

ALASKA LEGISLATURE COMMITTEE FILES 1963-1964

2919 HSA RENOVATION OF GOV.'S MANSION - RESIDENCY #1

the construction contract. Participatory construction funding by a Federal Agency or by the Division of Risk Management is not included in such cost as used within this procedure.

13.4.8 Public Buildings and Facilities - Schools, office buildings, court buildings, and other facilities designed for substantial public use and vessels of the State ferry system.

13.5 DIAGRAM OF PROCEDURE

13.5.1 Page 6 contains a summary diagram of this procedure. Each activity is identified by two numbers (eg 19-20) which are referenced in the procedural discussion herein.

13.6 PROCEDURE

13.6.1 (Activity 1-2) Following each legislative session, DOT/PF (Planning and Programming) provides ASCA with an informal summary of capital projects which identifies proposed buildings and facilities for which Artwork may be required.

13.6.2 (Activity 2-3) DOT/PF (Design and Construction Regions) assigns a Project Manager for each building and facility, who will concurrently initiate this procedure for procurement of Artwork and the selection procedure (P & P 28-8000) for architectural services.

13.6.3 (Activity 3-4) Project Manager and the designated Client's representative for the project decide if a percentage (amount) for public Artwork is required in accordance with A35.17.020 and 44.27.060. The amount for public Artwork shall be at least one percent of the construction cost.

- A. If a project consists of new construction or remodel/renovation of existing building or facility, the amount for public Artwork is required. However, remodel/renovation does not include maintenance, repair, code upgrade, heating renovation, etc.
- B. If the estimated construction cost is \$250,000 or less or if the building or facility is not for substantial public use, the amount for public Artwork shall be deposited in the Art in Public Places Fund after final acceptance of the facility (paragraph 6.14).
- C. If the estimated construction cost is greater than \$250,000, the amount for public Artwork shall be expended only for the actual costs of design (which may include engineering for the Artwork itself, exclusive of the architectural engineering design of the facility or site where the Artwork will be displayed), production and mounting of Artwork and direct administrative costs of Artists. Administrative costs of DOT/PF, ASCA and the Architect related to Artwork, costs related to a dedication or "unveiling" of Artwork, and

the Client Agency's maintenance and recurring operational utility costs shall not be charged to the amount for public Artwork.

- 13.6.4 (Activity 4-5) Project Manager establishes in writing an Artwork Selection Committee consisting of the Project Manager (Chairperson) and a designated Individual from ASCA, the Client and the Architect. If the amount for public Artwork exceeds \$50,000 for a building or facility, the Commissioner may appoint one additional member and the five designated persons may elect to add one community representative to the Committee. Project Manager must notify the Commissioner if Artwork will exceed \$50,000 to determine if such additional committee members will be designated. These individuals may receive assistance from facility users, community representatives, public art panel members or the ASCA Visual Arts Council; however, the Artwork Selection Committee shall consist only of the designated (4-6) individuals.
- 13.6.5 (Activity 5-6) Architect (or Committee if an Architect is not engaged) develops Artwork criteria (architectural and engineering constraints) during schematic and design development phases, in coordination with the Committee, and includes provisions in the Construction Documents to intergrade selected Artwork.
- A. The Architect's agreement with DOT/PP may require the above services only or it may include additional provisions for the Architect to manage Artwork procurement by directly entering into contracts with Artists approved by the Committee; the latter is preferred.
- B. The Architect's compensation should be a negotiated fixed fee or fixed hourly rates for the Architect's direct labor plus any allowable reimbursable expenses plus the Architect's direct cost of any approved subcontracts with Artists. If an amount equal to 110% of the amount for public Artwork plus an estimated amount for associated reimbursable expenses is established in the Architect's Agreement, an Amendment to the Architect's Agreement (reference paragraph 6.10) may not be necessary after Artwork is selected.
- 13.6.6 (Activity 10-11) Option for purchase of existing Artwork. Committee may, without or after soliciting and evaluation Artists' proposals, select existing Artwork for the project. In such cases, the Project Manager shall arrange for procurement, delivery and installation. Purchase shall not be made prior to award of a construction contract for the facility.
- 13.6.7 (Activity 6-7) If existing Artwork is not selected, Project Manager prepares an advertisement for Artist's proposals incorporating the Architect's criteria and the desires of the Committee. ASCA distributes the advertisement, receives all Artist's proposals, eliminates inappropriate submittals to the Selection Committee. Each advertisement must include the following:

- A. Instructions for submittal (format, content, time, date, place) and an explanation of the selection process to be used (eg Design Construction - paragraph 6.8A)
- B. Identification of the project, generally desired form of Artwork, architectural and engineering constraints, anticipated engineering support (eg structural analysis of a sculpture) which the Artist may be required to obtain and insurance coverages which will be required.
- C. Any information and/or assistance to be furnished by others and by whom.
- D. Maximum amount of funding for Artwork with a statement that actual price to be paid the Artist(s) shall be negotiated.
- E. Information for obtaining a copy of the Agreement to be used.

13.6.8 (Activities 8-13 & 9-12) Following review and evaluation of Artist's proposals, the Committee may select existing Artworks (paragraph 6.6), select Artist(s) or elect to conduct a Design Competition among several designated Artists based on their conceptual design submitted with proposals.

- A. If a Design Competitions if to be held, the Architect or the Project Manger shall contract with each designated Artist in accordance with paragraph 6.10 and shall include a provision addressing the Design Competition and stating that the Agreement given a Notice to Proceed for production of the Artwork contingent upon the results of the Design Competition. The Selection Committee shall establish requirements and procedures for the Design Competition.
- B. Alaska resident Artists shall be selected where they are available and qualified, in accordance with AS.35.020(g) and 36.10.010.

13.6.9 (Activity 13-14) Project Manager shall obtain Negotiation Authority for the selected Artist(s) in accordance with Delegation of Authority P & P 10-0017. Approval for Negotiations (AFN), DOT/PF Form 25A251, shall be used.

