 calendar-day period, the grantee shall apply the standards of subparagraph 6b and 6c as appropriate.

(3) When the Federal agency exercises its right to take title, the personal property shall be subject to the provisions for federally-owned nonexpendable property discussed in paragraph 4, above.

(4) When title is transferred either to the Federal Government or to a third party, the provisions of subparagraph 6c(2)(b) should be followed.

b. Use of other tangible nonexpendable property for which the grantee has title.

(1) The grantee shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the grantee shall use the property in connection with its other federally sponsored activities, in the following order of priority:

(a) Activities sponsored by the same Federal agency.

(b) Activities sponsored by other Federal agencies.

(2) Shared use. During the time that nonexpendable personal property is held for use on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal agency that financed the property; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal agency. User charges should be considered if appropriate.

c. Disposition of other nonexpendable property. When the grantee no longer needs the property as provided in 6b above, the property may be used for other activities in accordance with the following standards:

(1) Nonexpendable property with a unit acquisition cost of less than \$1,000. The grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(2) Nonexpendable personal property with a unit acquisition cost of \$1,000 or more. The grantee may retain the property for other uses provided that compensation is made to the original Federal agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the grantee has no need for the property and the property has further use value, the grantee shall request disposition instructions from the original grantor agency.

The Federal agency shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Federal agency to determine whether a requirement for the property exists in other Federal agencies. The Federal agency shall issue instructions to the grantee no later than 120 days after the grantee request and the following procedures shall govern:

Attachment N

(a) If so instructed or if disposition instructions are not issued within 120 calendar days after the grantee's request, the grantee shall sell the property and reimburse the Federal agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the grantee shall be permitted to deduct and retain from the Federal share \$100 or ten percent of the proceeds, whichever is greater, for the grantee's selling and handling expenses.

(b) If the grantee is instructed to ship the property elsewhere the grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(c) If the grantee is instructed to otherwise dispose of the property, the grantee shall be reimbursed by the Federal agency for such costs incurred in its disposition.

d. Property management standards for nonexpendable property. The grantee's property management standards for nonexpendable personal property shall include the following procedural requirements:

(1) Property records shall be maintained accurately and shall include:

(a) A description of the property.

(b) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(c) Source of the property including grant or other agreement number.

(d) Whether title vests in the grantee or the Federal Government.

(e) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(f) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for

which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(g) Location, use and condition of the property and the date the information was reported.

(h) Unit acquisition cost.

(i) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a grantee compensates the Federal agency for its share.

(2) Property owned by the Federal Government must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The grantee shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the grantee shall promptly notify the Federal agency.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) Where the grantee is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

7. Expendable personal property. Title to expendable personal property shall vest in the grantee upon acquisition. If there is a residual inventory of such property exceeding \$1,000 in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other federally sponsored project or program, the grantee shall retain the property for use on nonfederally sponsored activities, or

sell it, but must in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as nonexpendable personal property.

8. Intangible property.

a. Inventions and patents. If any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored by the Federal Government, such fact shall be promptly and fully reported to the Federal agency. Unless there is a prior agreement between the grantee and the Federal agency on disposition of such items, the Federal agency shall determine whether protection on the invention or discovery shall be sought. The Federal agency will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

b. Copyrights. Except as otherwise provided in the terms and conditions of the agreement the author or the grantee organization is free to copyright any books, publications, or other copyrightable materials developed in the course of or under a Federal agreement, but the Federal agency shall reserve a royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

9. Excess personal property. When title to excess property is vested in grantees such property shall be accounted for and disposed of in accordance with paragraphs 6c and 6d of this attachment.

ATTACHMENT O
Circular No. A-102

PROCUREMENT STANDARDS

1. Applicability

a. This Attachment establishes standards and guidelines for the procurement of supplies, equipment, construction and services for Federal assistance programs. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and executive orders.

b. No additional procurement requirements or subordinate regulations shall be imposed upon grantees by executive agencies unless specifically required by Federal law or executive orders or authorized by the Administrator for Federal Procurement Policy. This prohibition is not applicable to payment conditions issued in accordance with Treasury Circular 1075, individual grantee requirements pursuant to Section 10 of the basic circular or the provisions of this or other OMB circulars.

c. Provisions of current subordinate requirements not conforming to this Attachment shall be rescinded by grantor agencies unless approved by the Office of Federal Procurement Policy (OFPP).

