

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

2120 HT HB 537 - HB 558

2120

STATE OF ALASKA
 DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
POLICY AND PROCEDURES

10-0007

1 OF 4

Effective Date

October 1, 1978

SUBJECT

CRITERIA FOR THE EVALUATION OF CONSULTANTS
 (For Design & Construction Projects)

Supersedes P & P No.

Dated

New

10/10/78

APPROVED BY

Richard Blomquist

DIVISION

Commissioner

SECTION

Commissioner

CHAPTER TITLE

Policy

In accordance with A.S. 36.10.010 the firm must have the capabilities of performing a minimum of 90% of the services with Alaskan residents. If firm cannot meet this requirement then their proposal is to be recorded as non-responsive and not given further evaluation. (NOTE: on projects with Federal funds delete this restriction).

The following items will comprise the basic qualitative criteria for the evaluation of firms for performance of professional architectural and engineering design and other related services. Any firm offering professional services for a project must submit a complete team providing all basic services required for the project, otherwise they may be considered non-responsive. The evaluation will be based upon consideration of the qualifications of the sponsoring firm, its affiliated consultants, and the assembled team as a whole. When it is in the State's best interest, the qualitative data will be augmented by personal interviews with the top-ranking firms. In these interviews such aspects as time schedule, responsiveness, specific project staff, etc., can be evaluated. Point weights are included in parenthesis.

A. PHYSICAL PLANT AND MANPOWER RESOURCES

The facility and manpower (capability of the firm related to the size of the project). (0-10 points)

Criteria:

Higher score if the firm has adequate facilities and staffing in-house, prorate accordingly if the firm anticipates staffing-up to handle the job award of contract.

B. EXPERIENCE OF PROJECT TEAM

Qualifications of principle team firms for the work each is expected to perform. (0-10 points)

Criteria:

Higher score if all firms have adequate training and experience; prorate accordingly if not.

C. RELEVANT EXPERIENCE

The background of experience related to the particular facility type for the project, such as highway, airstrip, school, office building, airport terminal, hatchery, housing, etc. (0-10 points)

Criteria:

Consider the firm's previous design work similar to the project - give a maximum score when the firm (including subconsultants) has had specific experience: Zero score for no experience. Allow points for special educational courses relevant to this project scope.

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Effective Date
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CRITERIA FOR THE EVALUATION OF CONSULTANTS
(For Design & Construction Projects)

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10/27/78

APPROVED BY

[Signature]

DIVISION

Commissioner

SECTION

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CHAPTER TITLE

Policy

D. EXPERIENCE OF PROJECT MANAGER

Qualifications of the project manager.

(0-10 points)

Criteria:

Higher score if manager has substantial previous experience managing projects of similar scope and type. Prorate score accordingly, if not.

E. GEOGRAPHIC PROXIMITY

The professional's office location and major work should be performed in close geographic proximity to that of project. (0-15 points)

Criteria:

If in the same City, in the same geographic area (depending upon accessibility and communications), or if outside geographic area (depending upon accessibility and communications): prorate accordingly, least score for the latter.

F. DESIGN AND LOGISTIC CONSTRAINTS

(If, for example, thorough knowledge of arctic design requirements is desired, give heavier point weight to this criteria)

Design professionals should have previous successful experience working under design and logistic constraints equivalent to those of the project. (0-10 points)

Criteria:

Consider contemporary experience with several projects, contemporary experience with one or two projects, noncontemporary experience, or no experience: Prorate accordingly, with zero points for the latter.

G. ORIGINAL DESIGN PROFESSIONAL (this criteria is optional)

If the project is an addition or major remodeling, preference is given to the original design professional used on the existing project. If project is a follow-up of a master plan or study, partial preference may be given to the firm who performed the master plan or study. (0-10 points)

H. COMPLIANCE WITH MINORITY HIRE REGULATIONS

Extent to which firm has hired minorities and women (0-5 points)

Criteria:

Five (5) points if firm has federal or State approved plan of minority hire.

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APPROVED BY <i>Richard Danvers</i>	

SUBJECT
CRITERIA FOR THE EVALUATION OF CONSULTANTS
(For Design & Construction Projects)

DIVISION Commissioner	SECTION Commissioner	CHAPTER TITLE Policy
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I. PREVIOUS PERFORMANCE (DESIGN)

This is a measure of the firm's (or individual members of the "team's") previous performance in the design function. (0-20 points)

Criteria:

Consider ability to assimilate program data and develop alternative design options; organize and manage subconsultant's work; ability and willingness to respond and conform to the State's procedure and standards; and to fiscally manage (i.e., adhere to negotiated fee and schedule) and timely compensate subconsultants. Lastly, but certainly not least, ability to maintain the established time schedule and design the project within the established construction budget. Place an "X" on the score sheet in this category if no previous State experience; however, the experience of individual members of the firm or team with another firm or team should be prorated accordingly.

J. PREVIOUS PERFORMANCE (CONSTRUCTION)

This is a measure of the firm's (or individual members of the team's) previous performance in the construction phase. (0-10 points)

Criteria:

Consider willingness to perform all required phases of the post-bid services including:

- a. Timely review and approval of submittals and shop drawings, Contractor Pay Estimates, perform construction administration and inspection as required and respond during warranty period. Also, consider the quality of contract documents provided for previous projects. Place an "X" on the score sheet if no previous State experience; however, the experience of individual members of the firm or team (with another firm or team) should be prorated accordingly.

K. POST CONSTRUCTION

This is a measure of the effectiveness and efficiency of the facilities previously designed by the firm for the State. (0-10 points)

Criteria:

Prorate accordingly with a maximum score for a superior facility and minimum score for the other extreme. Both maintenance and operational costs should be considered in the proration. Place an "X" on the score sheet for a firm with no previous experience.

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APPROVED BY <i>Lowell L. James</i>	

SUBJECT CRITERIA FOR THE EVALUATION OF CONSULTANTS (For Design & Construction Projects)		
DIVISION Commissioner	SECTION Commissioner	CHAPTER TITLE Policy

L. MANAGEMENT STRUCTURE OF FIRMS - assuming technical capabilities the same.

Office location of team firm(s) (0-30 points)

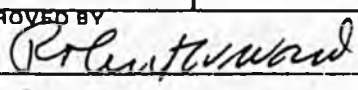
Criteria:

Office location(s) listed for team member(s); and where the decisions are being made.

- 25-30 entire team in Alaska
- 16-24 managing team in Alaska/support firm outside Alaska
- 11-15 managing team outside Alaska/support firm in Alaska
- 0-10 entire team outside Alaska

**PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.**

STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES POLICY AND PROCEDURES		P & P No. 28-8000	Page 1 OF 8
SUBJECT Selection of Professional and Specialty Services Contractors		Effective Date March 26, 1981	
		Supersedes P & P No. 10-0006	Dated 10/1/78
		APPROVED BY <i>Robert W. Ward</i>	
DIVISION Support Services	SECTION Contracts Administration	CHAPTER TITLE Procedure	
<p>1.0 PURPOSE</p> <p>1.1 To promulgate standard departmental procedures for the selection of Contractors to provide exempt professional or specialty services.</p> <p>2.0 POLICY</p> <p>2.1 To select Contractors for exempt professional and specialty services in an objective manner which is documented and results in the use of the most qualified Contractor consistent with sound financial practices.</p> <p>3.0 DISTRIBUTION</p> <p>3.1 All holders of the Policy and Procedures Manual.</p> <p>4.0 DEFINITIONS</p> <p>4.1 <u>Professional/Specialty Services</u> - Services rendered by a Contractor that require specialized knowledge and training to perform, often through long and intensive academic preparation. The term includes artistic abilities, but not manual skills. Services are not limited to those requiring professional licensing under State Law.</p> <p>4.2 <u>Exempt Services</u> - Professional and specialty services specifically related to the planning, design or construction of a capital project, for which the Department of Transportation and Public Facilities (DOT/PF) has contracting authority under Alaska Statute and/or by Agreement with the Department of Administration (DOA), to include the following examples:</p> <p style="padding-left: 40px;">Aerial Photogrammetry; Appraisals; Architectural Services; Art for Public Buildings and Facilities; Engineering Services; Land Surveys; Mapping; Materials Testing; Pre-Construction Feasibility Studies; Site Selection Studies; and Any services obtained from the University of Alaska or federal, municipal or local government agencies.</p> <p>4.3 <u>Contractor</u> - Firm (person or any business combination) providing services.</p> <p>4.4 <u>Prequalification</u> - General evaluation of Contractor capability to provide broadly defined types of services.</p>			

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<p>4.5 <u>Qualification</u> - Formal evaluation of a Contractor's capability to provide specific services.</p> <p>4.6 <u>Expression of Interest</u> - Questionnaire for specific contract(s) which contains questions and space for each response by interested Contractors (prepared in accordance with Division procedures).</p> <p>4.7 <u>Divisional Procedures</u> - Written supplemental procedures as required by reference in this document.</p> <p>4.8 <u>Short List</u> - Contractors to be considered for negotiations in the order listed, or from which technical and/or priced proposals may be solicited.</p> <p>4.9 <u>Term Contract</u> - Agreement to provide identified types of services when authorized by Notice to Proceed for specific projects.</p> <p>5.0 USE</p> <p>5.1 This Procedure applies to all contracts for exempt professional or specialty services.</p> <p>5.2 When determined by the Commissioner of DOT/PF to be in the best interest of the State, this procedure may be waived.</p> <p>6.0 SUMMARY OF PROCEDURE</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Action</u></th> <th style="text-align: right;"><u>Paragraph</u></th> </tr> </thead> <tbody> <tr> <td>Identify services required.</td> <td style="text-align: right;">7.1</td> </tr> <tr> <td>Prequalification of Contractors (Division Option).</td> <td style="text-align: right;">7.2</td> </tr> <tr> <td>If cost less than or equal to \$2,500, select Contractor (proceed to paragraph 7.16).</td> <td style="text-align: right;">7.3</td> </tr> <tr> <td>If cost greater than \$2,500, but less than or equal to \$20,000 and Contractors are Prequalified, select Contractor (proceed to paragraph 7.14).</td> <td style="text-align: right;">7.4</td> </tr> <tr> <td>If cost greater than \$2,500 (\$20,000 if Contractors Prequalified), Committee Selection required.</td> <td style="text-align: right;">7.5</td> </tr> <tr> <td>Establish Selection Committee.</td> <td style="text-align: right;">7.6</td> </tr> <tr> <td>Prepare Expression of Interest questionnaire.</td> <td style="text-align: right;">7.7</td> </tr> <tr> <td>Prepare Invitation.</td> <td style="text-align: right;">7.8</td> </tr> </tbody> </table>				<u>Action</u>	<u>Paragraph</u>	Identify services required.	7.1	Prequalification of Contractors (Division Option).	7.2	If cost less than or equal to \$2,500, select Contractor (proceed to paragraph 7.16).	7.3	If cost greater than \$2,500, but less than or equal to \$20,000 and Contractors are Prequalified, select Contractor (proceed to paragraph 7.14).	7.4	If cost greater than \$2,500 (\$20,000 if Contractors Prequalified), Committee Selection required.	7.5	Establish Selection Committee.	7.6	Prepare Expression of Interest questionnaire.	7.7	Prepare Invitation.	7.8
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<p>Distribute Invitation and Expression of Interest. 7.9</p> <p>Log in responses. 7.10</p> <p>Score responses. 7.11</p> <p>Establish Short List. 7.12</p> <p>Prepare Evaluation Report. 7.13</p> <p>Obtain Approval for Negotiations (AFN). 7.14</p> <p>Mail Short List to all respondents. 7.15</p> <p>Negotiate (technical and or priced proposals, as appropriate). 7.16</p> <p>Select Contractors, prepare and execute contract. 7.17</p> <p>7.0 PROCEDURE</p> <p>7.1 Identify services to be obtained by contract. Services may be for one or several specific projects, or for services on an "as-needed" basis under a term contract. Services which are non-exempt or which may be non-exempt must be coordinated with DOA through the DOT/PF Contracts Administration Section.</p> <p>7.2 Prequalification of Contractors (Division option) may be used for broadly defined projects or professional/specialty services in accordance with Division procedures. If prequalification is used, such procedures must include the following;</p> <p>A. Annual solicitation thru advertisement to obtain general qualifications or to update prior submittals from Contractors for the provision of services. Specific items to be included with submittals must be identified.</p> <p>B. Designation of an office of record to maintain Contractor Qualification Files. In addition to prequalification submittals, Contractor files may contain performance evaluations (memos, letters, or agency forms) for previous projects, selection reports for previous projects, and Contractor's comments concerning any evaluation or selection.</p> <p>C. Provision for a Prequalification Committee of not less than three of the Department's professional level employees to evaluate general experience and competence of Contractors. Directors may coordinate between Divisions for the appointment of personnel for such Committees.</p> <p>1. The Committee must review each file at least annually and new or updated submittals at least quarterly.</p>			

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2. In accordance with Division procedures the Committee must assign a Pre-qualification Rating for each Contractor for each type of service/project for which the Contractor's physical plant is adequate and current personnel are experienced and qualified. Assigned ratings will be retained until the next quarterly or annual review.

D. Provision for any Contractor to review its file by appointment during the Division's normal working hours.

7.3 If contract cost is less than or equal to \$2,500, select Contractor (Proceed to Paragraph 7.16).

7.4 If contract cost is greater than \$2,500, but less than or equal to \$20,000, and Contractors are Prequalified in accordance with Division procedures, select Contractor (Proceed to paragraph 7.14).

7.5 If contract cost is greater than \$2,500 (\$20,000 if Contractors are Prequalified) Committee evaluation is required.

7.6 Establish Evaluation and Selection Committee. Committees must be composed of a minimum of three persons appointed in writing by the Director or his designee. Client Agency representation must be in accordance with Division procedures.

7.7 Prepare an Expression of Interest questionnaire for the proposed contract(s) which includes:

A. Instructions for completion, including a statement that responses must be entered on the form and limited to the space provided, and an explanation of standard Department scoring procedure (paragraph 7.11).

B. Identification of project and/or services required.

C. Amount of funding available expressed by one significant figure.

D. Statement indicating if technical and/or priced proposals will be solicited from the Contractors placed on the Short List.

E. Questions relating to the proposed contract(s), addressing professional, technical and organizational capabilities. The following question must be included verbatim:

"What is the approximate percentage of total compensation under the proposed contract(s) which will be paid to Female and to Minority Business Enterprises (FMBE) and list the business name(s) and telephone number(s) of each such enterprise?"

F. Weights (paragraph 7.11) shall be assigned to each question prior to distribution of the Expression of Interest to allow each Contractor to stress those areas which are most important.