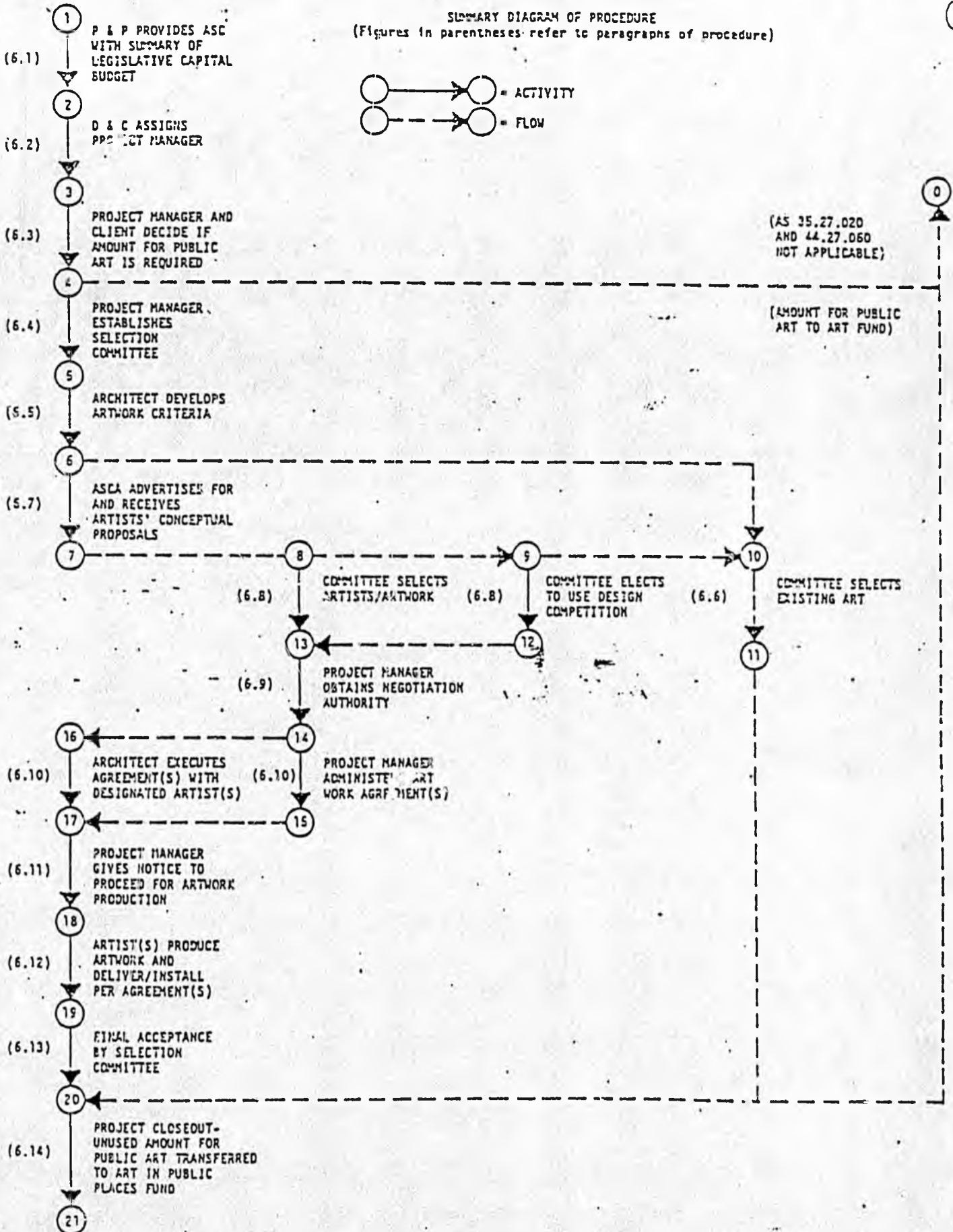
13.6.10 (Activities 14-15 & 16-17) If existing Artwork is not selected, the Architect or Project Manager shall contract with designated Artist(s). Architect-Artist Agreements must contain provisions required by the Selection Committee and must contain provisions required by the Selection Committee and must be approved by the Project Manager prior to execution. DOT/PF - Artist Agreements must be executed using DOT/PF standard forms consisting of the Basic Agreement (Form 25A261), Appendix A - General Conditions for Artwork (Form 24A263), Appendix B - Statement of Services for Artwork (Form 25A264), Appendix C - Basis of Compensation for Artwork (Form 25A265) and Appendix D - Catalogue Worksheet (Form 25A266).

- 13.6.11 (Activity 17-18) Project Manager shall withhold Notice to Proceed to the Architect of the Artist(s) for Artwork production until a construction contract for the building or facility is awarded and shall attempt to insure that Artwork design is completed and approved by the Committee prior to bidding for the construction contract.
- 13.6.12 (Activity 18-19) Following receipt of Notice to Proceed, Artist(s) will produce, deliver and install Artwork in accordance with Agreement(s). The Architect or Project Manager shall coordinate delivery/installation with construction progress of the building or facility.
- 13.6.13 (Activity 19-20) Committee or its designated representative shall view the completed Artwork(s) installed within the building or facility and provide written approval and acceptance to the Project Manager. The Artist(s) may then receive final payment contingent upon receipt by the Project Manager of the documentation required for the public Artwork program in accordance with the Artwork Agreement(s). Client Agency owns Artwork after installation and final acceptance of the building or facility.
- 13.6.14 (Activity 20-21) Upon final acceptance of the building or facility, the unused amount for public Artwork shall be placed in the Art in Public Places Fund (amount not to exceed one percent of the sum of the original construction contract plus construction contingency, unless construction change orders changed the original program of the major activities for which the building or facility was constructed in which case the amount shall equal one percent of the construction contract plus the applicable change orders.)

13.7 IMPLEMENTATION

- 13.7.1 Regional Directors are responsible for coordinating with ASCA and establishing any supplementary procedures necessary to augment this Department procedure as applicable to each region's functions.

**SUMMARY DIAGRAM OF PROCEDURE**  
(Figures in parentheses refer to paragraphs of procedure)



STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

STATE EEO GOALS AND TIMETABLES

The following goals and timetables for minority and female utilization shall be included in all State and State-assisted construction contracts and subcontracts in excess of \$10,000.

A. ALASKA GOALS AND TIMETABLES FOR WOMEN\*

<u>Timetable</u>	<u>Goals in percent**</u>
From April 1, 1980 until further notice	6.9%

B. ALASKA GOALS AND TIMETABLES FOR MINORITY UTILIZATION

<u>Timetable</u>	<u>Economic Area (EA)***</u>	<u>Goals in percent**</u>
Until further notice	Anchorage SMSA Area	8.7%
	Statewide, except Anchorage SMSA Area	15.1%

\* The goals and timetables for women listed above apply to Alaska as well as nationwide.