2. Grantee/Grantor Responsibility

a. These standards do not relieve the grantee of any contractual responsibilities under its contracts. The grantee is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered in support of a grant. These include but are not limited to source evaluation, protests, disputes, and claims. Executive agencies shall not substitute their judgment for that of the grantee unless the matter is primarily a Federal concern. Violations of law are to be referred to the local, State, or Federal authority having proper jurisdiction.

b. Grantees shall use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements for Federal Assistance Programs

conform to the standards set forth in this Attachment and applicable Federal law.

3. Grantee Procurement Improvement

Executive agencies awarding Federal grants or other assistance which require or allow for procurement by the recipients are encouraged to assist recipients in improving their procurement capabilities by providing them with technical assistance training, publications, and other aid.

4. Procurement System Reviews

a. Executive agencies are encouraged to perform reviews of their grantees' procurement systems if a continuing relationship with the grantee is anticipated or a substantial amount of the Federal assistance is to be used for procurement and review of individual contracts is anticipated. The purpose of the review shall be to determine: (1) whether a grantee's procurement system meets the standards prescribed by this Attachment or other criteria acceptable to the OFPP, such provisions of the Model Procurement Code for State and local government; and (2) whether the grantee's procurement system should be certified by the reviewing agency. Such a review will also give an agency an opportunity to give technical assistance to a grantee to remedy its procurement system if it does not fully comply. In addition, such a review may provide a basis for deciding whether the grantee's contracts and related procurement documents should be subject to the grantor's prior approval, as provided by Section 6.

b. In conducting procurement system review, grantor agencies will evaluate a grantee's procurement system in terms of whether it complies with the standards prescribed by this Attachment and represents a fair, efficient and effective procurement system. To the maximum extent feasible, reviewers will rely upon State or local evaluations and analyses performed by agencies or organizations independent of the grantee contracting activity.

c. When a Federal grantor agency completes a procurement review, it shall furnish a report to the grantee, with a copy to OFPP.

d. All agencies should normally rely upon the resultant findings or certification for a period of 24 months before another review is performed.

e. Reviews shall be conducted in accordance with standards and guidelines approved or issued by OFPP.

f. The reviews authorized by Section 6 are waived if a grantee's procurement system is certified.

5. Protest Procedures

a. Grantor agencies may develop an administrative procedure to handle complaints or protests regarding grantee contractor selection actions. The procedure shall be limited as follows:

a. No protest shall be accepted by the grantor agency until all administrative remedies at the grantee level have been exhausted.

b. Review is limited to:

(i) Violations of Federal law or regulations. Violations of State or local law shall be under the jurisdiction of State or local authorities.

(ii) Violations of grantee's protest procedures or failure to review a complaint or protest.

6. Grantor Review of Proposed Contracts

Federal grantor pre-award review and approval of the grantee's proposed contracts and related procurement documents, such as requests for proposal and invitations for bids, is permitted only under the following circumstances:

a. The procurement is expected to exceed \$10,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation.

b. The procurement expected to exceed \$10,000 specifies a "brand name" product; or

c. The grantee's procurement procedures or operation fails to comply with one or more significant aspects of this Attachment. The grantor agency shall notify the grantee in writing, with a copy of such notification to the OFPP.

7. Code of Conduct

Attachment O

Grantees shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- a. The employee, officer or agent;
- b. Any member of his immediate family;
- c. His or her partner; or
- d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The grantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

Grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

8. Procurement Procedures

The grantee shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by grantee officials to avoid the purchase of unnecessary or duplicative items. Consideration should be given to consolidation or breaking out to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, grantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

9. Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms

a. It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

(1) Including qualified small and minority businesses on solicitation lists.

(2) Assuring that small and minority businesses are solicited whenever they are potential sources.

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

(5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

(6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in 1 through 5 above.

b. Grantees shall take similar appropriate affirmative action in support of women's business enterprises.

c. Grantees are encouraged to procure goods and services from labor surplus areas.

d. Grantor agencies may impose additional regulations and requirements in the foregoing areas only to the extent specifically mandated by statute or presidential direction.

10. Selection procedures

a. All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and

free competition consistent with this Attachment. Procurement procedures shall not restrict or eliminate competition. Example of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business; (2) noncompetitive practices between firms; (3) organizational conflicts of interest; and (4) unnecessary experience and bonding requirements.

b. The grantee shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitations of offers, whether by competitive sealed bids or competitive negotiation shall:

(a) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

(b) Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

11. Method Procurement

Procurement under grants shall be made by one of the following methods, as described herein: (a) small purchase procedures; (b) competitive sealed bids (formal advertising); (c) competitive negotiation; (d) noncompetitive negotiation.

a. Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than \$10,000. Grantees shall comply with State or local small purchase dollar limits under \$10,000. If small purchase procedures are used for a procurement under a grant, price or rate quotations shall be obtained from an adequate number of qualified sources.

b. In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(1) In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum, the following:

(a) A complete, adequate and realistic specification or purchase description is available.