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- G. Statement concerning statutory residency requirements, if applicable.
- H. Current requirements for Affirmative Action for Equal Employment Opportunity and Female and Minority Business Enterprises.
- I. Approximate Date for Short List to be mailed.
- J. Maximum of fifteen questions.
- 7.8 Prepare an Invitation to submit the Expression of Interest which includes:
- Abbreviated definition or scope of services to be provided;
 - Desired approach and anticipated disciplines to be involved;
 - Information and/or assistance to be furnished by the Department, Division other agency or other Contractors;
 - Time constraints;
 - Number of contracts proposed for negotiations;
 - Number of copies, time and place to be submitted;
 - Any additional items expected to be submitted with the Expression of Interest;
 - Instructions for obtaining the Expression of Interest.
- 7.9 Distribute Invitation and the Expression of Interest questionnaire. If direct contact with contractors prequalified in accordance with Division procedure is not used (or if used and the contract cost is greater than \$100,000) the Invitation to submit the Expression of Interest must be advertised in local papers, state-wide papers, appropriate minority media and professional publications. The advertisement must be placed at least once in three publications, with the first advertisement appearing at least 15 calendar days before the submittal deadline.
- 7.10 Log responses. Insure that responses are not evaluated before submittal deadline and that contact with any respondent does not result in any unfair advantage or premature commitment.
- 7.11 Score responses as follows:

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SUBJECT
Selection of Professional and
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DIVISION Support Services	SECTION Contracts Administration	CHAPTER TITLE Procedure
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- A. Each question must be assigned a Weight before Expression of Interest questionnaires are distributed to Contractors. Weights will be expressed as a whole number between 1 and 100 and the sum of all weights must equal 100 (i.e. 100%). Minimum Weight of the mandatory FMBE Question is "5". If some questions are deleted from consideration by the Committee after responses are received, the assigned Weight for other questions will not be changed.
- B. Each Committee member shall rate Contractor response for each question as follows: "X" = Disqualified (submittal must be rejected) or a whole number from 0 to 5 where 0 = Unacceptable, 1 through 4 = Acceptable and 5 = Outstanding. Responses to the mandatory FMBE Question must be rated as follows: 0% = 0, 1 - 20% = 1, 21 - 40% = 2, 41 - 60% = 3, 61 - 80% = 4, 81 - 100% = 5.
- C. Committee members' ratings for Contractor responses to each question must be multiplied by the assigned weight and the products summed to obtain the member's score for each Contractor. Example (3 questions):

<u>Question</u>	<u>Weight</u>	<u>Rating</u>	<u>Product</u>
1	70	4	280
2	5	3	15
3	25	3	75
(Sum = 100)		Member's Score =	370

- D. A Contractors total score shall be equal to the sum of each member's score (Do not average member ratings to obtain a Committee rating for each response or manipulate this scheme in any other way).
- 7.12 Establish Short List for negotiations based on one or any combination of the following:
- A. Highest numerical score for responses in the Expressions of Interest.
 - B. Interviews with highest scored Contractors. (Committee must develop a list of questions to be uniformly presented to each Contractor with approximately equal amount of time for the interview. Contractors selected for interviews must be notified by telephone and letter.)
 - C. Contact with Contractor's references.
 - D. Current Affirmative Action Programs for Equal Employment Opportunity and Female and Minority Business Enterprises.
 - E. Records of Contractor performances.

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DIVISION	Support Services	SECTION	Contracts Administration	CHAPTER TITLE	Procedure
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- 7.13 Prepare an Evaluation Report which identifies Committee members, all responsive Contractors, Committee member scores and total scores for each Contractor, the Short List, and indicates if technical and/or priced proposals will be requested from Contractors on the Short List. Contractors whose submittals were rejected should be identified, including the reason for rejection. If the Short List is not based on the highest numerical scores, document the reason(s). Attach one copy of the Expression of Interest questionnaire used for the evaluation.
- 7.14 Obtain Approval for Negotiations (AFN) with Contractors on the Short List using DOT/PF Form 25A251.
- A. Copies of the Committee Evaluation Report, or a memorandum stating why Committee selection not required and documenting the bases of selection, and an uncompleted Expression of Interest questionnaire must be attached.
 - B. All approvals indicated on the AFN Form must be obtained before a contract is executed. Negotiations may begin, however, following signature on the AFN by the individual authorized by Delegation of Authority to execute the contract.
- 7.15 Mail approved Short List to all respondents.
- 7.16 Either negotiate with Contractors on the Short List in the order listed or solicit and evaluate technical and/or priced proposals, as appropriate, from all Contractors on the list. (Guidelines for preparing Requests for Proposals (RFP) and evaluating proposals are contained in the State Administrative Manual - Sections 8142 and 8144.)
- A. Technical Proposals must be solicited from Contractors on the Short List when any of the following apply:
 - Services required are unusually large or complex;
 - Scope of Services is not clearly defined;
 - Requested by a simple majority of the Evaluation Committee.
 - B. Priced Proposals should be requested in accordance with Division policy, the type and scope of services desired, and professional practice.
 - C. If negotiations cannot be concluded within the amount stated in the AFN, verbal approval of the increased amount must be obtained from the individual authorized by Delegation of Authority before the Contract is executed by either party, following which a revised AFN to document such approval must be processed.

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Effective Date

March 26, 1981

SUBJECT

Selection of Professional and
Specialty Services Contractors

Supersedes P & P No.

10-0006

Dated

10/1/78

APPROVED BY

Robert W. Ward

DIVISION

Support
Services

SECTION

Contracts
Administration

CHAPTER TITLE

Procedure

7.17 Select Contractor and prepare and execute contract in accordance with current DOT/PF Policy and Procedure. If selection was based upon technical and or priced proposals from several Contractors a Committee Report which documents such action must accompany the Contract when forwarded for execution for the Department.

8.0 IMPLEMENTATION

8.1 Directors are responsible for establishing divisional procedures to augment this Department Procedure as applicable to each Division's functions and to maintain records of all selection and Contracting actions.

Introduced: 4/28/81
Referred: Transportation

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE
BY REQUEST

2 HOUSE BILL NO. 537

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the authority of the Department of
7 Transportation and Public Facilities to enter into
8 professional services contracts; and providing for an
9 effective date."

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

11 * Section 1. AS 44.42.020(a)(6) is amended to read:

12 (6) cooperate and coordinate with and, subject to AS 44.42.-
13 035, enter into agreements with federal, state and local government
14 agencies and private organizations and persons in exercising its powers
15 and duties; *defin.*

16 * Sec. 2. AS 44.42 is amended by adding a new section to read:

17 Sec. 44.42.035. CONTRACTS OF THE DEPARTMENT. (a) Regulations
18 and procedures adopted by the commissioner of administration, whether
19 or not adopted in accordance with the Administrative Procedure Act
20 (AS 44.62), apply to contracts for professional services proposed to be
21 entered into by the department.

22 (b) For purposes of this section, "contracts for professional
23 services"

24 (1) means a contract for professional, technical, or consul-
25 tant's services which are predominantly intellectual in character and
26 which

27 (A) include analysis, evaluation, prediction, planning
28 or recommendation; and

29 (B) result in the production of a report or the comple-

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tion of a task;

(2) includes but is not limited to design and engineering services and surveys in conjunction with the construction of a highway or public facility by the department.

wording

* Sec. 3. This Act takes effect July 1, 1981.

OFFICE OF THE OMBUDSMAN
STATE OF ALASKA

SPECIAL REPORT 81-3

PROPER USE OF
PROFESSIONAL SERVICES CONTRACTS

MARCH 27, 1981

Frank Flavin

FRANK FLAVIN
OMBUDSMAN

*Town Meetings
held in
fall of '79*

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According to a recent report of the Comptroller General to the Congress, the "proper use" of consultants is viewed as a "normal, legitimate, and economical way to improve Government service and operations." In Alaska, consultant services are obtained through the use of Professional Services Contracts (PSC's); their "proper use," however, is a continuing controversy.

I. BACKGROUND

In May, 1979, staff of the Attorney General's Office wrote to the Ombudsman:

AS 37.05.230(1)(c)(vi) specifically exempts professional services contracts from bidding requirements. . . However, the Department of Administration, pursuant to AS 37.05.220(1), has established certain internal guidelines for the approval of such contracts. These guidelines are not regulations promulgated under the Administrative Procedures Act, and therefore do not have the force and effect of law. (emphasis added)

Although the Division of General Services and Supply is the purchasing agent for the state, in his response to a 1978 Legislative Audit, then Commissioner of Administration, B.B. Allen, explained that PSC's:

. . . are negotiated by the (various) agencies. The Department of Administration determines that prescribed guidelines and procedural safeguards are followed. This activity more closely resembles a pre-audit rather than a procurement function.

PSC guidelines, previously in the Purchasing Regulations, were moved to form a new chapter in the State Administrative Manual.

In August, 1980, the Pre-Audit Section, Division of Finance, ". . . assumed the responsibility of reviewing and processing proposed professional services contractual agreements." Subsequently, the PSC chapter in the State Administrative Manual was reorganized and minimally revised to include reference to a manual, Choosing and Using Contractors. This guidebook was developed by an Atlanta firm as the text for state-sponsored seminars conducted during 1980 on the "proper use" of consultants.

Additionally, in 1981, the Division of General Services and Supply compiled a computerized listing of potential contractors by professional service commodity code (area of specialization).

II. PROBLEM

These incremental efforts to reform the system and educate those state employees who are subject to its controls are laudable and should continue, but are effective only if the guidelines are strictly observed.

In the Governor's Office response to a Legislative Audit on d-2 contracts, it was stated that, "Idealism oftentimes is tempered by reality." This argument, the substance of which has been used by various agencies when rejecting Ombudsman findings that proper procedures have been subverted or ignored, is that although agencies "endeavor to follow the ideal progression of events whenever possible," circumstances take precedence over guidelines.

Investigative findings in Ombudsman complaints reveal that some agencies fail to comply with correct procedures because of ignorance, poor planning, favoritism, or conscious disregard. In other words, some agencies follow appropriate procedures only when it is convenient. They are, after all, only guidelines, with no penalty for their violation. While some agencies conscientiously follow accepted procedures and some have imposed further in-house restrictions, others attempt to outmaneuver Department of Administration oversight and provide only after-the-fact rationalization as to why their project was a special case.

Because the policy guidelines in the Administrative Manual lack the force of law, in practice they have often been reduced to "idealistic tools" by agencies which pay lip service to their existence while rejecting their substance and spirit. The Department of Administration's pre-audit, to ensure compliance with procedural safeguards, then becomes manipulated into a post-audit rubber stamp. At best it is a paperwork review prior to issuance of a Request for Proposals, wholly dependent upon information submitted by the contracting agency.

III. EXAMPLES

Following are examples of recent PSC complaints evidencing multiple problem areas, with selected Ombudsman findings and recommendations:

- A79-1133 et al (insurance coverage on fishing boats which were purchased with state loaned funds)

Summary:

Agency improperly and unfairly designated one company to work with a state program without fairly reviewing the current level of service available from other providers in the free market. This state endorsement created unfair competition for new customers.

Findings:

1. insufficient justification for sole source negotiations
2. no formal Request for Proposals (RFP) and insufficient proposal solicitation
3. no formal review of the few proposals submitted

Recommendations:

1. terminate favored status designation
2. take action to inform the public of state's withdrawal of the firm's special designation
3. develop guidelines to address future similar situations so that all businesses will have the opportunity to compete when a state endorsement will result in a considerable profit to the state designated entity.

- F80-0904 et al (land clearing)

Summary:

The process was in marked contrast to a 1959 Attorney General Opinion which states:

The purpose of the chapter (AS 37.05) was not only to protect the state and the public from uneconomic contracts let because of failure to request competitive bids and because of possible favoritism, but was also to insure that contractors would be insured a certain amount of "fair play" in dealing with the state government and in competing with one another for state contracts.

Findings:

1. insufficient planning resulted in a rushed procedure deficient in virtually every PSC guideline area
2. work to be performed did not meet criteria of a professional service and therefore should have gone to bid
3. negotiations began prior to submission or approval of Authority to Negotiate (ATN)
4. no formal RFP and questions as to whether those verbally asked to submit proposals started with the same information or were given the same response time
5. no written record of some proposal costs and other estimates submitted in such inconsistent form as to preclude cost comparisons
6. no formal evaluation process

Recommendations:

1. clarify definition of and rules for professional services contracting
2. revise the Administrative Manual to reflect recommendation 1
3. plan future projects sufficiently far in advance so that proper contracting procedures can be followed, and then follow them

● A79-0429 (public participation in transportation planning process)

Summary:

Sole source professional services contracts can be authorized under certain circumstances. However, once a determination is reached to request proposals, contracting procedures change dramatically to ensure a fair and impartial selection. All proposers should start on equal footing so that the process is competitive rather than a bureaucratic ruse.

Findings:

1. prior sole source negotiations were fundamentally unfair to private sector providers subsequently allowed to compete
2. vague RFP
3. insufficient time between RFP and proposal submission deadline
4. no accessible and knowledgeable agency contact person to respond to proposers' questions
5. agency official involved in prior sole source negotiations drafted subsequent RFP and participated in finalizing evaluation criteria
6. agency officials involved in prior sole source negotiations evaluated proposals submitted
7. proposals were distributed to evaluators prior to finalization of evaluation criteria
8. DOT has statutory contracting authority; DOA provides advice and oversight only to the extent of a voluntary agreement

Recommendations:

1. Administrative Manual professional services contracting procedures be promulgated pursuant to the Administrative Procedures Act to afford them the force of law
2. DOTPF should not be a contracting empire unto itself. Statutorily DOTPF should be made subject to Department of Administration PSC regulations
3. Department of Administration should maintain a central specialized listing of professional services contractors by area of expertise which must be consulted before contract negotiations are initiated.

● J79-0013 (telecommunications--tape delay center)

Summary:

In a rush to obtain the services of a perceived expert, well established administrative contracting policies were abrogated and fundamental fairness violated.

Findings:

1. some services contracted for had previously been provided by a state employee
2. insufficient justification for sole source negotiations
3. no ATN, RFP, or evaluation system to compare other unsolicited proposals

Recommendations:

1. request proposals and impartially evaluate them when the current contract expires
2. delete from future contracts those services which can be performed by state employees

- J79-0515 (public school alcoholism education program)

Summary:

Substantial problems found with the technical aspects of the RFP and the evaluation method used by the proposal evaluation committee.

Findings:

1. evaluation system developed after contracting process began
2. budget information in proposals inadequate to the extent that cost of services to be provided and cost effectiveness of different approaches could not be compared
3. selected contractor's proposal did not meet all RFP requirements

Recommendations:

1. request standardized financial information in RFP
2. develop evaluation criteria prior to, and include in, RFP
3. RFP requirements should be explicit, and areas of latitude/allowable deviation specifically identified in the RFP
4. develop aggrieved bidder appeal procedures

- A80-0285 (evaluation of alcoholism education program)

Summary/Suggestion:

When basic parameters of an RFP are disregarded or altered by a proposer, the proposal should be found non-responsive. If the issues raised by the non-responsive proposal merit serious consideration, the appropriate avenues might include rejection of all proposals, plus reissuance of a new RFP or securing authority to proceed sole source.

Findings:

1. a proposal should have been rejected as non-responsive since it did not meet the time frame set out in the RFP and ATN
2. another proposal should have been rejected as non-responsive because of excessive costs

IV. RECOMMENDATIONS

These complaints, and numerous others, evidence areas of contracting problems. Ironically, most of these issue areas are adequately addressed in the current policy guidelines. Were the procedures and suggestions contained in the Administrative Manual and Choosing and Using Contractors consistently followed, the magnitude of administrative discretion, and therefore possible abuse, would be vastly lessened. Especially in these times of increased state spending, the "proper use" of PSC's is essential.