\*\* The Director, from time to time, shall issue goals and timetables for minority and female utilization which shall be based on appropriate work force, demographic or other relevant data and which shall cover construction projects, or construction contracts performed in specific geographic areas. The goals shall be applicable to each construction trade in a covered contractor's or subcontractor's total work force.

\*\*\* Refer to the Standard Metropolitan Statistical Areas (SMSA) and Economic Areas (EA), Office of Management and Budget, 1975.

**STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES (DOT/PF)  
FEMALE AND MINORITY BUSINESS ENTERPRISE (F/MBE) CONTACT REPORT**

Successful contractor/consultant shall complete a copy of this form to document FBE and/or MBE contact(s) for each subcontract. Use additional sheets as necessary. See definitions at the bottom of page 2.

PROJECT #: \_\_\_\_\_ PROJECT NAME: \_\_\_\_\_

FUNDING SOURCE (if any federal funds involved, consider as federal):

- 1.  State funded (only minority businesses recognized by a directory listing are valid contacts).
- 2.  Federally funded (only certified minority or female firms as listed in the current DOT/PF Directory of Certified Female and Minority Business Enterprise Firms are valid).

**LIST ITEMS INCLUDED IN THIS SUBCONTRACT:**

Bid Item Number (if applicable)	Description of Work	Price quoted by Successful Sub (construction only)

**IDENTIFY THE SUCCESSFUL SUBCONTRACTOR:**

\_\_\_\_\_ Name of Firm

\_\_\_\_\_ Address

\_\_\_\_\_ MBE  FBE  non F/MBE   
Status

CONTACTS. Indicate all efforts made to comply with requirements (contact categories are listed in descending order of preference).

1. PERSONAL CONTACTS. Include all valid MBE or FBE firms with whom you had "in person" or phone contacts:

Name of Firm	Address	Phone No.

This firm is a: MBE  FBE  FMBE  Directory Source \_\_\_\_\_

**Results of Contact:**

- 1. Firm selected
- 2. Bid/Proposal received: (a) Not low bid  (b) Unacceptable ; List items bid on below.
- 3. Firm not interested in submitting bid/proposal  (explain below)

Name of Firm	Address	Phone No.
Person Contacted, Title	Date of Contact	Phone [ ] Office Visit [ ] Type of Contact

This firm is a: MBE [ ] FBE [ ] FMBE [ ] Directory Source \_\_\_\_\_

Results of Contact:

1. Firm selected [ ]
2. Bid/Proposal received: (a) Not low bid [ ] (b) Unacceptable [ ]; List items bid on below.
3. Firm not interested in submitting bid/proposal [ ] (explain below)

2. DIRECT MAIL CONTACT.

[ ] Attach a copy of certified letter and a list of all firms to whom it was mailed. This list shall include the name and address of firms as well as type and content of response.

3. ADVERTISEMENT. (Advertisement is only acceptable if no firms can be found through directories or MBE assistance centers.)

[ ] F/MBE interest was solicited by advertisement. The advertisement and responses to it are attached

4. COMMENTS:

I CERTIFY THAT ALL F/MBE CONTACT DOCUMENTATION AND ALL SOLICITATION RESULTS ARE AVAILABLE FOR INSPECTION UPON REQUEST.

Signature of Authorized Company Representative	Date	Phone Number
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Company Name	Address
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I HAVE REVIEWED THIS FORM AND FIND THE INFORMATION SUBMITTED TO BE APPROPRIATE.

DOT/PF Reviewer	Date
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This report is required by Executive Order 11246, Sec. 203. Failure to report can result in contracts being cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts of federally assisted construction contracts.

2. EMPLOYERS I.D. NO.

MINORITY:  
FEMALE:

FROM:  
TO:

NAME AND LOCATION OF CONTRACTOR

FEDERAL FUNDING AGENCY

5. CONSTRUCTION TRADE	6. WORK HOURS OF EMPLOYMENT (Federal & Non-Federal) Classifications	6a. TOTAL ALL EMPLOYEES BY TRADE		6b. BLACK (Not of Hispanic Origin)		6c. HISPANIC		6d. ASIAN OR PACIFIC ISLANDERS		6e. AMERICAN INDIAN OR ALASKAN NATIVE		7. MINORITY PERCENTAGE	8. FEMALE PERCENTAGE	9. TOTAL NUMBER OF EMPLOYEES		10. TOTAL NUMBER OF MINORITY EMPLOYEES	
		M	F	M	F	M	F	M	F	M	F			M	F	M	F
	Journey worker																
	APPRENTICE																
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	TRAINEE																
	SUB-TOTAL																
	TOTAL JOURNEY WORKERS																
	TOTAL APPRENTICES																
	TOTAL TRAINEES																
	GRAND TOTAL																

11. COMPANY OFFICIAL'S SIGNATURE AND TITLE

12. TELEPHONE NUMBER (Include area code)

13. DATE SIGNED

PAGE

OF

# MEMORANDUM

State of Alaska  
Department of Transportation & Public Facilities

TO: Robert W. Janes, CPA  
Chief, Internal Review  
Department of Transportation  
& Public Facilities

FROM: Jonathan W. Scribner *JS*  
Deputy Commissioner *11/16/83*  
Southeast Region

DATE: November 21, 1983

FILE NO:

TELEPHONE NO: 364-4360

SUBJECT: Audit Report  
83-S-10

I concur with a number of the procedural points which were raised in the Department's internal audit review of the renovation work of the Governor's Mansion. I also concur that a department-wide review of DOT&PF's contracting procedures should be undertaken in conjunction with the Department of Law to clarify our regulations and to remove any inconsistencies which may exist.

In any review of the contraction work performed at the Governor's mansion, I think that it is important to keep in mind that the Department's basic objective was to ensure that a professional and long-lasting renovation of this unique historic structure was accomplished. The Governor's mansion was constructed in 1912. It was in a run-down condition with substandard heating and electrical systems. There were no fire and life safety systems. These deficiencies had been repeatedly pointed out by the State Fire Marshal. Numerous attempts by the Department to schedule extensive renovation work on the facility had been denied since previous occupants did not wish to undergo the large scale disruption that the obviously-needed construction work would create for their family life.