(b) Two or more responsible suppliers are willing and able to compete effectively for the grantee's business.

(c) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(2) If formal advertising is used for a procurement under a grant the following requirements shall apply:

(a) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(b) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(c) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(d) A firm-fix-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the grantee indicates that such discounts are generally taken.

(e) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.

c. In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under a grant, the following requirements shall apply:

(1) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(2) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(3) The grantee shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(4) Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.

(5) Grantees may utilize competitive negotiation procedures for procurement of architectural/engineering professional services, whereby competitors' qualifications are evaluated and the most qualified competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

d. Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(1) The item is available only from a single source;

(2) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;

(3) The Federal grantor agency authorizes noncompetitive negotiation; or

(4) After solicitation of a number of sources, competition is determined inadequate.

e. Additional innovative procurement methods may be used by grantees with the approval of the grantor agency. A copy of such approval shall be sent to the OFPP.

12. Contract Pricing

The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used. Grantees shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts under grants shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

13. Grantee Procurement Records

Grantees shall maintain records sufficient to detail the significant history of a procurement. These records shall

include, but are not necessarily limited to information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

14. Contract Provision

In addition to provisions defining a sound and complete procurement contract, any recipient of Federal grant funds shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by the provision, Federal law or the grantor agency.

a. Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

b. All contracts in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

c. All contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

d. All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.

e. When required by the Federal grant program legislation, all construction contracts in excess of \$2,000, awarded by grantees and subgrantees shall include a provision for compliance

with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the grantor agency.

f. Where applicable, all contracts awarded by grantees and subgrantees in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

g. The contract shall include notice of grantor agency requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of grantor agency requirements and regulations pertaining to copyrights and rights in data.

h. All negotiated contracts (except those awarded by small purchase procedures) awarded by grantees shall include a

provision to the effect that the grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

Grantees shall require contractors to maintain all required records for three years after grantees make final payments and all other pending matters are closed.

i. Contracts, subcontracts, and subgrants of amounts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the grantor agency and to the USEPA Assistant Administrator for Enforcement (EN-329).

j. Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

Grantor agencies are permitted to require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.

15. Contract Administration

Grantees shall maintain a contract administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

CIRCULAR A-102
ATTACHMENT P

AUDIT REQUIREMENTS

1. This Attachment establishes audit requirements for State and local governments, and Indian tribal governments that receive Federal assistance. It provides for independent audits of financial operations, including compliance with certain provisions of Federal law and regulation. The requirements are established to ensure that audits are made on an organization-wide basis, rather than on a grant-by-grant basis. Such audits are to determine whether (a) financial operations are conducted properly, (b) the financial statements are presented fairly, (c) the organization has complied with laws and regulations affecting the expenditure of Federal funds, (d) internal procedures have been established to meet the objectives of federally assisted programs, and (e) financial reports to the Federal Government contain accurate and reliable information. Except where specifically required by law, no additional requirements for audit will be imposed unless approved by the Office of Management and Budget.

2. Definitions.

"Cognizant agency" means the Federal agency that is assigned audit responsibility for a particular recipient organization by the Office of Management and Budget.

"Recipient organization" means a State department, a local government, an Indian tribal government, or a subdivision of such entities, that receives Federal assistance. It does not include State and local institutions of higher education or hospitals, which are covered by Circular A-110.

3. State and local governments and Indian tribal governments shall use their own procedures to arrange for independent audits, and to prescribe the scope of audits, provided that the audits comply with the requirements set forth below. Where contracts are awarded for audit services, the contracts shall include a reference to this Attachment.

4. The provisions of this Attachment do not limit the authority of Federal agencies to make audits of recipient organizations.

However, if independent audits arranged for by recipients meet the requirements prescribed below, all Federal agencies shall rely on them, and any additional audit work shall build upon the work already done.