1. The following areas in the current guidelines should be clarified (or consistently interpreted) and/or emphasized:

- when to contract for services; when to have current employees do the work; when to hire project employees
- what constitutes a professional service as opposed to those services which would more appropriately be solicited through a bid process
- when are sole source negotiations, or any waivers from normal procedures, permissible
- why prior approval of Authority to Negotiate is essential
- why lists of prequalified vendors or interested potential contractors must be solicited, kept current, and mandatorily used
- why the RFP is as important a document as the contract itself, and why an accessible and responsive agency contact person to answer proposers' questions is required
- why adequate RFP response time must be allowed and why decisions to allow deviations from RFP requirements must be communicated to all proposers
- why early development of evaluation criteria, and their inclusion in the RFP, is important and how to structure and conduct a fair and impartial evaluation process
- why and how contractor performance must be adequately monitored
- why contract amendments, renewals and extensions must be carefully negotiated and considered to ensure that the competitive process which led to the contract award isn't now being subverted by substantive change or delays caused by the contractor
- why contractor performance must be evaluated for results so that agencies will have the benefit of past experience in letting future contracts

2. The current policy guidelines on PSC's contained in the State Administrative Manual and in Choosing and Using Contractors should, after revision, be adopted as regulations under the Administrative Procedure Act.

The APA, at AS 44.62.640(a) (2) defines "regulation" as:

every rule, regulation, order, or standard of general application or the amendment, supplement or revision of a rule, regulation, order or standard adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one which relates only to the internal management of a state agency; "regulation" does not include a form prescribed by a state agency or instructions relating to the use of the form, but this provision is not a limitation upon a requirement that a regulation be adopted under this chapter when one is needed to implement the law under which the form is issued; "regulation" includes "manuals," "policies," "instructions," "guides to enforcement," "interpretative bulletins," "interpretations," and the like, which have the effect of rules, orders, regulations or standards of general application, and this and similar phraseology shall not be used to avoid or circumvent this chapter; whether a regulation, regardless of name, is covered by this chapter depends in part on whether it affects the public or is used by the agency in dealing with the public

According to AS 37.05.020

The Department of Administration shall adopt rules and regulations for the performance of its powers or duties, the execution of its business, and its relations to and business with other state agencies. (emphasis added)

Following this statute is an excerpt from a 1959 Attorney General Opinion:

A policy of publishing regulations concerning bidding and letting of contracts in the Administrative Code is consistent with the Alaska Administrative Procedure Act, since these regulations are regulations in which an important portion of the public has a vital interest and since they are of great use to the portion of the public interested in dealing and contracting with the state.

An April 25, 1978, Legislative Audit of Professional Service Contracting in the Department of Administration (see Appendix A) recommended that the DOA "develop and implement regulations requiring departments to publicly request proposals for all professional service contracts." B.B. Allen, who was then DOA Commissioner, responded for the Department on August 24, 1978:

This department has prepared, to the degree we consider necessary, a separate section of the State Administrative Manual dealing with professional service contracts. Your recommendation is covered to the degree that we believe necessary in this addition to the manual.

Following this Audit, DOA prepared the July 1978 addition to the Administrative Manual on PSC's and submitted it to the Attorney General's Office for review. On November 14, 1978, Avrum Gross, then Attorney General, wrote to the DOA Commissioner:

. . . the material has a direct, regulatory effect on the rights of persons, firms, and corporations who seek to provide the state with professional services on a contractual basis. Because of that, the material, "affects the public or is used by the agency in dealing with the public" AS 44.62.640(a)(2). Accordingly, the material does not have the legal effect you apparently intend unless and until it is adopted under the Administrative Procedures Act. Coghill v. Boucher, 511 .2d 1297, 1302 (Alaska 1973).

The manual addition is an excellent effort to systematize the state's professional services contracts. It should be fairly simple to rewrite it in regulatory form. However, if you prefer and the Lieutenant Governor agrees, it could be codified by reference alone under AS 44.62.130. It seems to me that the important thing is that public notice be made, an opportunity to comment be given, and a regulation be adopted.

The advice of the Attorney General was apparently not heeded, and the PSC chapter of the Administrative Manual was adopted as guidelines only.

On April 12, 1979, a meeting was held in the Attorney General's Office to discuss adoption of the Administrative Manual section dealing with PSC's under the APA. In attendance were then Deputy Attorney General Wil Condon, then Deputy Commissioner of the Department of Administration Sue Greene, and William Ladwig of the Division of Finance. An excerpt from Mr. Ladwig's April 19, 1979, memo summarizing the meeting follows:

Concerning adopting the contract provisions of the Administrative Manual under the APA, it was stated by Mr. Condon that his purpose for suggesting this adoption was to (1) give the manual provisions the force of law when dealing with members of the public in that the person from the public sector would be put on notice that the person signing the contract on behalf of the State agency is in fact an authorized representative of the State who had the legal authority to commit the State to a contract and (2) that the manual provisions, once they were adopted and modified, could be used to discipline to the extent deemed necessary by the circumstances, those responsible officials who enter into contracts which are improper. The vehicle for disciplining certifying officers already exists; however, there is no provision, short of termination, for reaching the "man behind the scenes."

Based upon the representation by Mr. Condon concerning this first area it was the consensus of the group that with assistance from members of the Office of the Attorney General, the Administrative Manual provisions would be modified as to language and be adopted by reference under the Administrative Procedures Act.

Despite these repeated recommendations and attempts, professional service contracting is today governed only by policy guidelines rather than APA regulations.

3. Statutory language, similar to that which follows, should be adopted regarding professional services contracts.

Legislative Finding and Purpose. A formal written Request for Proposals soliciting an offer to perform the services required under a contract must be extended to a sufficient number of providers of the required services to assure that public interest in competition is adequately served. It is hereby declared to be the policy of the state to publicly announce requirements for consultant or professional and technical services, to encourage all qualified persons to put themselves in a position to be considered for a contract and to negotiate contracts for consultant or professional and technical services on the basis of demonstrated competence and qualifications for the types of services required and on the basis of the furnishing of such services at fair and reasonable fees. The provisions of this act apply to professional services contracting with state or federal dollars unless compliance with this Act would result in non-compliance with federal law or regulation governing the use of federal funds.

Public Notice. When consultant or professional and technical services are required to be contracted for, public notice shall be given by the state agency if the cost of the project is estimated by the state agency to be more than \$2,500. Such public notice shall be given at least thirty days in advance by publication three times in one or more daily newspapers of general circulation in this state and shall contain a general description of the proposed project and shall indicate the procedure by which interested persons may apply for consideration for the contract.

Professional Services Listings. (1) Any person desiring to provide consultant or professional and technical services to a state agency shall annually submit to the department a statement of qualifications and performance data and such other information as may be required by the department. The department may request such person to update such statement before the anniversary date to reflect changed conditions in the status of such person.

(2) For each proposed project for which consultant or professional and technical services are required, the state agency for which the project is to be done shall evaluate current statements of qualifications and performance data on file with the department and shall send a Request for Proposals to all prospective contractors found qualified.

Duties of Commissioner. The commissioner, or his designee, shall perform all contract management and review functions for state contracts, excepting those functions presently performed by the contracting agency. In so doing, the commissioner shall, by regulation adopted under the Administrative Procedure Act, establish the manner and form in which all state contracts shall be prepared and processed and shall examine and approve or disapprove all state contracts as to content, purpose, propriety and budget ramifications. No agency shall execute a state contract without receiving the prior approval of the commissioner. All agencies shall afford full cooperation to the commissioner in the management and review of state contracts.

Duties of Contracting Agency. Before an agency may seek approval of a consultant or professional and technical services contract valued in excess of \$2,500, it shall certify to the commissioner that:

- (1) no state employee is competent or available to perform the services called for by the contract;
- (2) the normal competitive bidding mechanisms will not provide for adequate performance of the services;
- (3) the services are not available as a product of a prior consultant or professional and technical services contract, and the contractor has certified that the product of his services will be original in character;
- (4) required efforts were made to publicize the availability of the contract;
- (5) the agency has received, reviewed and accepted a detailed work plan from the contractor for performance under the contract; and
- (6) the agency has developed, and fully intends to implement, a written plan providing for (a) the assignment of specific agency personnel to a monitoring and liaison function, (b) the periodic review of interim reports or other indicia of part performance and (c) the ultimate utilization of the final product of the services.

Procedure for consultant and professional and technical services contracts. Before approving a proposed state contract for consultant or professional and technical services the commissioner shall have determined at a minimum that:

- (1) all provisions of the preceding section have been verified or complied with;
- (2) the work to be performed under the contract is necessary to the agency's achievement of its statutory responsibilities, and that there is statutory authority to enter into the contract;
- (3) the contract will not establish an employer/employee relationship between the state or the agency and any persons performing under the contract;
- (4) no current state employees will engage in the performance of the contract;
- (5) no state agency has previously performed or contracted for the performance of tasks which would be substantially duplicated under the proposed contract;
- (6) the contracting agency has specified a satisfactory method of evaluating and utilizing the results of the work to be performed.

Contract Terms. A consultant or technical and professional services contract shall by its terms permit the agency to unilaterally terminate the contract prior to completion, upon payment of just compensation, if the agency determines that further performance under the contract would not serve agency purposes or is not in the state's best interest. Each professional services contract shall contain a termination date.

Contract Administration. Upon entering into a state contract, an agency shall bear full responsibility for the diligent administration and monitoring of the contract. The commissioner may require an agency to report to him at any time on the status of any outstanding state contract to which the agency is a party. After completion of performance under a consultant or professional and technical services contract, the agency shall evaluate the performance under the contract and the utility of the final product. This evaluation shall be delivered to the commissioner who shall retain all such evaluations for future reference.

Rulemaking Authority. The commissioner shall adopt and enforce necessary regulations regarding the management and review of state professional service contracts. Regulations adopted pursuant to this section are subject to the Administrative Procedure Act (AS 44.62).

Validity of State Contracts. No state contracts shall be valid, nor shall the state be bound by the contract until it has first been executed by the head of the agency which is a party to the contract and has been approved in writing by the Commissioner, or his designee:

Liability. The following classes of people should be held accountable with regard to PSC violations specified. This could be accomplished through civil or criminal penalty provisions in this bill, through specific language to be included in ethics legislation, or through the criminal code.

- (1) Any person, other than a bona fide employee working solely for a person providing consultant or professional and technical services, who offers, agrees, or contracts to solicit or secure for any other person state agency contracts for consultant or professional and technical services and who, in so doing, receives any fee, commission, gift, or other consideration contingent upon or resulting from the making of the contract.
- (2) Any person providing consultant or professional and technical services who offers to pay or does pay any fee, commission, gift, or other consideration contingent upon or resulting from the making of a contract for consultant or professional and technical services with a state agency;
- (3) Any state agency official or employee who solicits or secures or offers to solicit or secure a contract for consultant or professional and technical services with a state agency and who is paid any fee, commission, gift, or other consideration contingent upon the making of such contract;
- (4) Any state employee who violates this statute or regulations promulgated under it, is subject to suspension or dismissal.

Definitions.

- (1) Consultant or professional and technical services means services which are predominantly intellectual in character, which include analysis, evaluation, prediction, planning, or recommendation and which result in the production of a report or the completion of a task.

- (2) Department means Department of Administration.
- (3) Commissioner means Commissioner of the Department of Administration or his designee.
- (4) Agency means a department, office, institution, corporation, authority, organization, commissior, committee, council or board in the executive legislative or judicial branches of the state government, and a department, office, institution, corporation, authority, organization, commission, committee, council or board of the state government independent of the executive legislative and judicial party, including the University of Alaska.

4. The Department of Transportation and Public Facilities should be subject to the same statutory and regulatory requirements regarding professional services contracts as other state agencies.

According to a March 23, 1979, Attorney General opinion (see Appendix B)

. . . it is clear that DOT/PF has statutory authority to enter into personal services contracts. It is equally clear that the Department of Administration does not have any statutory authority to override a decision by the Commissioner of the Department of Transportation to enter into a particular contract. This is not to say that the Department of Administration cannot, in an advisory capacity, make known its thoughts concerning the advisability of entering into a certain contract. It must be remembered, however, that in such a case the Department of Administration's opinion is in the nature of advice and that the only situation when the Department of Administration has the authority to "veto" a contractual agreement proposed by the DOT/PF is in the case where the proposed contractor is a state employee. And the source of this rests on the agreement referred to above between the Department of Administration and the Department of Transportation and Public Facilities.

The above-referenced agreement was proposed in November, 1977, by then DOT Deputy Commissioner Richard Holden, and agreed to that same month by then Commissioner B.B. Allen. It was agreed that:

1. Requests for proposals for professional services for the Department of Transportation and Public Facilities will be advertised.
2. Recommendations to your commissioner (DOT) will follow either Departmental or superseding federal procedure.
3. Following commissioner's approval, an Authority to Enter Contract Negotiations form will be submitted to the Department of Administration, Division of Finance. This form will list three firms when the proposed contract will exceed \$20,000.

4. Following submission of the Authority form, Department of Transportation and Public Facilities will proceed to negotiate the contract with the successful proposer. Contracts will contain a clause which declares the contract void should our Division of Finance find that by Internal Revenue Service definition, the contractor is, in fact, a State employee.
5. Division of Finance will return the Authority form after analysis. Should our analysis reveal an Internal Revenue Service violation, the contract will be voided or negotiations terminated.

It should be noted that DOT does have a policy "to promulgate standard procedures for selection of consultants for Department of Transportation and Public Facilities' negotiated agreements for architectural and engineering design, survey and related services." This P & P however, does not cover all the subject areas, nor address in detail the procedural safeguards presently contained in the Administrative Manual.

Apart from the sheer numbers of PSC's awarded by DOT, and the AG's opinion that this department has statutory authority to independently enter such contracts, there appears to be no valid reason why DOT should be exempt from requirements imposed on all other state agencies. Members of the public wishing to contract with the state should be able to reference one set of contracting regulatory procedures which are applicable to all agencies.

DOT's contracting authority as contained in:

AS 44.42.020(a)(6) and (b)(1),
AS 44.43.030,
AS 44.44.030,
AS 19.05.040(10), and
AS 35.05.040(7) and (10)

should be amended so as to subject the DOT to the same statutory and regulatory provisions as apply to other state agencies.

APPENDIX A

DIVISION OF LEGISLATIVE AUDIT

A REVIEW OF
PROFESSIONAL SERVICE CONTRACTING

A SPECIAL REVIEW OF
PROFESSIONAL SERVICE CONTRACTING
DEPARTMENT OF ADMINISTRATION

April 25, 1978

Commissioner of Administration
Deputy Commissioner of Administration

B. B. Allen
Robert S. Gates

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

April 25, 1978

Members of the
Legislative Budget and Audit Committee:

In accordance with your request and the provisions of Title
24 of the Alaska Statutes, the attached report is submitted
for your review:

A SPECIAL REVIEW OF
PROFESSIONAL SERVICE CONTRACTING
DEPARTMENT OF ADMINISTRATION

April 25, 1978



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

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PURPOSE OF THE REVIEW

In accordance with a special request of the Legislative Budget and Audit Committee and the provisions of Title 24 of the Alaska Statutes, this audit was conducted to review professional service contracting procedures currently in use throughout the State.