Your audit was performed: my staff and I have completed our review, and my response follows:

## Audit Comment #1 - Pg. 2 (Harbor Plumbing Contract)

"...the contract should have been advertised in more than the Empire an' in newspapers of statewide solicitation not restricted to City and Borough of Juneau."

## Response

For project control of a cost reimbursable contract, I believe it is essential that the contractor's management be immediately available to expedite the acquisition of materials and promptly respond to problems on the job. Several highly qualified contractors are headquartered locally to ensure good competition. In order to provide the level of on-site management necessary, key contractor management personnel not in Juneau would need to relocate during the project at a decided extra cost compared with local contractors. Since this was a cost reimbursable contract, as opposed to the more conventional "lump sum" approach normally used by the State, contractor innovation and other project cost saving techniques were not compromised.

The Department's Policy & Procedure on advertising is not applicable to the competitive contractor selection system used for this fast-track, cost reimbursable contract.

In retrospect, regardless of the mitigating factors, I agree that statewide advertising of the project would have precluded the audit comment. Further consideration needs to be given to developing procedures for these types of contracts.

Meanwhile, I have instructed all personnel to advertise statewide should we encounter this type of project in the future.

I would like to underline that the statutory requirements to advertise this project were in fact met.

Audit Comment #2 - Pg. 2 (Harbor Plumbing Contract)

"The newspaper advertisement stated that work would total \$500,000, but the current contract is for \$1,075,000."

Response

It is true that the estimate in the advertisement was \$500,000. We were unaware until well into the project that the costs for this contract would exceed this estimate. We did not give adequate weight to the high probability of additional expenses which can occur in the renovation of an old structure.

Audit Comment #3 Pg. 2 (Harbor Plumbing Contract)

"Other information, as required in Policy and Procedure 10-0013, Advertisement for Bids, is not included in the ad."

Response

Policy & Procedure 10-0013 does not apply to this advertisement. The advertisement for this project solicited contractor interest and stated how prospective bidders would be prequalified. It also stated how sealed bids would be accepted from the prequalified contractors. Policy & Procedure 10-0013 pertains to the solicitation of bids only, which was not the case in this system.

Audit Comment #4 Pg. 2 (Harbor Plumbing Contract)

"There is also a question as to whether the contract was for management and coordination or for plumbing, heating and electrical work."

Response

This question arises somewhat out of context. The advertisement clearly states that the Department "... is soliciting interest for Mechanical/

Plumbing Contractors ..." (emphasis added).. It would appear clear we were not soliciting interest from non contractors or consultants, for example. Further, no consultants or non contractors responded to the advertisement and no contractors raised any questions to alert us to a possible problem.

Nevertheless, I agree that the wording could have been more clear. The addition of one word would have avoided the question, i.e. :

"... to provide management and coordination and to provide work to renovate the Governor's Mansion plumbing, heating and electrical systems."

Audit Comment #5 Pg. 2 (Coogan/Capitol Contract)

"There is also a question as to whether the advertisement contained all the items required in Policy and Procedures."

Response

Policy & Procedure 10-0013 does not apply to this advertisement. The advertisement for this project solicited contractor interest and stated how prospective bidders would be prequalified. It also stated how sealed bids would be accepted from the prequalified contractors. Policy & Procedure 10-0013 pertains to the solicitation of bids only, which was not the case in this system.

Audit Comment #6 Pg. 3 (Coogan/Capitol Contract) -

"The Department has no system of prequalifying contractors for construction contracts...". "...a method similar to that of professional services contracts was used which had the effect of restricting competition..."

Response

The renovation of a historic building makes it difficult to develop the project scope by ordinary means.

In the absence of a specific procedure which would minimize the substantial risk to the State inherent in this special project and still preserve the statutory requirements for competition and bidding, an alternate system was developed. It was a prequalification system specifically authorized under AS 35.15.050; and which further determined the responsibility of bidders in accordance with AS 37.05.240(a).

Given the lack of time to develop an entirely new system, we used applicable portions of the system used to select professional services. In addition, this system was modified to ensure the statutory requirements for competition were met.

Finally, it was discussed with the Attorney General's Office to ensure that it met appropriate requirements for competition.

Audit Comment #7 Pg. 3 (Vernon Akin Contract)

"...using the time constraints as a justification for a waiver appears inappropriate."

Response

A waiver of selection requirements was based on the following factors:

- The building was constructed in 1912. It was in a run down condition with inadequate heating and electrical systems. There were no fire and life safety systems and it had drawn the attention of the State Fire Marshall on several occasions.
- Repeated attempts by the Department to schedule extensive renovation work to the facility had been diverted because the previous occupants did not want their families and lives disrupted by the obviously needed construction work.
- The present Governor was willing to have the Mansion renovated to correct the deficiencies. It was essential that the work be done in time for the traditional open houses and other public events beginning late fall. The only way to have achieved this schedule was to begin design immediately.
- Vern Akin and Associates had a prior working knowledge of the Mansion. He had also been a subconsultant to "Snow Goose Productions" who had performed an architectural, mechanical and electrical survey on the mansion one month prior to the request for waiver. Mr. Akin was the only engineer in the State that could start design work immediately without resurveying the entire building. By the time the magnitude of the work was fully realized there was only marginally enough time to complete the work within the scheduled time frame.

Audit Comment #8 Pg. 3 (Other Comments)

"...lack of a well defined scope..." "...bonuses for performance by a specific date."

Response

In my opinion it was impossible to define the scope because of the need first to perform exploratory work within the structure of the building itself. No amount of planning or design would have resulted in a defined scope. Bonuses were offered to induce the contractor to accelerate his work schedule.

Audit Comment #9 Pg. 3 (Other Comments)

"...\$150,000 for extended work hours..." "...personnel should have determined the magnitude of the problem earlier..."

Response

I agree the magnitude of the extended work hours problem probably should have been identified earlier. However, as noted in Tom Metlicka's September 13, 1983 memorandum, the oversight was due to an error in estimating the cost of the work which carried through from the beginning of the project. As soon as the error was known I took corrective action to ensure funds were available to complete the job.

Audit Comment #10 Pg. 3, (2) (Other Comments)

"Some documents available in the files in Douglas were not contained in master files in the Contracts Section. All pertinent documents on selection, advertising, award, and amendments should be in the master file as required by the Department P & P 10-0012."

Response-

Documents missing from the Contracts Administration Section files were available in the project files. We have coordinated with the Contracts Section and they now have all documents required. In addition, I have reminded appropriate staff of the requirements of P & P 10-0012, and requested them to adhere to it strictly in order to avoid similar questions in the future.