5. Audits shall be made in accordance with the General Accounting Office Standards for Audit of Governmental Organizations, Programs, Activities and Functions, the Guidelines for Financial and Compliance Audits of Federally Assisted Programs, any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

6. Audits will include, at a minimum, an examination of the systems of internal control, systems established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of recipient organizations. These examinations are to determine whether:

a. There is effective control over and proper accounting for revenues, expenditures, assets, and liabilities.

b. The financial statements are presented fairly in accordance with generally accepted accounting principles.

c. The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data, and are presented in accordance with the terms of applicable agreements, and in accordance with Attachment H of this Circular.

d. Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

7. In order to accomplish the purposes set forth above, a representative number of charges to Federal awards shall be tested. The test shall be representative of (1) the universe of Federal awards received, and (2) all costs categories that materially affect the award. The test is to determine whether the charges:

a. Are necessary and reasonable for the proper administration of the program.

- b. Conform to any limitations or exclusions in the award.
 - c. Were given consistent accounting treatment and applied uniformly to both federally assisted and other activities of the recipient.
 - d. Were net of applicable credits.
 - e. Did not include costs properly chargeable to other federally assisted programs.
 - f. Were properly recorded (i.e., correct amount, date) and supported by source documentation.
 - g. Were approved in advance, if subject to prior approval in accordance with OMB Circular A-87.
 - h. Were incurred in accordance with competitive purchasing procedures if covered by Attachment O of this Circular.
 - i. Were allocated equitably to benefiting activities, including non-Federal activities.
8. Audits usually will be made annually, but not less frequently than every two years.
9. If the auditor becomes aware of irregularities in the recipient organization, the auditor shall promptly notify the cognizant agency and recipient management officials above the level of involvement. Irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets.
10. The audit report shall include:
- a. Financial statements, including footnotes, of the recipient organization.
 - b. The auditors' comments on the financial statements which should:
 - (1) Identify the statements examined, and the period covered.

(2) Identify the various programs under which the organization received Federal funds, and the amount of the awards received.

(3) State that the audit was done in accordance with the standards in paragraph 5.

(4) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification.

c. The auditors' comments on compliance and internal control should:

(1) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses.

(2) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements and reports.

(3) Contain an expression of positive assurance with respect to compliance with requirements for tested items, and negative assurance for untested items.

d. Comments on the accuracy and completeness of financial reports and claims for advances or reimbursement to Federal agencies.

e. Comments on corrective action taken or planned by the recipient.

11. Work papers and reports shall be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the cognizant agency of the need to extend the retention period. The audit workpapers shall be made available upon request to the cognizant agency or its designees and the General Accounting Office or its designees.

12. The Office of Management and Budget will work with Federal agencies and State and local governments to assure that recipient audits are made in accordance with the standards set forth in paragraph 5.

13. The Office of Management and Budget will designate cognizant agencies for major recipient organizations.

14. The cognizant agency shall have the following responsibilities:

a. Obtain or make quality assessment reviews of the work of non-Federal audit organizations, and provide the results to other interested audit agencies. (If a non-Federal audit organization is responsible for audits of recipients that have different cognizant audit agencies, a single quality assessment review should be arranged.)

b. Assure that all audit reports of recipients that affect federally assisted programs are received, reviewed, and distributed to appropriate Federal audit officials. These officials will be responsible for distributing audit reports to their program officials.

c. Whenever significant inadequacies in an audit are disclosed, the recipient organization will be advised and the auditor will be called upon to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient organization and Federal awarding agencies of the facts and its recommendation. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies.

d. Assure that satisfactory audit coverage is provided in a timely manner and in accordance with the provisions of this Attachment.

e. Provide technical advice and act as a liaison between Federal agencies, independent auditors, and recipient organizations.

f. Maintain a followup system on audit findings and investigative matters to assure that audit findings are resolved.

g. Inform other affected audit agencies of irregularities uncovered. The audit agencies, in turn, shall inform all appropriate officials in their agencies. State or local government law enforcement and prosecuting authorities shall also be informed of irregularities within their jurisdiction.

15. Recipients shall require subrecipients that are State and local governments or Indian tribal governments to adopt the requirements in paragraph 1 through 11 above. The recipient shall ensure that the subrecipient audit reports are received as required, and shall submit the reports to the cognizant agency. The cognizant agency will have the responsibility for these reports described in paragraph 14.

16. Small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts awarded with Federal funds. Grantees of Federal funds shall take the following affirmative action to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals as defined in P.L. 95-507 are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available, and arrange time frames for the audit so as to encourage and facilitate participation by small or disadvantaged audit firms.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small or disadvantaged firms.

d. Encourage contracting with small or disadvantaged audit firms which have traditionally audited government programs, and in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small or disadvantaged audit firms as described in paragraph a when a contract is too large for an individual small or disadvantaged audit firm.

f. Use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the Community Services Administration in the solicitation and utilization of small or disadvantaged audit firms.

U.S. Department of Housing and Urban Development

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