ORGANIZATION AND FUNCTION

The purpose of Article 4, Uniform Purchasing, of the Fiscal Procedures Act is to protect the State from uneconomic contracts let because of failure to request competitive bids and to insure that contractors would be insured a certain amount of "fair play" in dealing with the State and in competing with one another for State contracts.

However, legislation enacted in 1957, AS 37.05.250(1)(C)(iv), exempts professional services from competitive bidding. To provide uniform purchasing procedures with respect to professional services, the Department of Administration adopted chapter five of the State Purchasing Regulations, professional service contracts. This chapter defines a professional service as non-biddable duties or accomplishments that require personal knowledge and training to perform.

The Department of Administration's Division of Finance is currently responsible for the review and approval of professional service contracts. The Purchasing Regulations require all contracts negotiated by departments in excess of \$300 must be approved by the Division prior to execution. For contracts in excess of \$2,000, departments must have the Division's approval prior to commencing negotiations.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Department of Administration should develop and implement regulations requiring departments to publicly request proposals for all professional service contracts.

The purpose of Article 4, Uniform Purchasing, of the Fiscal Procedures Act is, in part, to insure contractors a certain amount of "fair play" in dealing with the State and in competing with one another for State contracts.

Legislation enacted in 1957, AS 37.05.230(1)(C)(iv), exempted professional services from competitive bidding. In 1957, the majority of professional services were not competitive and probably, in some cases, difficult to obtain. Since then, professional services have traditionally been excluded from any type of public competition in spite of their growth and competitiveness now in Alaska.

More recently, several departments have been leaning towards competition in awarding certain professional service contracts. The Department of Community and Regional Affairs recently advertised for financial compliance auditing of CETA subgrantees, a professional service. Five certified public accounting firms responded with costs ranging from \$24,484 to \$91,600. Although price should not be the only consideration in the evaluation of professional service proposals, the above example does show a benefit the State received from public competition.

Without public competition for professional services, departments cannot be sure of obtaining contracts in the State's best interest or that all interested parties are given the opportunity to compete for State contracts.

However, when unique circumstances make requesting proposals for professional services inappropriate, waiver procedures should be developed to allow alternatives in obtaining services.

Recommendation No. 2

The responsibility for the maintenance of a professional service request for proposal system should be placed within the Division of General Services and Supply.

Implementation of Recommendation No. 1, requiring a request for proposal (RFP) system for professional services, will change and/or add new responsibilities to the Department of Administration. These responsibilities would best be performed within General Services and Supply.

This Division, on behalf of the Department of Administration, is the purchasing agent for the State in other aspects of State buying. There is often a direct relation between proposed professional service contracts and other purchasing practices of the State. Having the necessary purchasing knowledge and expertise, General Services and Supply would best be able to evaluate and approve professional service RFP's. On the other hand, when the requested service does not meet the established criteria of a professional service, the Division would best be able to recommend other purchasing alternatives they feel would properly meet departments' needs in accordance with the State's Purchasing Regulations.

In addition, since the Division presently provides competitive bidding services for the State, the mechanism already exists to absorb the new responsibilities of professional service RFP's with a minimal amount of expansion. Once the Department has developed and implemented a workable system, one position within General Services and Supply should be adequate to properly monitor the RFP activity.

AUDITOR'S COMMENTS

Initial implementation of these recommendations should include:

1. prequalification of vendors in professional fields commonly providing services for the State;
2. establishment of professional service vendor lists;
3. public notice of the State's RFP policy, requesting any interested parties to contact General Services and Supply for inclusion on vendor listings;
4. complete revision of chapter five, professional services, of the State Purchasing Regulations; and
5. notice to departments that RFP waivers will not be granted when poor planning is apparent, thereby requiring departments to better anticipate and properly plan their professional service needs.

Provisions of the new regulations should give the Division of General Services and Supply the authority to approve or deny:

1. RFP's prior to advertisement;
2. departments' evaluation of submitted proposals and selection of contractor; and
3. final contracts prior to execution.

The following are items we feel should be considered in the development of a professional service RFP system.

Request for Proposals

1. Specifications should include the method of award. All criteria to be used in the award process should be listed so that those submitting proposals will know the areas in which they will be judged. Weighted values should be included in the specifications.
2. The RFP should clearly state that the contract will not be awarded solely on the basis of cost.
3. RFP's should be advertised within a reasonable period of time so that the State can receive the best possible proposals.
4. Proposals should be sent directly to General Services and Supply for formal opening.

Evaluation of Proposals

1. Vendor proposals should be given to the requesting agency for evaluation.
2. No contract for professional services should be awarded solely on the basis of price. Evaluation should include qualifications, past performance, etc.
3. The notice to the successful vendor should specify that negotiation of specific terms of the contract may be required and that failure to agree to negotiated terms is cause for nonacceptance of the proposal.
4. If a proposal is selected that is other than the lowest dollar amount submitted, notice should be sent to vendors offering a lower dollar price giving the reasons for nonselection.

Final Contracts

1. Contracts should specify a person or position within the agency as the project director who is responsible for the proper administration of the project.
2. Following completion of the project, a contractor evaluation should be prepared by the agency and submitted to General Services and Supply.

Waivers

1. Approval or denial authority should rest solely with the Commissioner of Administration.
2. Waivers should not be granted when poor agency planning is apparent.

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH C -- JUNEAU 99811

August 24, 1978

Gerald L. Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Thank you for giving me the opportunity to respond to your audit findings on professional service contracts.

You have recommended that the Department develop and implement regulations requiring departments to publicly request proposals for all professional service contracts. This department has prepared, to the degree we consider necessary, a separate section of the State Administrative Manual dealing with professional service contracts. Your recommendation is covered to the degree that we believe necessary in this addition to the manual.

In drafting the Fiscal Procedures Act, I believe that legislative intent of "fair play" was to assure all vendors of a homogeneous product an equal opportunity to engage in business with the State. This belief appears logical in light of the fact that the legislature specifically excluded non-homogeneous products, professional services, from the area of competitive bidding since each professional service is unique unto the type of service and the vendor.

Your report cites an example of a state agency advertising via newspapers for professional services. What your example does not contain, in the figures given in an effort to demonstrate savings from competitive bidding, is the culmination of the contract which included amendments to increase the cost.

It is my belief that the current system and that to be implemented under the new manual additions, parallels competitive bidding procedures. The request for proposal being the counterpart of the newspaper advertisement or invitation to bid, the review of submitted proposals being the counterpart of the bid opening, etc. In addition, to mandate competitive bidding as such may also conflict with the canons of ethics of certain professional groups which prohibit open price bidding in the solicitation of business.

Gerald L. Wilkerson
Page two

August 24, 1978

In your second recommendation you suggest that the contract review become a function of the Division of General Services and Supply. The area of professional service is specialized and regardless of where the review function is performed the ultimate authority and responsibility rests with the Commissioner of Administration. The review function will remain in the Division of Finance.

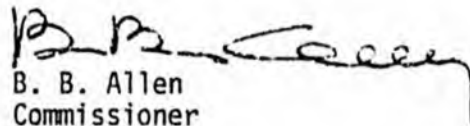
If professional contracts were negotiated and initiated by my department (such as purchase orders and leases) the function would be in the Division of General Services and Supply. Professional contracts, however, are negotiated by the agencies. The Department of Administration determines that prescribed guidelines and procedural safeguards are followed. This activity more closely resembles a pre-audit rather than a procurement function.

Also contained in the audit report is a section entitled, "Auditors Comments". Most of the points raised by the auditor are addressed in the new addition to the administrative manual. Comments that are not addressed in the manual are judgemental areas in which I feel you are requesting that my department make a value judgement on decisions and actions taken by other agencies thereby usurping their expertise in their appropriate areas.

Had the auditor assigned made an effort, other than the entrance conference, to talk to members of my staff to determine how contracts were being handled, areas of weakness in contract procedure and steps being taken to correct the deficiencies, most of his comments would not have had to have been made.

I believe the foregoing have been responsive to the issues raised by Mr. Welker. If I can be of additional assistance please let me know.

Sincerely,


B. B. Allen
Commissioner

APPENDIX B

ATTORNEY GENERAL OPINION

DEPARTMENT OF TRANSPORTATION
CONTRACTING AUTHORITY

MEMORANDUM

TO: [Richard Holden
Deputy Commissioner
Planning and Research
DOT/PF

DATE: March 23, 1979

FILE NO: (Our) J-66-470-79

TELEPHONE NO:

FROM: Jack McGee *JGM*
Assistant Attorney General
Transportation Section
Department of Law

SUBJECT: Dispute Between Department
of Administration and the
Department of Transportation
Concerning the Latter's
Contracting Authority

The general question you pose in your memorandum dated January 22, 1979, is this: Does the DOA have authority to overrule a decision made by the Commissioner of the DOT/PF to enter into a professional services contract.

The answer to this question must begin with an analysis of the DOT's contracting authority. The DOT/PF was created by Executive Order No. 39 (1977) effective July 1, 1977. Section 2 of the Order specifically created AS 44.42.010 and AS 44.42.020.¹ AS 44.42.10 reads as follows:

Sec. 44.42.010 Commissioner of transportation and public facilities. The principal executive officer of the Department of Transportation and Public Facilities is the commissioner of transportation and public facilities.

AS 44.42.020 sets out the powers and duties of the DOT/PF. Relevant sections of AS 44.42.020 are as follows:

Sec. 44.42.020. Powers and duties. (a) The department shall

- (1) plan, design, construct and maintain all state modes of transportation and transportation facilities, communication facilities, and all docks, floats, breakwaters, buildings and similar facilities;
- (2) study existing transportation modes and facilities and communication facilities in the state to determine how they might be improved or whether they should continue to be maintained;
- (3) study alternative means of improving transportation and communication in the state with regard to the

1. Under Article III § 23 of the Alaska Constitution and AS 24.30.130(b), executive orders can create statutory law. A copy of Executive Order No. 39 is attached and marked as Appendix #1.

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economic costs of each alternative and its environmental and social effects;

(4) develop a comprehensive, long-range intermodal transportation plan for the state;

(5) study alternatives to existing modes of transportation in urban areas and develop plans to improve urban transportation;

(6) cooperate and coordinate with and enter into agreements with federal, state and local government agencies and private organizations and persons in exercising its powers and duties; . . .

(8) study alternative means of transportation in the state, considering the economic, social, and environmental impacts of each alternative; . . .

(b) The department may

(1) engage in experimental projects relating to available or future modes of transportation and any means of improving existing transportation facilities and service and communication;²

Since (a) (6) of AS 44.42.020 above gives the DOT the authority to enter into agreements with "private organizations and persons in exercising its powers and duties", AS 44.42.020 (a) (b) is the primary statutory source of the contracting authority of the DOT/PF.

There are, however, additional sources for DOT's authority to enter into contracts. By section 9(a) of Executive Order No. 39 (1977) the DOT/PF was vested with "the duties and powers formerly held by the Department of Public Works relating to planning, construction, maintenance and operation of transportation facilities . . ." Section 9(b) of Executive Order No. 39 vested in the DOT/PF all the duties and powers "formerly held by the Department of Highways relating to planning, construction, maintenance and operation of state transportation facilities, . . ." Finally, § 11 of Executive Order No. 39 provides that all references in the Alaska Statutes to the Department of Highways or to the Department of Public Works shall be read as references to the DOT/PF. § 11 reads as follows:

2. The definition of "transportation" and "transportation mode", pursuant to AS 44.42.900(3) "includes, but is not limited to, the following means of conveyance or travel, including their related or auxiliary structures, facilities or services: air, rail, water, highway and pipeline."

Sec. 11. All other references in the Alaska Statutes to the Department of Highways or the commissioner of highways, or to the Department of Public Works or the commissioner of public works, not expressly amended by or referred to in this Order shall be read as the Department of Transportation and Public Facilities or the commissioner of transportation and public facilities, respectively, in order to implement this Order.

The contracting authority of the old Department of Public Works and Department of Highways were found in AS 44.43.030 and AS 44.44.030 respectively.³ They provided as follows:

Sec. 44.43.030. Contracts for design and engineering services. If it is not feasible for the staff of the Department of Public Works to perform design and engineering services or surveys, the commissioner may contract with a private engineering firm for design and engineering services or surveys on a negotiated basis after reasonable public notice is given. The prices submitted or negotiated shall be available for public inspection upon request.

Sec. 44.44.030. Contracts for design and engineering services. If it is not feasible for the staff of the Department of Highways to perform design and engineering services or surveys, the commissioner may contract with a private engineering firm for design and engineering services or surveys on a negotiated basis after reasonable public notice is given. The prices submitted or negotiated shall be available for public inspection upon request.

Since 9(a) and 9(b) of Executive Order No. 39 gave to the DOT all powers formerly held by the Department of Public Works and Department of Highways, it follows that the DOT now possesses the same authority to enter into contracts that was formerly held by these two agencies pursuant to AS 44.43.030 and AS 44.44.030.

Pertinent sections of the Alaska Statutes relating to contracting authority and affected by § 11 of Executive Order No. 39 are AS 19.05.040(10) and AS 35.05.040(7) and (10). AS 19.05.040 has to do with the power of the old Department of Highways, while AS 35.05.040 sets out the powers of the old Department of Public Works. These sections read as follows:

Sec. 19.05.040. Powers of department. The department may . . .

3. AS 44.43 and AS 44.44 were repealed by § 13 of Executive Order No. 39.

(10) enter into contracts or agreements relating to highways with the federal government, municipalities, a political subdivision or with a foreign government, if the contract is approved by the federal government.

Sec. 35.05.040. Powers of department. The department may . . .

(7) enter into contracts or agreements relating to public works with the federal government and political subdivisions, and also enter into contracts with a foreign government if approved by the federal government;

(10) procure directly materials, labor and contractual services for planning, designing and constructing public facilities of the state.

Since § 11 of Executive Order No. 39 provides that all references in the Alaska Statutes to the Department of Highways and Department of Public Works are now to be read as the DOT/PF, it is clear that the DOT is vested with the contracting authority set out in AS 19.05.040(10) and AS 35.05.040(10) and AS 35.03.040(7) and (10).

So much for the analysis of the first part of your question. Now, the second part of the question will be considered: Does the DOA have the authority to override a decision by the Commissioner of the DOT/PF to enter into a particular contract? With the exception of a proposed contract with a state employee, it appears that the DOA has no such authority.⁴ The statutory duties of the DOA are set out in AS 44.21.020 and AS 37.05.220. AS 44.21.020 reads as follows:

Sec. 44.21.020. Duties of department. The Department of Administration shall

(1) (repealed by § 4 ch 97 SLA 1976.)

(2) make surveys and studies to improve administrative procedures, methods, and organization;

4. The authority of the DOA to "veto" a proposed contract with a state employee stems from the DOT's informal agreement with the DOA to submit the names of proposed contractors to the DOA for the purpose of establishing whether any contractor is a state employee. See Appendixes #2 and #3.