Audit Comment #11 Pg. 3 (3) (Other Comments)

"...Potential problems with union contracts...Department may have been able to have some of the work performed by State Local 71 employees."

Response

Department employees were not used for the larger contracts because the value of the work exceeded \$100,000 and therefore would have conflicted with AS 35.15.010 & AS 35.15.030. These statutes clearly require this type of work to be contracted unless there is an emergency or it is found to be in the best interest of the State. Neither special condition could be met for these contracts.

Audit Comment #12 Pg. 4 (4) (Other Comments)

"...we could find no contract as required by AS 35.27.20 for artwork..."

Response

According to P & P 28-8002 on Procurement of Artwork for Public Buildings and Facilities the artwork requirement does not apply for maintenance, repair, code upgrade, heating renovation, etc. It also does not apply unless the building is for "substantial public use".

Hence, only those portions of the historical renovation and interior decorating construction work apply which don't fall under the exclusions noted above.

Assuming the portions of the Governor's Mansion which might be judged to have "substantial public use" are the ballroom, library, conservatory, dining room, entry way and second floor mezzanine the required artwork contracts should not need to exceed about \$4000.

Coordination with the Arts Council has been ongoing to establish artwork requirements. This effort is being coordinated with completion of the work on this project.

Audit Comment #13 Pg. 4 (5) Other Comments)

"This course of events did not follow the procedures defined in Advertising Procedures for state-funded projects under \$100,000."

Response

I concur that applicable advertising procedures were not followed for this contract. Hence, I intend to officially notify each of the individuals responsible so there can be no misunderstanding that it is unacceptable to ignore or take lightly substantive requirements in procedures.

In partial mitigation, I have reviewed the process used and am personally satisfied that statutory requirements for obtaining informal bids were met and that a documented process was used to ensure competition. Although the process was documented, the required waiver to support the lack of formal advertising appears to be missing.

Audit Comment #14 - (Other Comments)

"In a bid from Harbor Plumbing..., the two contractors noted in 5 above were cited as proposed subcontractors. Harbor's bid was accepted." "...the State may have been charged excessive profit and overhead and it is conceivable that the State may have paid twice for the same work."

Response

In the case of the August Corporation Contract, the work for insulation and roof repairs was clearly separate from the work under the Harbor

Contract and it was substantially complete by the time the Harbor Contract was awarded.

The Rhine Contract was for work on the outside porch and also was clearly discrete from the work under the Harbor Contract.

In addition, our concurrent Review section conducted an on-site review of the subject project during the construction status and is is our Review Engineer's opinion that although this type of contract was very difficult to administer on the project level, both the project Inspector and Project Manager did a more that adequate job to ensure no double payments were made under the contracts.

Audit Comment #15A Pg. 4, (7) (Other Comments)

"Some of the contracts examined in the Contracts Section master file did not contain all (EEO) documents and some were not completely filled out."

Response

A review of the original signed copy of the contracts covered by this report showed that all required EEO forms were included. It appears that all documents which are to be transmitted to the Contract Administration Section were not sent. Copies of these documents have been transmitted to the Contracts Administration Section and their files should now be up to date. Also I acknowledge that some of the forms were not completely filled out. Our contracts personnel have been instructed to ensure all forms are properly completed on future contracts.

Audit Comment #15B Pg. 4 (7) (Other Comments)

"I was unable to determine if form CC-257, U.S. Department of Labor, on monthly employment utilization has been submitted as required."

Response

Partway through the project, it was discovered that these reports were not being completed. The project files are now up-to-date with completed reports and copies have been sent to the Contracts Administration Section.

Audit Comment #16 Pg. 4 (1) (Recommendations)

"An Attorney General's opinion should be solicited to clarify intent of statutes concerning advertisements, bid requirements and contractor pre-qualification..."

Response

A request for an opinion from the Attorney General's Office will be prepared and sent shortly.

Audit Comment #17 Pg. 4 (2) (Recommendations)

"Departmental procedures should be evaluated and clarified to cover this type of situation and insure that all requirements are documented. Standardized forms should be developed to document such items as informal solicitations with follow-up in writing, telephone conversations with contractors, and administrative procedures for construction contracts. Also, a uniform procedure for handling time and materials contracts should be set up."

Response

We will request Standards and Technical Services Division to review existing Policy and Procedures and documentation requirements for time critical and cost reimbursable contracts and develop appropriate revisions.

Audit Comment #18 Pg. 5 (3) (Recommendations)

"All documents which support a contract should be filed in one location, preferably the Contracts Section near master files in Juneau, so that all information is available in one place. At any rate, a standardized system should be established where all supporting document are filed in one location."

Response

Existing Policy and Procedure clearly requires all documents to be in the Contracts Section master files in Juneau. Discrepancies noted in the Audit Report and action taken have been addressed in the responses above.

LEGISLATIVE AUDIT REPORT

A SPECIAL REPORT ON THE  
DEPARTMENT OF TRANSPORTATION  
AND PUBLIC FACILITIES AND THE  
OFFICE OF THE GOVERNOR  
GOVERNOR'S MANSION RENOVATION PROJECT

December 29, 1983

Commissioner (Acting),  
Department of Transportation  
and Public Facilities

H. Glenzer, Jr.

Deputy Commissioners,  
Department of Transportation  
and Public Facilities:

Standards and Statewide  
Programs (Acting)  
Southeast Region  
Central Region  
Northern Region (Acting)

Daniel Malick  
Jon Scribner  
David Haugen  
William McMullen

Office of the Governor

Governor  
Lieutenant Governor

Bill Sheffield  
Stephen McAlpine

# STATE OF ALASKA

AUDIT DIVISION  
POUCH W  
JUNEAU, ALASKA 99811

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

January 3, 1984

Members of the  
Legislative Budget and Audit Committee:

In accordance with a Legislative Budget and Audit Committee special request and Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A SPECIAL REPORT ON THE  
DEPARTMENT OF TRANSPORTATION  
AND PUBLIC FACILITIES, AND THE  
OFFICE OF THE GOVERNOR, GOVERNOR'S MANSION  
RENOVATION PROJECT

December 29, 1983



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

TABLE OF CONTENTS

	<u>Page</u>
Purpose of the Report. . . . .	1
Historical Background. . . . .	3
Findings and Auditor's Comments. . . . .	5
Appendix:	
A. Governor's Mansion Renovation Project, Schedule of Contracts and Costs . . . . .	17
Agency Response:	
Office of the Governor . . . . .	23
Department of Transportation and Public Facilities . . . . .	26

## PURPOSE OF THE REPORT

In accordance with a Legislative Budget and Audit Committee request and Title 24 of the Alaska Statutes, this special report has been prepared to document the activities surrounding the renovation of the Governor's mansion. The review was of the Department of Transportation and Public Facilities and the Office of the Governor and addresses specific areas of concern:

1. The sources of funding used to finance the project;
2. Contracting procedures used to hire individual contractors;
3. Cost overruns and expansion of the project beyond its original scope.

(Intentionally left blank)

## HISTORICAL BACKGROUND

The construction of the Governor's Mansion in Juneau in 1912 was under the direction of William N. Collier, U.S. construction engineer. The structure was authorized by Congress in the Public Builders Act of 1910, which appropriated \$40,000 to cover both building and furnishing. The architecture of the building was designed by a well-known architect of the time, James Knox Taylor, and is described as a liberal interpretation of New England Colonial.

The mansion, measuring 58 x 60 feet overall, has two and a half stories with a full basement. The original \$40,000 was insufficient to furnish the entire building, but the lower floor and some of the bedrooms were furnished in 1912. The third floor was left virtually unfinished though the original detailed drawings show that half of this top floor was to serve as a territorial museum (which it never did).

The single most extensive renovation of the exterior of the house was done with Federal funds (\$14,100) in 1936. Renovations to the mansion, which had been badly run down, were started in June 1936, under contract to the J.B. Warrack Company.

The entire exterior of the building was plastered over the original clapboard finish and painted white giving the building the appearance that it has today. The short porch that covered only the entry steps was extended to cover the driveway. The peaked roofs of the dormers were flattened and the three small windows above the small entry porch were consolidated into one large window. The three windows on the third floor were consolidated into two to be in balance with the roof angle. Outside shutters were provided for all flush windows. The garage was also dug into the basement in 1936.

The most dramatic change made in the 1936 renovation was the extension of the original portico which covered the central third of the porch. The short portico was extended to cover the entire length of the house supported by six pillars rather than the original four. No major renovations to the exterior have been done since 1936.

Interior renovations done in 1936 included redesigned bathrooms with new plumbing and other minor cosmetic changes.

Minor changes took place between 1936 and 1967. A kitchenette was installed sometime during the Egan administration in the late fifties and early sixties.

The single most significant interior renovation prior to 1983 was executed in 1967-1968 by Arthur Morgan Designers of Seattle, Washington. The renovation, done under the Hickel administration, included gutting the third floor and remodeling it. The ceiling on this floor was lowered and two suites and one bedroom were constructed. A sauna was installed in the basement also. Although the lower two floors remained structurally unchanged, major cosmetic changes were made. The entire color scheme of the mansion was changed to greens and golds, wall-to-wall carpeting was installed in many rooms, and contemporary furniture was purchased.

On November 7, 1976, the mansion was placed on the National Register of Historic Places.

The 1983 renovation of the mansion is the most extensive in the history of the building. The first and second floors and the basement were renovated to restore the interior appearance to the 1912 era.

General changes included removing all of the wall-to-wall carpeting and replacing it with large oriental rugs. Hardwood floors were refinished and repaired throughout the mansion. All of the seven fireplace mantles and all the walls were stripped and repainted. Some antique furniture was purchased and bathroom fixtures were replaced by old style fixtures, (bear claw tubs, pedestal sinks, brass and porcelain handles, etc.).

Several structural changes were made during the 1983 renovation. The kitchenette on the second floor was removed to allow for the large entry hall per the original blueprints. A door was installed between the Governor's study and the master bedroom. The bathroom adjacent to the Governor's study was converted into a kitchenette with toilet facilities. Mahogany shelving from floor to ceiling was installed along all of the walls of the library on the first floor, and a new mahogany mantle was built. A new hardwood floor was placed in the entry way and the conservatory. The pantry was changed to the dishwashing area and a new refrigerator and dishwasher installed. The dishwashing area was changed to the pantry and custom cabinets installed. A hot tub (purchased by Governor Sheffield) was installed in the basement, and the mantle from the library was installed around the fireplace in the recreation room in the basement. Also, a wall was built to block off the laundry room in the basement. The 1983 renovation included installing new electrical and plumbing systems on the first and second floors as well as the basement, and a new fire detection and intrusion system.

FINDINGS AND AUDITOR'S COMMENTS

A. What were the sources of funding used to finance the Governor's Mansion Renovation project?

DOTPF transferred a total of \$1,455,000 to the Governor's mansion project from appropriations that were originally intended for other purposes. The following is a list of the source of funds used for the mansion project:

1. Ch 120, SLA 80 appropriated \$71,000 to DOTPF for the Governor's Mansion Fire Sprinkler System.
2. Ch 82, SLA 81 appropriated \$5,200,000 to DOTPF for Energy, Safety, and Architectural Barrier Changes. Of this total appropriation, \$1,385,000 was used to fund the mansion project. However, only \$235,000 was specifically intended for the mansion. The residual amount, \$1,150,000, had originally been intended to be used to correct deficiencies noted in energy audits performed on Interior Region buildings. The specific projects are:
  - a) \$596,000, project number H79364 (Fairbanks Electrical Retrofit), Fairbanks Court House and parking garage.
  - b) \$200,000, project number H79361 (Interior Buildings Retrofit), State office buildings.
  - c) \$204,000, project number H79362 (Interior Shops Energy Retrofit), maintenance shops.
  - d) \$150,000, project number H79363 (Fairbanks Peger Road Energy Retrofit), DOTPF building complex on Peger Road, Fairbanks.
3. Ch 107, SLA 83 appropriated \$500,000 to DOTPF for the Governor's Mansion. Intent per DOTPF's budget documents was for remodeling/repairs to the Governor's mansion.
4. An RSA between the Department of Administration (DOA) and DOTPF transferred \$305,000 from DOA to DOTPF for the Governor's Mansion Renovation project. The source of funds of the amount transferred was Ch 25, SLA 82, which appropriated \$7,000,000 for Building Renovation, Replacement, and Surplus. The intent per budget documents was for this appropriation to be used for providing housing to State employees, particularly in remote rural locations. The following projects were eliminated as a result of the RSA:

FAI

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FAI

- a. Deer Mountain Hatchery (\$100,000)
- b. Livengood Septic System (\$60,000)
- c. Nelchina Septic System (\$30,000)
- d. McGrath Septic System (\$70,000)
- e. Slana Exterior (\$75,000)

DOTPF subsequently transferred \$117,000 to the Office of the Governor for the acquisition of furniture, rugs, and other decor items.