5. AS 44.21.160 sets out additional powers and duties of the DOA, but these have to do exclusively with the management of automatic data processing services.

- (3) keep general accounts;
- (4) approve vouchers and disburse funds for all purposes;
- (5) operate centralized purchasing and supply services, and necessary storerooms and warehouses;
- (6) allot space in state buildings to the various departments according to need and available space;
- (7) supervise telephone, mailing, messenger, duplicating, and similar services adaptable to centralized management;
- (8) administer the public employees' retirement system and teachers' retirement system;
- (9) administer a statewide personnel program, including central personnel services such as recruitment, examination, position classification, and pay administration;
- (10) administer the Alaska Pioneers' Homes;
- (11) administer and supervise a statewide automatic data processing program;
- (12) administer and maintain the recording system established under the laws of this state.

From the above, it is clear that AS 44.21.020 does not grant the DOA the authority to override a decision by the Commissioner of the DOT to enter into a particular contract.

The pertinent parts of AS 37.05.220 are as follows:

Sec. 37.05.220. Purchasing agent. The Department of Administration is the purchasing agent for the state. The department shall

- (1) purchase, rent, or otherwise provide for the furnishing of supplies, materials, equipment, or contractual services for all state agencies;
- (2) have power to authorize an agency to purchase directly certain specified supplies, materials, equipment, or contractual services under conditions and procedures prescribed in § 230 of this chapter;

stat. interp. question

Now it might be argued that a conflict exists between the statutes that grant contracting authority to the DOT and AS 37.05.220 (1) and (2). This argument, however, has little merit in light of the general rule that apparently conflicting statutes ought to be construed as, as far as is reasonably possible, to be in harmony with one another. See 82 C.J.S. Statutes, § 368 at 838, and Sands, Sutherland Statutory Construction, 4 ed, Vol. 2A, § 51.02, at 290. With this in mind, it should be noted that AS 37.05.220 (1) says the DOA will "otherwise provide for the furnishing of supplies . . . or contractual services." The use of the word "otherwise" is instructive because its use indicates that if a state agency already has an independent statutory source of contracting authority, then the DOA ought not to be considered the contracting authority for such an agency. Similarly, AS 37.05.220(2) must be interpreted, not as a veto power, but as a power to authorize or delegate contracting authority (i.e. the power to enter into contracts) to state agencies, which possess no independent sources of authority to enter into contracts. Given this interpretation of (1) and (2), all other references to contracting services in AS 37.05.220 must be considered to be applicable only to those agencies who do not possess independent contracting authority.

If, however, one insists on maintaining that an irreconcilable conflict does exist between AS 37.05.220 and the statutes that grant contracting authority to the DOT, then a rule of law exists that resolves such a conflict. And that rule is this: If there is an irreconcilable conflict between two statutes, then the more recent statute controls since it is the later expression of the legislature. See Sands, Sutherland Statutory Construction, 4 ed., Vol. 2A, § 51.02 at 290 and 82 C.J.S., Statutes, § 368 at 838. If this rule is applied here, then since AS 35.05.040 (10), AS 44.44.030 and AS 44.42.020 were all enacted subsequent to AS 37.05.220 (1) and (2), it becomes clear that the statutes giving contracting authority to the DOT are controlling, and that AS 37.05.220 does not grant the DOA the authority to override a decision by the Commissioner of the DOT to enter into a particular contract.⁶

Conclusion:

Based on the above, it is clear that DOT/PF has statutory authority to enter into personal service contracts. It is equally clear that the DOA does not have any statutory authority to override a decision by the Commissioner of the

6. AS 44.42.020 was enacted in 1977; AS 35.05.040(10) was enacted in 1975; and AS 44.44.030 was enacted in 1963. AS 37.05.220 was first enacted in 1955 and was later amended in 1960.

March 23, 1979

DOT to enter into a particular contract. This is not to say that the DOA cannot, in an advisory capacity, make known its thoughts concerning the advisability of entering into a certain contract. It must be remembered, however, that in such a case the DOA's opinion is in the nature of advice and is not binding on the DOT/PF. It must be concluded, therefore, that the only situation when the DOA has the authority to "veto" a contractual agreement proposed by the DOT/PF is in the case where the proposed contractor is a state employee. And the source of this authority, it must be noted, is not statutory but rests on the agreement referred to above between the DOA and the DOT/PF.

JM:clc:eb

Enclosures

The executive order submitted to the legislature concerning the state museum from the office of the governor to the Department of Education designated as Executive Order No. 34 on the interpretation that the number should follow the last executive order actually perfected. The executive order was incorporated in the Alaska Statutes as AS 14 57.

EXECUTIVE ORDER NO. 37

Revisor's note (1976)

Executive Order No. 37, dated January 20, 1975, abolishing the Department of Economic Development and reassigning functions of that department, was submitted to the legislature on that date and withdrawn from legislative consideration by the governor on March 4, 1975. Essentially the same purposes were accomplished by ch. 297, SLA 1975 (HCS CSSB 225 (Finance)).

EXECUTIVE ORDER NO. 38

Revisor's note (1976)

Executive Order No. 38, transferring the state archives from the Department of Administration to the Department of Education, was submitted to the legislature on January 12, 1976. That executive order was disapproved by 1976 House Special Committee Resolution No. 2.

EXECUTIVE ORDER NO. 39

Under the authority of Article III, Section 23 of the Constitution of the State of Alaska, and in accordance with AS 24.30.130(b), I order the following:

Section 1. FINDINGS AND PURPOSE. As governor, I find that the diverse transportation needs of the state would best be served by the creation of a single department for the planning, study, development, management and operation of integrated, intermodal transportation systems. The purpose of this department is to evaluate, plan, design, construct, manage, operate and maintain all state transportation modes and systems, relying on analysis of the relative advantages of different modes and systems and considering their social, economic, and environmental consequences.

Secs. 2-7. Permanent laws. See Table of Disposition of Acts.

Uniform Rules
Alaska State Legislature

Sec. 8. All litigation, hearings, investigations and other proceedings pending under a law amended or repealed by this Order, or in connection with functions transferred by this Order, continue in effect and may be continued and completed notwithstanding a transfer or amendment or repeal provided for in this Order. Certificates, orders, and regulations issued or adopted under authority of a law amended or repealed by this Order remain in effect for the term issued, until revoked, vacated, or otherwise modified under the provisions of this Order. All contracts, rights, liabilities, and obligations created by or under a law amended or repealed by this Order, and in effect on the effective date of this Order, remain in effect notwithstanding this Order's taking effect. Records, equipment, and other property of agencies of the state whose functions are transferred under this Order shall be transferred commensurate with the provisions of this Order.

Sec. 9. (a) The Department of Transportation and Public Facilities is vested with the duties and powers formerly held by the Department of Public Works relating to planning, construction, maintenance and operation of transportation facilities, including state ferries, airports and water and harbor facilities, and for design and construction of buildings and appurtenant structures, and specifically including all powers and duties formerly held by the Department of Public Works under AS 02, AS 30.05, AS 30.15, AS 35, AS 41.20 and AS 44.65.

(b) The Department of Transportation and Public Facilities is vested with the duties and powers formerly held by the Department of Highways relating to planning, construction, maintenance and operation of state transportation facilities including state highways, roads, bridges, traffic signs and signals, the supervision and maintenance of state automotive and mechanical equipment, the control of outdoor advertising visible from state highways and all other duties and powers of the Department of Highways, and specifically including powers and duties formerly held by the Department of Highways under AS 19, AS 28.01, AS 28.05, and AS 44.57.

Sec. 10. The commissioner of transportation and public facilities shall replace the commissioner of highways on the state Geographic Board, the Alaska Toll Bridge Authority, and all other boards and commissions.

Sec. 11. All other references in the Alaska Statutes to the Department of Highways or the commissioner of highways, or to the Department of Public Works or the commissioner of public works, not expressly amended by or referred to in this Order shall be read as the Department of Transportation and Public Facilities or the commissioner of transportation and public facilities, respectively, in order to implement this Order.

Sec. 12. During Fiscal Year 1978, all appropriation items made for that fiscal year and prior years for the Department of Highways and

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SLA 1975

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the Department of Public Works may, upon approval of the governor, be appropriately transferred to implement the purposes of this Order.

Sec. 13. Permanent law. See Table of Disposition of Acts.

Sec. 14. This Order takes effect July 1, 1977.

JAY S. HAMMOND
Governor
State of Alaska

Uniform Rules
Alaska State Legislature

MEMORANDUM

B. B. Allen, Commissioner
Department of Administration

DATE: November 3, 1977

FROM: Richard A. Holden
Deputy Commissioner
Department of Transportation
and Public Facilities

SUBJECT: Negotiated Contracts

The Commissioner of the Department of Transportation and Public Facilities has statutory authority to contract for professional services.

AS 35.05.040 - "The department may(10) procure directly materials, labor and contractual services for planning, designing and constructing public facilities of the state."

The Commissioner is required to provide adequate public notice for entering into a contractual agreement.

AS 44.43.030 - "The Commissioner may contract with a private engineering firm for design and engineering services or surveys on a negotiated basis after reasonable public notice is given."

This requirement has been interpreted to mean a request for professional services must be advertised to insure that adequate notice is provided to interested parties. The department's selection procedure follows certain criteria. Projects using federal funds are required to follow F.H.W.A. or F.A.A. guidelines. Selection for projects using state funds follow an evaluation procedure which utilizes a point system applied to all proposals by a recommending committee with a minimum of three members. It is obviously impossible to remove all subjectivity from any selection procedure. However, the use of a point system tends to minimize personal prejudices. When dealing with state funded projects, the department currently requires the submission of a minimum of three names when the probable contract amount will exceed \$20,000.

The department's contract forms are developed in conjunction with the Department of Law.

The Department of Administration has a responsibility to insure that personal services contractors are not in fact employees within the definition of the Internal Revenue Service. You have also expressed concern that proposed work receive adequate exposure within the professions. We believe that the Department's procedures provide for such exposure.

In the light of the above, we would propose to modify the process delineated in your memo of September 29, 1977. We propose the following:

1. Requests for proposals for professional services for Department of Transportation and Public Facilities will be advertised.
2. Recommendations to the Commissioner will follow either Departmental or superceding Federal procedure.
3. Following Commissioner's approval, your Authority to Enter Contract Negotiations form will be submitted to the Department of Administration, Division of Finance. This form will list three firms when the proposed contract will exceed \$20,000.
4. Following submission of the Authority form, Department of Transportation and Public Facilities will proceed to negotiate the contract with the successful proposer. Contracts will contain a clause which declares the contract void should your Division of Finance find that by Internal Revenue Service definition, the contractor is, in fact, a State employee. Given the nature of our work, we are confident that the possibility of such a ruling is extremely remote.
5. Division of Finance will return the Authority form after analysis. Should your analysis reveal an Internal Revenue Service violation, the contract will be voided or negotiations terminated.

We feel that the above procedure will adequately discharge your statutory responsibility as well as that of this department.

RAH:ora

H B

5 5 8

CITY OF SEWARD



P. O. BOX 337
SEWARD, ALASKA 99664

CITY MANAGER	224-5214
COMPTROLLER	224-5216
INFORMATION	224-5215
CITY POLICE	224-5201
CITY CLERK	224-5214
HARBOR	224-3420

January 21, 1981

Honorable Jalmar M. Kerttula
President Alaska State Senate
Pouch V
State Capital
Juneau, Alaska 99817

Dear Sir:

The City of Seward, strategically located at the sea-going crossroad of the Gulf of Alaska, is pressing forward with the development of a full-service marine industrial park and major shipyard facility. With completion scheduled for the fall of 1982, this facility will offer major ship repair, a 3,000-ton shiplift, and a full range of marine support services for Alaska's fishing, commercial and pleasure boat fleets. Full scale marine service and ship building is currently unavailable anywhere in the state, a fact causing untold delay and expense to marine operations and resulting in wholesale exporting of jobs from our economy.

Our City and a leasing partner, VECO Construction of Anchorage, has initiated this vital shipyard project after considerable encouragement from state government and private business sources. Seward has generated seed money funding in the amount of \$6 million as a down payment on the total estimated cost of \$60 million for the completed Fourth of July Creek Industrial Marine Park. The balance of funding for this unique capital project, some \$54 million, is dependent on state appropriation.

In addition to providing vital and cost effective support services for our maritime fleets, the Seward - Fourth of July Creek Shipyard will provide hundreds of permanent jobs and a large measure of economic stability for our city and the surrounding Kenai Peninsula. Additionally, VECO anticipates spending \$15 million over the next three years to develop their portion of the facility. Dozens of spin-off marine oriented businesses will be created and subsequent service industry increases will substantially increase the economic picture for our region.

Honorable Jalmar M. Kerttula
January 21, 1981
Page 2

We firmly believe that our shipyard project epitomizes the kind of lasting economic development that is essential to the well-being of a growing Alaska. The impact of this project is statewide, and we have done our homework in preparing for the population growth in Seward that will be triggered by the venture.

We are proud to report this project is:

- * on time
- * on budget
- * on target

Seward has done its job in carrying this Alaskan shipyard project to its current viable status. We offer the attached engineering project description for your review or comments you might have on the topic.

The entire City thanks you for your careful consideration and deliberation on this matter.

Very truly yours,

Raymond L. Hugli
Mayor
City of Seward

3/20/81

Seward

Coal Hearings - send calendar

- Daryl - asst city mgr - Seward
Johnny Johnson - Seward

↓
Thelma -

→ dock facility in Seward

20,000 yrly to City for maint - agreement

to 25,000 - 40,000 for Tustemera

ferry striping fenders ^{system} of dock

~~the~~ threat to moves just to Homer

Nash Rd - 4th of July Creek - rd leading to

city 1 last yr

paving this yr

3.5 mil - now 1.7 mil ()

^{Bates} port bond money - ^{okay} trusted into Nash rd paving

Welder (contractor) ^{city mgr} rec to encl give contract
to ^{incl} Nash Rd paving & award kept away

4.45 mil

→ total amt of work for Welder
i jobs

need: amt of add'l monis needed
length of road

4/10/81

Johnny Johnson

2500.0

6 mil sheet pile cells for freshwater

25 sq ft mitigation being new

Sep '87 ~~##~~ completion

operational stage < Cargo dock

Century Graduate - doing current
A/E

no decision on final sq -
B.G. on shared contract

→ min 200 ft jobs - peron
(exclusive of const.)

Alicia
Dunbar
Whard

FOURTH OF JULY CREEK

INDUSTRIAL MARINE
PARK

CITY OF SEWARD, ALASKA

PROJECT DESCRIPTION

DECEMBER 1980



Executive Overview

The City of Seward, in conjunction with VECO of Anchorage, Alaska has undertaken the development of a Marine Industrial Park on 100 acres of land on the Fourth of July Creek Delta three miles across Resurrection Bay from the City. This project was initiated to expand Seward's employment base and to provide a much needed service to the marine industry operating in Alaskan waters.

In anticipation of this type of development, Seward has been in the process of expanding and upgrading the City's services to accommodate a population influx. This plan, initiated several years ago and still underway, will add capacity to the City's basic infra-structure and will provide over 100 new residential lots for new home construction.