5. Ch 101, SLA 82 appropriated \$13,121,400 to the Office of the Governor for Executive Operations, and \$169,000 was used for the Governor's Mansion Renovation project.

In summary, DOTPF funded \$2,144,000 and the Office of the Governor funded \$286,000 for the renovation of the Governor's mansion, which totals to \$2,430,000. Of this amount, \$1,455,000 (\$1,150,000 of Ch 82, SLA 81 and \$305,000 from RSA) or 60% of the total funding was budgeted for other purposes.

B. Were individual contractors on the Governor's Mansion Renovation project hired in accordance with State contracting procedures?

The purpose of the various statutes, regulations, and P&Ps regarding competitive bidding and advertising for State contracts is probably best summarized by an Attorney General's opinion note to AS 35.15.050:

"The purpose of this section and the Fiscal Procedures Act (AS 37.05) is not only to protect the state and the public purse from uneconomic contracts let because of failure to request competitive bids and because of possible favoritism, but also to insure that contractors are insured a certain amount of 'fair play' in dealing with the state government and in competing with one another for state contracts."

When the competition has been limited through sole source contracts, restricted advertising, etc., this sense of "fair play" is missing. It also opens up the State to possible litigation and gives the appearance of favoritism.

Department of Transportation and Public Facilities (DOTPF)

DOTPF did not follow established procedures or the intent of statutes and regulations when awarding

several contracts for construction and professional services on the Governor's Mansion Renovation project:

1. Vernon Akin & Associates was awarded a sole source contract for engineering design and construction services in the amount of \$60,000. This project was not advertised as required by AS 36.98, or DOTPF P&P 28-8000. AS 36.98.030 does allow DOTPF to contract on a sole source basis if they can demonstrate that there is a single person or firm that can clearly perform the required tasks more satisfactorily because of the person's or firm's prior work. Although DOTPF stated that this was the basis for the sole source contract, it was not clearly demonstrated by any written evidence in the files.
2. Jerry D. Wood, P.E., was awarded a sole source contract of \$25,000 to provide on-site management for the Governor's Mansion Renovation project. In addition, the contract provided Mr. Wood with a car during the duration of his contract. The contract was later amended up to a total of \$35,000, which included the car rental in the contract price.

In our opinion, the original contract amount exceeded \$25,000 and therefore should have been advertised in accordance with AS 36.98. There were over 100 firms on DOTPF's prequalification register for these types of services. DOTPF's not allowing these and other contractors the opportunity to compete for this contract clearly violates the spirit and intent of the law. Several other items noted were:

- a) Mr. Wood had been a business associate with Fred Seeger in a corporation known as SeeWood (this is discussed further in "D" of this section of the report). Fred Seeger was Deputy Commissioner of DOTPF until he resigned in early December, 1983.
- b) Mr. Wood was added to the DOTPF professional services contractor register without all of the proper forms being submitted and reviewed.
- c) Mr. Wood obtained a business license the same day his contract was signed, July 7, 1983.
- d) Mr. Wood's business address was DOTPF's Southeast Regional office.

- e) Three out of the four construction contracts for this project had been awarded and work started (with one contract completed) by the time Mr. Wood's contract began. His contract terminated October 18, 1983. Both before his contract began and after it was terminated, the project was managed by DOTPF employees (project was not complete until mid-December).
3. The August Corporation was awarded a contract of \$90,000 for roof repair and attic insulation. DOTPF did not advertise this contract as required by DOTPF P&P 70-7001. In addition, AS 35.15.030 requires that at a minimum, informal bids shall be requested from as many contractors as can be requested conveniently. Five local firms were contacted, with two responding.
  4. The Rhine Stone and Plastering Company was awarded a contract of \$14,000 for concrete and masonry services. This contract was not advertised. However, two local firms were contacted for informal bids.
  5. Harbor Plumbing & Heating was awarded a contract of \$600,000 (subsequently amended to \$1,000,000 with costs to date of \$1,081,000 and estimated to exceed \$1,130,000) for plumbing, heating, and electrical renovation. This contract was not advertised as required by DOTPF P&P 70-7001. P&P 70-7001 states "projects shall be advertised in three consecutive weekday issues in newspapers in Anchorage, Fairbanks and Juneau, local papers where available, the Tundra Times and the All Alaska Weekly. Large projects should also be advertised in the northwest regional construction trade papers." However, DOTPF only advertised in the Juneau Empire, limiting the response to only those firms located in the City and Borough of Juneau, and provided a cost estimate indicating the project would cost only \$250,000 to \$500,000.  
  
In addition, this contract was not dated, did not contain a project completion date, but did provide a bonus of \$25,000 if the contractor completed the project on time.
  6. Coogan Construction Company and Capitol Construction Company, a Joint Venture, was awarded a \$300,000 contract (subsequently amended to \$400,000 with costs to date of \$676,000 and estimated to exceed \$735,000) for architectural renovation work. This project was not advertised in accordance with P&P 70-7001 which requires a

minimum advertising period of 21 days. DOTPF did not submit advertising orders to newspapers, etc., until June 27, 1983, but they required that completed "Expression of Interest Questionnaires" be returned to DOTPF by 2:00 PM, July 8, 1983, a period of eleven days maximum.

In addition, DOTPF prequalified the contractors and stipulated that only the top three would be allowed to bid on the project. This further restricted the competition (two bids were not opened).

The purpose of prequalification is to assure that only contractors who meet certain qualification criteria are allowed to bid on a project. However, DOTPF does not have established procedures or standards for prequalifying construction contractors. In this particular case, allowing only the top three prequalified contractors to bid could not only have resulted in excluding some qualified contractors, but it also could have resulted in DOTPF having to award the bid to an unqualified contractor if one of the top three was really not qualified to perform the contract but submitted the low bid. DOTPF, if it wishes to use prequalification, should establish procedures and standards so that all qualified and interested contractors will be allowed to bid on projects where prequalification is used.