The Industrial Marine Park includes the construction of a 300 x 80-foot shiplift with a 3,000 ton-capacity and seven public and seven private dry berths. These facilities will be used for both ship repair and ship building purposes. Additional public features include a 1000 x 650-foot basin sheltered by breakwaters, a general cargo dock, a transit shed, 700,000 square feet of cargo storage and a 10-acre industrial subdivision available for small shops and supporting facilities to the shipyard. The project also includes construction of an access road, utilities and other related support services. Work was initiated in the spring of 1980, and completion of the project and operations start-up is scheduled for the fall of 1982.

VECO is leasing land from the City and will construct seven dry berths and other shipyard improvements for the purpose of ship repair and ship building. Additionally, under a license agreement, VECO will operate the shiplift and other facilities within the complex.

The total estimated cost for the public features of the project is \$60,000,000. Presently, the City has \$6,000,000 of this amount in place and has committed these funds to the initial phases of the development. An additional \$54,000,000 is required for the successful completion of the Development. VECO anticipates spending \$15,000,000 on the project, and they have also initiated their planning and engineering efforts.

An expanded review of the project is available in the Introduction and Summary Section of this document and detailed information is available in the sections following.

**FOURTH OF JULY CREEK
INDUSTRIAL MARINE PARK
CITY OF SEWARD, ALASKA**

DECEMBER 1980

PROJECT DESCRIPTION

Prepared By:

CENTURY.

*A Joint
Venture*

QUADRA

**301 EAST FIREWEED LANE
ANCHORAGE, ALASKA 99502
(907) 276-3770**

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Introduction & Summary

The City of Seward, intending to increase industrial opportunities which will provide more stable employment - particularly in marine related areas - is proceeding with the development of the Fourth of July Creek Industrial Marine Park. Historically, Seward's economic growth and stability have been based on the natural features and resources of the region. The present economy, relying heavily on tourism, recreation, timber, fishing, and government employment, tends to be seasonal, resulting in a serious fluctuation of unemployment rates, often soaring as high as 16-18% during winter months.

In an effort to stabilize this sagging and seasonally dependent economy, Seward has initiated this project. However, the people of Seward do not view the development as just benefiting their City, instead they see the project as having a positive economic benefit to the Maritime and Fishing Industry throughout the State. Since there are no major repair or fabrication facilities within the State, the Maritime Industry must rely on sources outside Alaska for these services. This costs both lost time and revenues due to the greater distances a vessel must travel for repairs or other shipyard services.

Since the 1964 earthquake, local facilities which could support industrial development in Seward have been limited, thereby restricting opportunities for large-scale economic expansion. After several years of planning and preparation, the City is now capable of meeting the challenge created by the introduction of this new large-scale marine industry development. Seward has been expecting and preparing for this type of development. Water, power, and wastewater improvements are in progress; paving of all the City's streets has been completed, and a number of Subdivision developments, including one funded by the City, are underway to accommodate the housing needs of a population increase.

A major part of Seward's improvement plan is the upgrading and extension of Nash Road into the Fourth of July Creek area. This project was started in the spring of 1980 and construction began in September, and is currently still underway. When this \$3,000,000 project is completed, there will be a paved 55-mph highway leading from the Anchorage-Seward Highway directly into the Fourth of July Creek area.

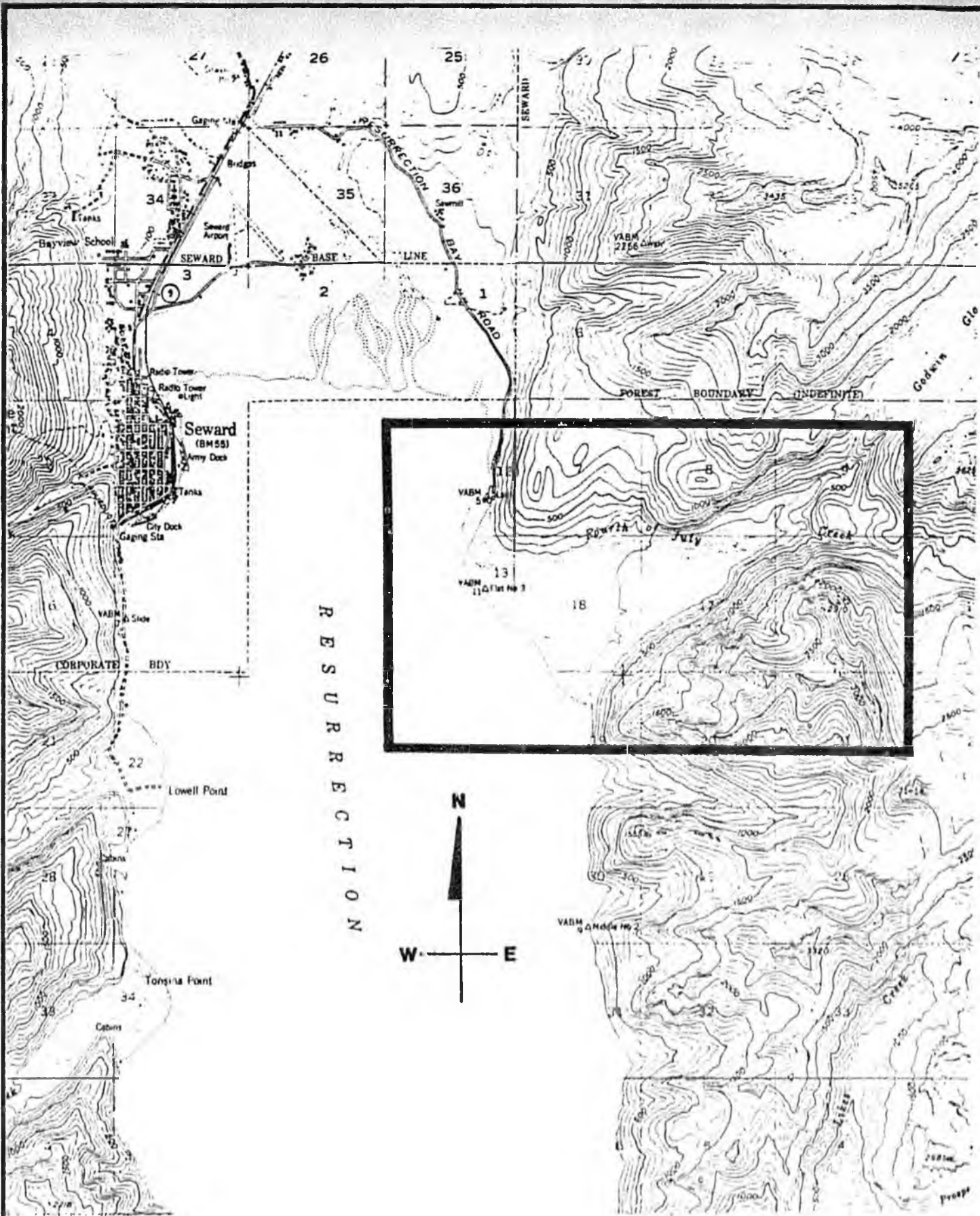
For the past four years the City has been evaluating land which could be developed with the facilities necessary to coax new industries into Seward. The City is convinced that lands available around the Fourth of July Creek delta can provide the necessary elements for such future development. Thus, this location was selected as the site of the New Industrial Marine Park. The location of this site with respect to the City is shown on Figure No. 1.

In June of 1980, Seward engaged a consulting team to investigate the Fourth of July Creek site, prepare a development plan, and obtain the necessary permits for its development. Investigations produced the following conclusions: 1) The valley floor is gently sloping and well drained; 2) The soils are coarse sands and gravels, with excellent foundation properties; 3) Natural, deep water is available within several hundred feet of the beach; and 4) The valley is not a sensitive habitat for wild life, and there is no significant fish production in the area. These factors all indicate that the Fourth of July Creek Valley is an excellent site for almost any type of marine related industrial development. Using this information and other physical data, the development plan described in this document has been prepared, and applications for permits to implement the plan have been filed.

Pursuing the development plan, the City entered into an agreement with VECO, an Alaskan company which proposes to construct a ship repair and ship building facility in the project area. VECO, having analyzed the regional economy and determined that there is a substantial market available in the repair of vessels on the Alaskan Gulf Coast, has agreed to lease land from the City of Seward for these purposes, assuming Seward can provide the sheltered basin and other facilities necessary for the successful operation of an industrial marine park.

Project Description

The Industrial Marine Park entails development of a sheltered basin through construction of breakwaters and a cargo--docking--facility. The project requires dredging an inner basin area to a depth of 22-feet below Mean Lower Low Water (MLLW), constructing a sheet pile breakwater approximately 56-feet high, filling adjacent land areas to an elevation of 16-feet above Mean Sea Level, and constructing a training levee to direct flow of the Fourth of July Creek along the southern boundary of the project area. In addition, an access road, waste treatment and water supply systems, cargo--storage--areas, and a shiplift with associated dry docking facilities will be constructed. These improvements and the general site layout are shown on Figure 2.

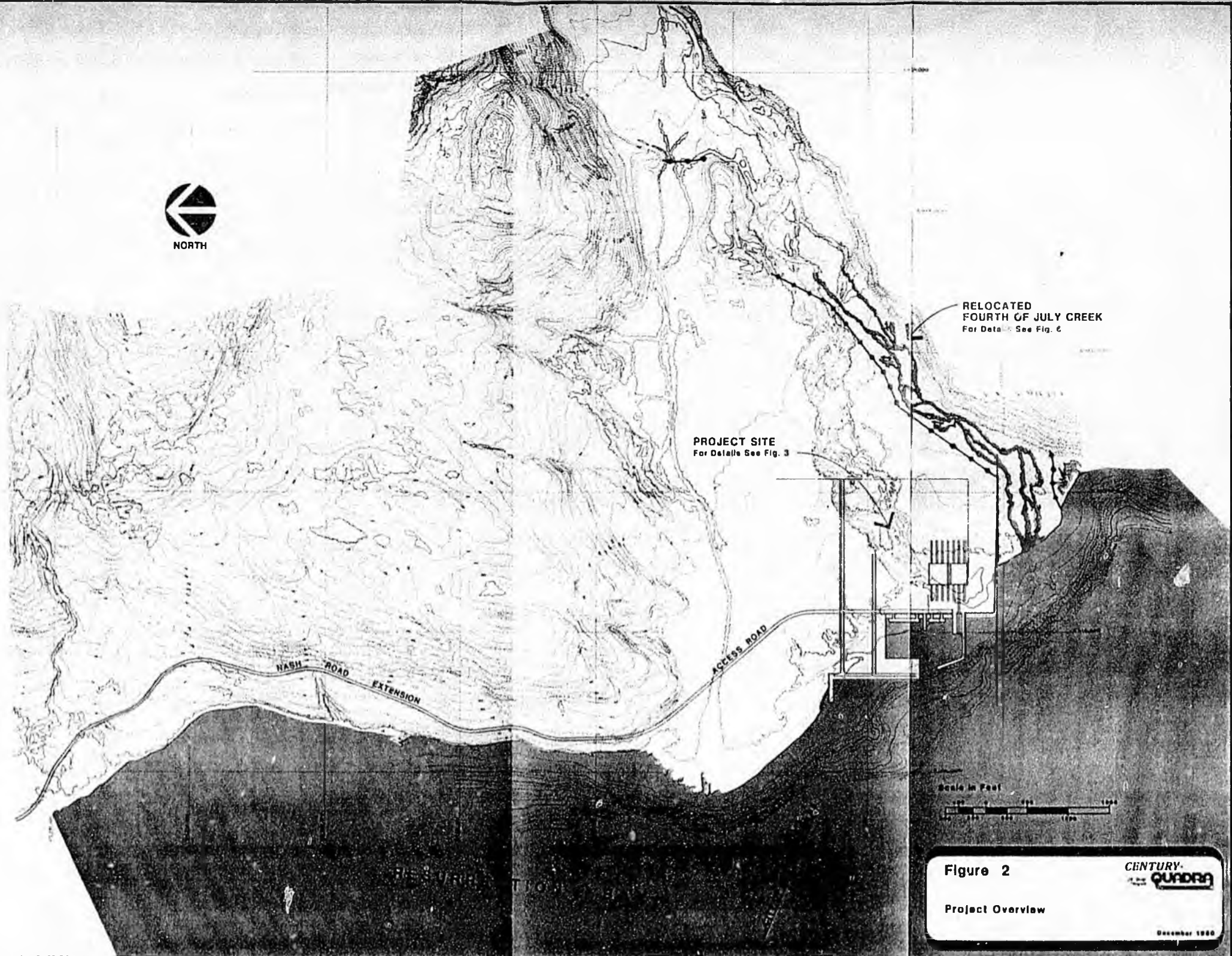


SCALE 1:63,000



CONTOUR INTERVAL 100 FEET
 DATUM IS MEAN SEA LEVEL
 DEPTH CURVES AND SOUNDINGS IN FEET - DATUM IS MEAN LOWER LOW WATER
 SHORELINE DASHES REPRESENTS THE APPROXIMATE LINE OF HIGH AND LOW WATER
 THE MEAN RANGE OF TIDE IS APPROXIMATELY 20 FEET

Figure 1
Site Location
 CENTURY-QUADRA
 December 1980



RELOCATED
FOURTH OF JULY CREEK
For Details See Fig. c

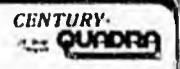
PROJECT SITE
For Details See Fig. 3

NASH ROAD
EXTENSION

ACCESS ROAD



Figure 2
Project Overview



December 1980

The publicly funded portion of the project includes a 1,300-foot long general cargo dock with associated staging areas, a shiplift with a 300 x 80-foot platform having a 3,000-ton capacity, seven (7) dry berthing positions for ships up to 250-feet in length, and a ship transfer area which serves both the seven (7) public, and seven (7) private dry berths. A section of the Marine Industrial Park, leased by the City to VECO for private development, contains ship repair and vessel fabrication facilities and seven (7) dry berths for ships up to 300-feet in length.

Utilities such as water and electricity, sewage disposal, storm drainage systems, and access roads will be publicly funded, whereas disposal systems for industrial wastes requiring special treatment will be provided by the shipyard operator. Certain additional areas of the site will be set aside for lease to other future tenants, e.g., ship chandlery, a fish processing plant, a fish cold storage facility, and various workshops providing services to small and medium sized crafts. The present Fourth of July Creek stream bed interferes with the developments described above. Conceptual engineering plans to relocate the creek on the south side of the valley have been prepared to eliminate this conflict.

Project Responsibilities

VECO has completed preliminary agreements with the City of Seward to lease approximately 43.4 acres of land within the industrial park. These agreements require VECO to construct and maintain their own facilities, including ship repair, dry berths, and waste treatment systems. The City is responsible for construction of the basin, shiplift, dry berths, cargo dock, and storage areas. However, the City will transfer the operation and maintenance of these facilities to VECO and they will operate the facility under a license agreement.

Schedule of Development

The entire project has been divided into four major construction phases with total time required to complete the public portion of the project set at approximately 19 months. Each of the construction phases has been scheduled, when possible, to avoid conflicts with environmental constraints and commercial or recreational fisheries. The project is scheduled for completion and operations start-up in the fall of 1982. It should be noted, however, that the schedule depends on the timely issuance of permits from State and Federal agencies, and the appropriation of funds to finance construction. Extension of the permit process or delays in funding will significantly alter this schedule.

Estimated Project Costs

The total budget for all public improvements is currently estimated to be \$60,000,000. This figure includes all Engineering, Administrative, Construction, and Supervision expenses as well as a contingency and inflation factor.

The City of Seward has \$6,000,000 of this amount in place and they are using these funds to proceed with the completion of Phase I and the Engineering and Design of Phase II. Since the City has exhausted all of its financial resources improving the infra-structure of the City itself, it must look to outside sources to aid in the financing of the remaining improvement costs. Thus, the City is seeking aid from the State via a legislative appropriation for the remaining \$54,000,000 necessary to complete the project.

All of the funding that has been appropriated and released by the State to Seward for this project has been encumbered for the ongoing effort towards its completion. The City is proceeding as expeditiously as possible, and is now limited only by the receipt of additional financial aid.

Seward's Growth Potential

Because of Seward's low growth and high unemployment rates since 1964, the community strongly desires to encourage new industrial and business development. This desire is reflected in the City Government's aggressive pursuit of oil or marine related industry developments. Seward has been expecting and preparing for this industrial expansion for several years. Water, power, and sewer improvements are in progress, and paving of all city streets has been completed. A number of subdivision projects are underway to accommodate the housing needs of a rapid population increase. This section is a brief discussion of the existing community services, including those projects underway for expansion and upgrading.

Population and Housing

The Census Bureau currently estimates the City's population to be 1,850 persons. Presently, the vacancy rate is near zero for residential properties. There are about 100 undeveloped residential lots available throughout the community that have full utility service.

To relieve the anticipated housing shortage, planning and design for resubdivision and development of the Terminal Subdivision is underway by the City. When completed, in 1981, the development will include approximately 100 single family and 150 multi-family dwelling units with full community services. There are also several subdivisions being developed north of Seward by private parties. The developments are adjacent to the Seward Highway and rely on on-site water supply and wastewater disposal.

Water

Seward has an abundance of good quality groundwater, most of which comes from groundwater wells. The minimum combined pumping capacity at this time is approximately 3,800 gpm with a total of 600,000 gallons storage. Pressure ranges from 30 to 70 psi, and is supplied by well pumps and one 1,700 gpm constant pressure pump for the school and Jessie Lee Heights Subdivision. Treatment consists of chlorination, and the water is of excellent quality.

The distribution system serving existing development is in good condition. Plans to expand the system to serve new residential and commercial areas in the harbor area have been developed with expansion occurring on an as-needed basis.

The existing supply is capable of serving the community for some time. Additional storage is required to meet fire reserve requirements and plans are underway to accomplish this objective.

Sewerage

Construction is underway on a new secondary treatment lagoon, interceptors, and force mains to serve the City with completion now scheduled for September 15, 1981. When completed, the existing outfall will be eliminated and the wastewater from those portions of the community that have sewers will be treated at the lagoon.

Components of the system are designed to handle the following populations:

Interceptors	-	15,000
Pump Stations	-	10,000
Pumps	-	5,000
Lagoon	-	5,000

Thus, excess capacity will be installed in the initial system. Expansion of the Sewage Collection System is planned to coincide with development on an as-needed basis.

Electrical

Seward is served by Chugach Electric, and purchases power delivered at Lawing, about 25 miles north of the City. All retail customers south of that point are served by the City's utility.

Up to this fall, Seward has had 5,000 KW available which served a population of about 2,000, the Kenai Lumber Company Mill, Seward Fisheries, and all other industrial and commercial users. The capacity of that system was reached several times in recent years.

Improvements completed this fall include a new substation at Mile 2.2 with two 7,500 KVA transformers and the abandonment of the Chugach owned substation at Mile 7.5. The current capacity is 9,000 - 10,000 KW at 24.9 KV split into 5 distribution circuits.

The transmission line from Lawing to Seward is capable of 30,000 KW at 69 KV, but Chugach's line from Dave's Creek Substation to Lawing is not. Negotiations with Chugach are now underway to have that line upgraded to 30,000 KW at 69 KV capability.

Service of the Nash Road area is now 2,000 KW at 12.5 KV. A project planned for the spring of 1981 will include a new transmission line to the Nash Road and Fourth of July Creek areas capable of 25,000 to 30,000 KW at 69 KV with a new substation to be installed as needed.

After the sewage lagoon is completed at Lowell Point, service to that area will be 2,000 KW at 12.5 KV and will support many residences as well as the sewage treatment facilities.

Seward now has a total of 5,500 KW in standby diesel generators, and plans to add 5,000 KW in 1981. This standby capacity is important due to the potential for interruption of service from avalanches.

Telephone

General Telephone serves the Seward area. Since they are a demand type service, expansion of the system will occur as growth requires. A sudden large influx of people will cause a backlog in the installation of services but the response time to meet the demand is estimated to be one to two months.

Other Basic Community Services

Seward has recently completed several capital improvement projects including paving of all City streets and upgrading their 33-bed hospital.

The basic community services include:

- | | |
|---------|---|
| Schools | - Elementary - capacity for 500 students |
| | - High School - capacity for 300 students |
| Police | - Sufficient for population of 3,000 |

- Fire - Full time Fire Chief and 20 volunteers. Fire Rating of 5.
- Medical - Hospital facilities sufficient for 5,000 population, 2 full time doctors.
- Communications - 3 television channels, 1 radio station, 1 weekly newspaper.

Waterfront Improvements

The Fourth of July Creek Industrial Marine Park entails construction of a number of facilities. Figure 3 shows the detailed plan for the development. All of the improvements listed as public and infra-structure (Items 1-19 and 31-36) on Figure 3 will be constructed as part of the overall project. Additionally, Item 51, the private shipyard, will be constructed by VECO, the shipyard operator. The remaining features (Items 52-59) are conceptual only, and presently there are no current proposals to develop any of these improvements. The following is a discussion of the Shiplift and Transfer System, Breakwater, General Cargo Dock, the Shelter Basin, and Dredge and Fill Activities.

Shiplift and Transfer System

The Shiplift and Transfer System for docking, undocking and dry berthing of vessels will be the major feature of the Fourth of July Creek Industrial Marine Park. These facilities will be constructed as Public Improvements and operated under license by the shipyard operator, VECO. The facilities will service the shipyard operations as well as the public dry berthing spaces.

The shiplift will be able to launch and retrieve vessels up to 3000 long-tons displacements, having lengths up to 300-feet and widths to 65-feet. The vertical shiplift consists of a platform hung from wire ropes attached on two sides. The upper ends of the wire ropes wrap around the drums on a pair of synchronized hoists, positioned on piers flanking the platform. A section through the shiplift is shown on Section AA of Figure 4.

Using the winches, the platform is lowered and raised into and out of the water. When retrieving a vessel from the water, a cradle with blocks shaped to the bottom of the ship is placed on the platform. The platform and cradle are then lowered to a depth below the draft of the vessel. The vessel, moored elsewhere, is floated over the platform, and then the platform, cradle and ship are raised.

The ship transfer system consists of an end-transfer cradle on rails and a transfer table, also on rails, connecting to fourteen dry berth positions. When transferring a raised ship from shiplift to dry berth, the transfer table is positioned so it's rails align with the extension rails of the shiplift. The cradle and ship are pulled by tractor or winch from the shiplift platform onto the transfer table. The ship, now supported by two cradles, is transferred laterally to a pre-assigned dry berth position, where the

LIST OF FACILITIES

PUBLIC

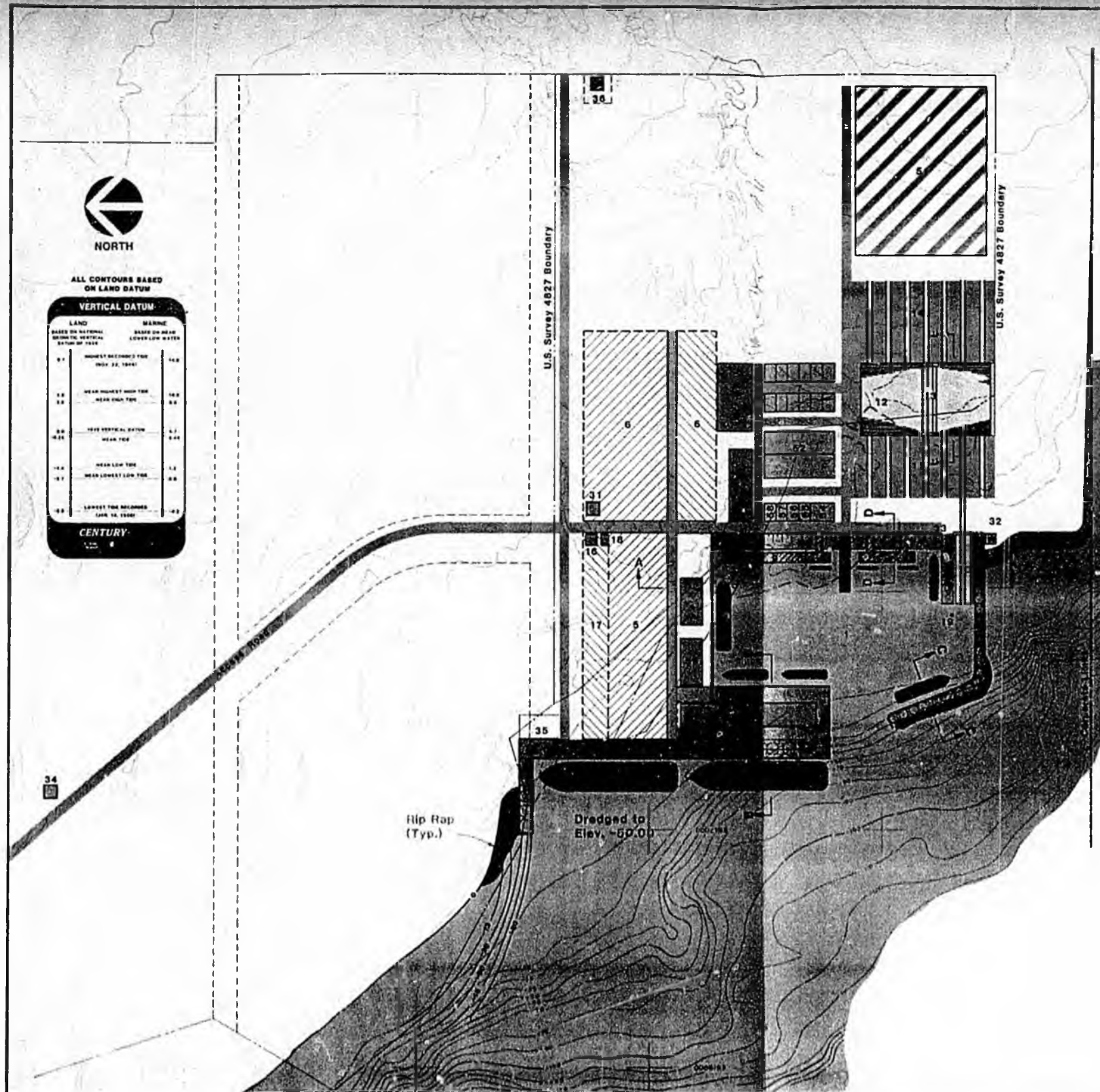
1. Sheltered Harbor Basin 1000' x 850'
Bottom EL: - 22.00 Ft. Marine Datum (-27.70 Land Datum)
2. General Cargo Dock, 1300' x 300' Wide
Capacity 160,000 T/Yr.
3. Transit Shed, 100' x 600' x 20' Clear Height.
4. Bonded Warehouse, 100' x 200' x 20' Clear Height
5. Open Buffer Storage, 212,500 S.F.
6. Open General Storage, 428 500 S.F.
7. Dry Boat Repair Yard For 43 Boats, 50' x 20'/Boat.
8. Boat Ramp , 30' Wide.
9. Small Floating Dock For Tugs, Fire Boats and Small Crafts.
10. Shiplift, 300' x 80' Platform Size.
11. Dry Berths, 7 Positions, 250' Long.
12. Transfer Pit, 300' x 560' x 5' Deep
13. Transfer Carriage, 300' x 40'.
14. Dry Berths, 7 Positions, 350' Long (Leased To Shipyard Operator)
15. Covered Small Boat Storage, 150' x 300', Double Deck, 120 Spaces at 25' x 30'.
16. Guard House, First Aid Station, Ambulance 50' x 70'.
17. Parking, 130' x 900' For Approximately 350 Cars.
18. Harbormaster 50' x 30'.
19. Warping Dolphin

INFRASTRUCTURE

31. Sewage Treatment Plant.
32. Storm Water Disposal Plant.
33. Shiplift Control Booth
34. Master Sub-Station.
35. Recreational Parking
36. Well & Reservoir

PRIVATE

51. Private Shipyard Area 385,000 S.F.
52. Ship Chandlery, 200' x 300' Including Storage.
53. Fish Processing Plant, 100' x 300'.
54. Net Loft, 100' x 80'.
55. Plastic and Fiberglass Repair Shop, 50' x 80'
56. Electronic Repair Shop, 50' x 80'.
57. Propeller Repair Shop, 50' x 80'.
58. Boat Engine Repair Shop, 50' x 80'.
59. Cold Storage Building, 100' x 200' - 4 Stories w/setback



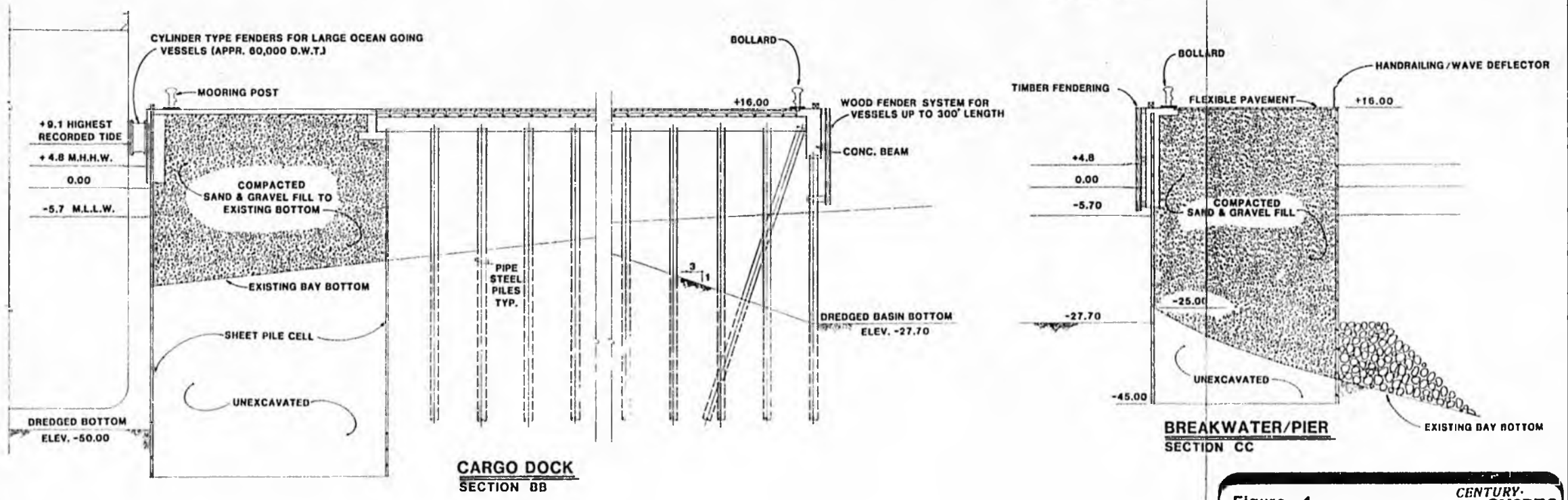
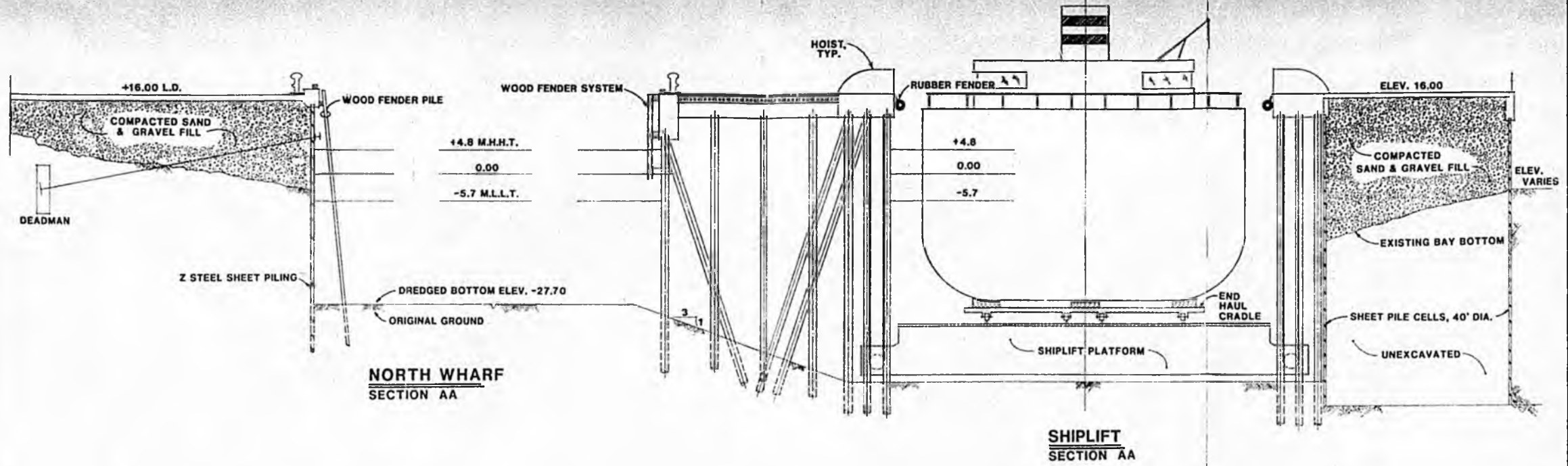


Figure 4

CENTURY-
QUADRA

Cross Section through North Wharf, Shiplift, Cargo Dock, and Breakwater Pier

December 1988

end haul cradle is pulled off the transfer table to the designated dry berth. A typical section through the transfer pit with a ship in position is shown on Section EE, Figure 5.

When the lift and transfer system become operational, and the dry berthing facilities are completed, there will be seven 350-foot long berths for the shipyard operator and seven 250-foot long berths available for public use. Additionally, the shiplift itself is available for simple and quick repairs. With this combination, the facility will be able to service in excess of 200 vessels per year.

Breakwater

Analysis of the physical features at the Fourth of July Creek Site indicates that a breakwater is necessary to protect the inner harbor facilities and to provide all-weather operations of the shiplift. The basic considerations are protection from wind, waves and currents plus the reduction of siltation problems. An elaboration on these follows.

Based on weather records at Seward and wind records obtained at the Fourth of July Creek site, it is predicted that winds in excess of 20 mph will occur an average of 40 days per year. Winds of this magnitude will seriously hamper work on ships afloat, and will interfere with the shiplift operation.

The anticipated 5-year wave heights are 9-feet from the south and 7-feet from the north. The breakwater configuration shown on Figure 3 will protect most of the inner harbor completely from these waves. Waves that enter through the harbor entrance will be attenuated to approximately 30% of their original height. Thus, the maximum 5-year wave anticipated in the Shelter Basin is approximately 3-feet.

Tidal and wind currents in excess of 1-foot per second are anticipated to occur an average of 68 days per year at the site. Currents in excess of 1-foot per second will interfere with work on ships afloat and add difficulty to docking and undocking on the shiplift.

Since the Fourth of July Creek has a significant bed load, siltation at the site is a serious problem. The estimated siltation rate without a breakwater is 1-foot per year. At this rate maintenance dredging of the basin will be required often. With the breakwater, the siltation rate in the inter-basin will be virtually zero.

The breakwater layout was determined with these factors in mind. All the major operations are sheltered by the breakwater except for two berthing spaces for large ships at the General Cargo Dock.

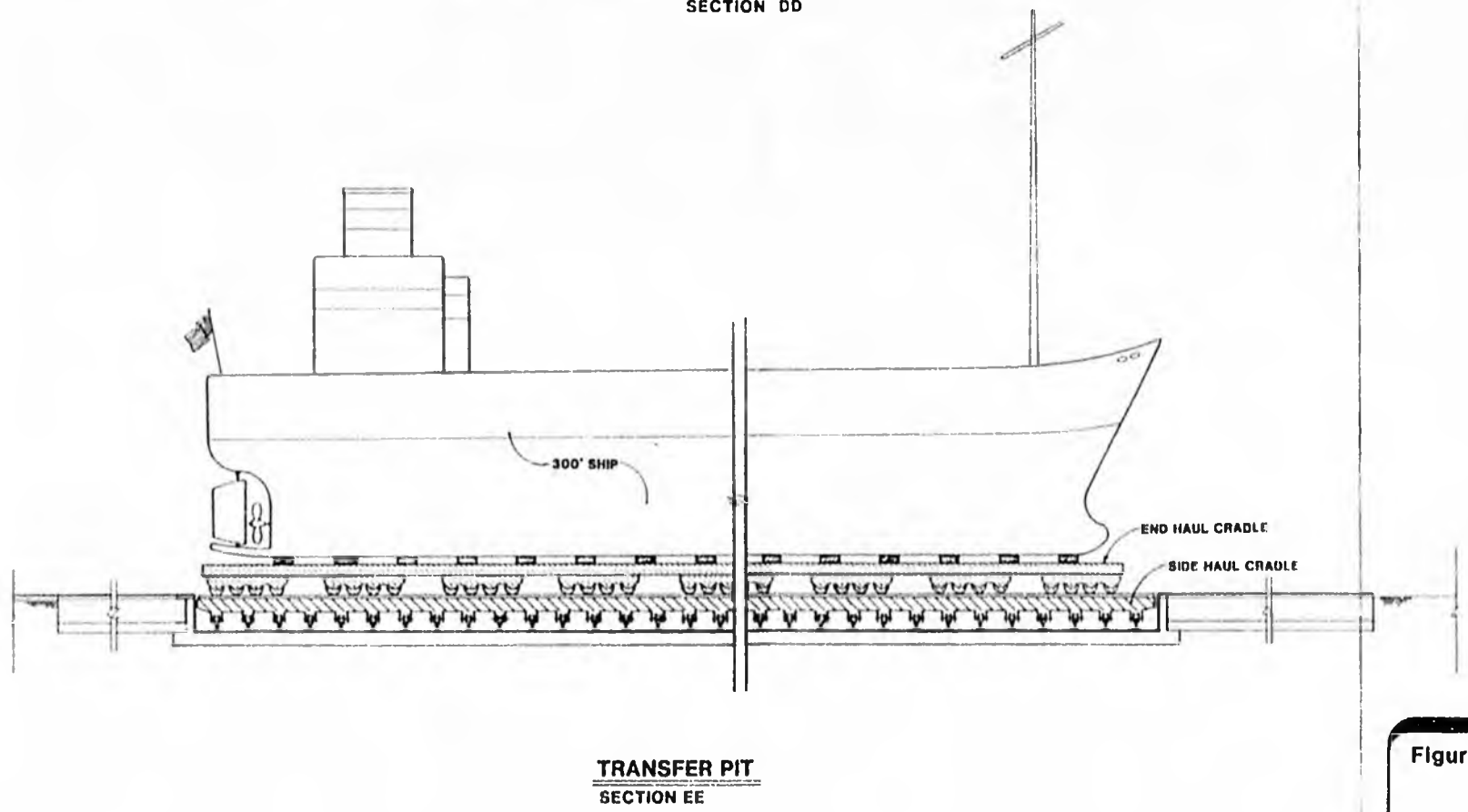
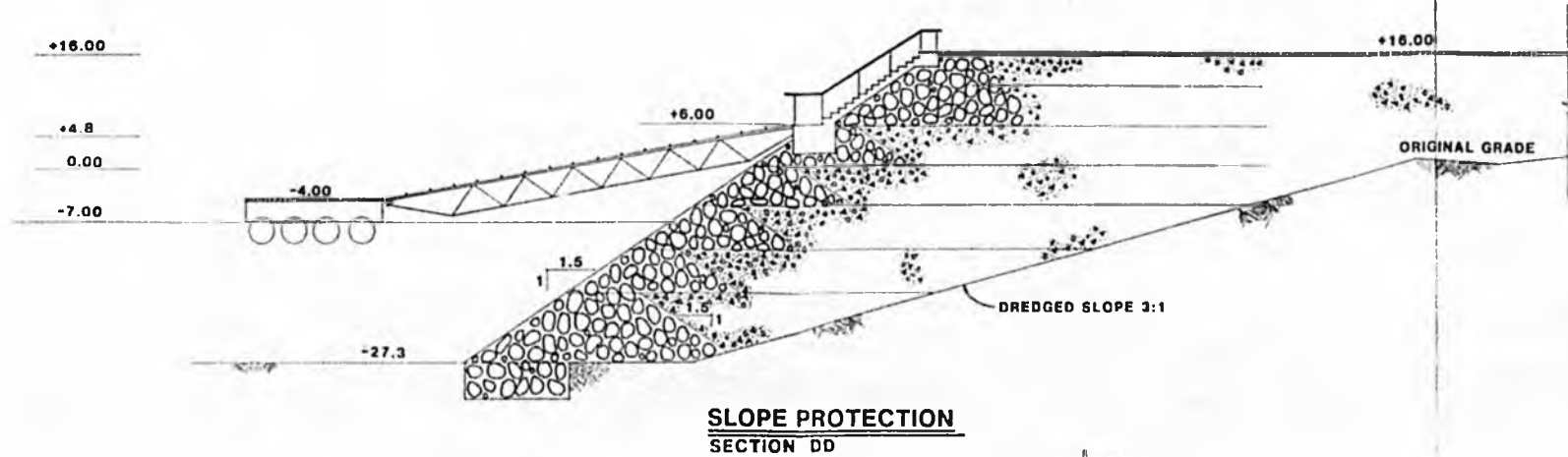


Figure 5

CENTURY
QUADRA

Cross Section through
Slope Protection and Transfer Pit

As shown on Figure 3, the north breakwater is an integral part of the general cargo dock and the south breakwater is extended from the south pier of the shiplift. The breakwater will consist of earth-filled sheet pile cells approximately 40-feet in diameter, and will have a finished top surface to allow vehicular access. The sheet piles will have an average length of 56-feet, and the top elevation will be 16-feet above mean sea level. The entrance to the breakwater will be 250-feet wide, allowing ample room for two 300-foot ships. Section CC on Figure 4 shows the general features of a typical section through the breakwater.

General Cargo Dock

A 1,300-foot long wharf is planned for berthing two ships of approximately 600-foot length. With a water depth dredged to minus 50-feet MLLW, the dock will be capable of servicing vessels up to 100,000 DWT with loaded drafts of 45 to 47-feet on the exposed (west) side. Berthing space is also available in the Shelter Basin for vessels with a maximum draft of 19 to 20-feet.

As stated earlier, the dock will be constructed as an integral part of the north breakwater which will form the foundation system for the west edge. The remainder of the foundation will be a conventional pile system. A typical section of the dock, depicting the major details, is shown on Section BB of Figure 4.

The annual capacity of this dock is estimated at 160,000 tons of cargo. This is computed on the basis of 100 ships per year calling at the port and unloading an average of 1,600 tons per call. Estimated operations will require four longshoreman gangs, handling an average of 400-tons per 10-hour day, working 4 days per ship call.

On the large-vessel side of the dock, bollards and cleats will be provided alternately at intervals of 50-feet. The bollards will have a pulling capacity of 100 tons and the cleats 5 tons. Two electric capstans per berth will be provided on the west face of the cargo dock, for emergencies.

On the east side of the dock, facing the protected harbor, 50-ton bollards and 5-ton cleats will be provided at 25-foot spacings alternately.

A prefabricated transit shed, with a floor area of 60,000 square feet and 15-foot clear height, is planned for cargo requiring short-term storage. This transit shed, located on the dock will provide approximately 30,000 square feet of storage area, or a storage volume of 450,000 cubic feet per berth. Port offices and operations and maintenance activities can also be headquartered in this structure.

A total storage capability of 8 acres per berth (approximately 700,000 square feet) will be provided. The storage is made up of the following:

Transit Shed	60,000 SF
Buffer Storage	212,500 SF
General Storage	<u>427,500 SF</u>
Total Storage	700,000 SF

No revolving gantry or container cranes are envisioned for the cargo dock. General cargo will be unloaded by the ship's own gear and with the help of rubber tired cranes. The ship's gear will place the cargo on the apron from where it will be picked up by forklift trucks and either loaded on trucks or placed in the transit shed.

The dock is considered to be an essential part of the development, serving the Shipyard and Marine Industrial Park and ultimately, other development that will occur in the surrounding lands of the Fourth of July Creek Valley.

Shelter Basin

A small shelter basin will be provided by dredging the area enclosed in the breakwater to a depth of minus 22-feet MLLW. The basin will be 1000-feet long and 650-feet wide and can accommodate vessels up to 300-feet in length. This harbor will provide shelter for: 1) loading and unloading smaller vessels at the cargo dock; 2) emergency berthing for vessels during storms; 3) permanent mooring of vessels assigned to the Industrial Marine Park; 4) providing repairs on ships afloat; and 5) docking and undocking of vessels on the shiplift.

A wooden floating dock inside the shelter basin is planned to provide mooring for small boats and harbormaster crafts. Access from yard level to the water will be via a fixed stairway in the upper portion and an articulated ramp in the lower part of the walkway. The arrangement of the floating dock and inter-basin shore protection is shown on Section DD of Figure 5.

Dredge and Fill Activities

The project design will require the land area adjacent to Resurrection Bay to be filled to a minimum elevation of 16-feet (Land Datum). This will require approximately 1.6 million cubic yards of fill material. The harbor will require a minimum depth of minus 22-feet MLLW which will necessitate the removal of approximately 1.5 million cubic yards of bay bottom material.