#### The Office of the Governor

Title 36, Chapter 98 of the Alaska Statutes governs professional services contracts. Under these statutes and the related regulations, 02 AAC 17, the Department of Administration has established procedures for professional services contracts in the State Administrative Manual (SAM) sections 8102 through 8193. Section 8120 specifies required procurement procedures for contracts depending on their dollar value: \$5,000 or less, informal solicitation of interest; over \$5,000 up to \$25,000, formal or informal solicitation of interest; over \$25,000, formal solicitation as well as advertisement in a newspaper in general circulation in Alaska. Section 8120 also states that all costs for the life of the contract including any anticipated successive phases or follow-up work are to be included in determining the dollar value of the contract.

However, the Office of the Governor awarded three sole source contracts (stated face value \$64,000) worth over

\$280,000 to Phyllice Bradner, dba Snow Goose Productions, that were not advertised nor were informal or formal proposals solicited:

1. A \$5,000 contract was awarded February 7, 1983 for Ms. Bradner to act as coordinator for the Restoration Advisory Committee on the Governor's Mansion Renovation project. This contract had not been advertised. Also, informal proposals had not been solicited as required by the SAM, Section 8120.
2. A \$14,000 contract was awarded March 24, 1983 for Ms. Bradner to provide a cost estimate study of the Governor's Mansion Renovation project and to continue as the coordinator for the Restoration Advisory Committee. This contract was awarded without securing competitive proposals because the Office of the Governor requested and the Department of Administration granted the authority to negotiate this contract on a sole source basis. However, we question the reason used to justify the sole source (to facilitate continuity in the project and to maintain consistency of style), especially since the initial contract was awarded without advertising or soliciting proposals from several firms. We believe a request for a sole source contract because of wanting to continue a relationship should come under much closer scrutiny.
3. A \$45,000 contract was awarded May 19, 1983, for Ms. Bradner to act as project coordinator for the Governor's Mansion Rehabilitation project. Her services included the selecting and purchasing of all decor items (furniture, antiques, draperies, etc.), selling these items to the Office of the Governor (plus a handling charge for wholesale items), and overseeing the placement and arrangement of these items in the mansion. Again, as in the previous contract, the authority to negotiate a sole source contract was requested from and granted by the Department of Administration, eliminating the competitive process.

In addition, the contract did not restrict the amount of the items the contractor could purchase. As a result, the Office of the Governor could have been liable for all items purchased even though the amount may have exceeded that intended for purchases (\$222,000 was encumbered for decor items). We believe because of the nonstandard nature of the scope of services and degree of latitude being allowed the contractor that this

contract should have been reviewed by the Department of Law.

C. Why was the original scope of the project expanded and what changes resulted from the scope expansion?

The original scope of the Governor's Mansion Renovation project was defined by the Governor's House Restoration Advisory Committee which was formed to oversee the project. The initial concern expressed by DOTPF to the Restoration Advisory Committee was for maintenance of the mansion which highlighted the need for a fire suppression (sprinkler) and alarm system. Subsequently, DOTPF personnel suggested that new electrical and plumbing systems be included in the scope of work being defined by the Restoration Advisory Committee, due to major plumbing problems and electrical deficiencies, and because it would be most economical and practical to install the systems while the walls are opened up to install the sprinkler system.

In April, 1983, the Restoration Advisory Committee defined the original scope of work, Phase I, to consist of installing a new hot water heating system, new electrical wiring and distribution system, new sprinkler and smoke detection systems, and related cutting and patching. The preliminary cost estimate was \$600,000. In May, 1983, Phase II of the renovation, which was for interior finishes, cabinetry, and wainscoting, was added to the original scope of work per the wishes of the Office of the Governor. The estimated cost of the additional work was \$300,000.

Phase II scope of work was again expanded per the wishes of the Office of the Governor in July, 1983 to include tile work for the scullery, cabinetry in the pantry, cast iron radiator wood enclosures and carpeting. The scope increase was estimated at a cost of \$235,000.

In September, the scope of Phase I was expanded to include additional electrical wiring work, television distribution, telephone system, fire alarm and intrusion systems. The estimated cost of the expanded scope was \$175,000. The scope of Phase I was expanded again in September to include heat distribution in the basement area, new dishwasher and refrigerator, and installation of antique plumbing and electrical fixtures. The cost of the additional work was estimated to be \$75,000. Phase II work was also expanded in September to include additional painting, wall papering, kitchen pantry, mill work, and door hardware. The estimated cost for the scope expansion was \$75,000. The scope

was expanded in these cases because of additional work required due to unknown conditions.

The amount of \$283,000 was identified for consultant contracts, roof repairs, new telephone system, attic insulation, and furnishing storage. The total cost estimate was increased by \$401,000 due to low estimates and overtime pay to expedite project completion. The total cost estimate for the construction phase of the project was \$2,144,000, with an additional \$286,000 cost estimate for overseeing the project and for decor items, bringing the total to \$2,430,000.

D. What was the relationship between Fred Seeger (DOTPF Deputy Commissioner until December, 1983) and the project coordinator Jerry Wood?

The following items were noted relating to this question:

1. Fred Seeger and Jerry Wood had been associates in a business known as SeeWood Corporation.
2. Mr. Wood gave to DOTPF personnel (in June, 1983) a SeeWood Corporation business card that contained both Mr. Wood's and Mr. Seeger's name on the face, indicating a current business relationship.
3. Mr. Wood was first mentioned as a potential contractor by Mr. Seeger.
4. Mr. Wood was awarded a sole source contract.
5. Mr. Wood was added to the DOTPF professional services contractor register without all of the proper forms being submitted and reviewed.
6. Mr. Wood obtained a business license the same day his contract was signed, July 7, 1983.
7. Mr. Wood's business address was DOTPF's Southeast Regional Office.
8. Three out of the four construction contracts for this project had been awarded and work started (with one contract completed) by the time Mr. Wood's contract began. His contract terminated October 18, 1983. Both before his contract began and after it was terminated, the project was managed by DOTPF employees (project was not complete until mid-December).

All of the above give the appearance of a conflict of interest. It should be noted, however, that the State

of Washington corporation records have not listed Jerry Wood as an owner or officer of SeeWood Corporation since 1981.

E. Expenditures and contract administration.

DOTPF

DOTPF transferred Governor's Mansion Renovation project expenditures of \$40,000 to an overhead account. The project expenditures transferred consisted of personal services expenditures for DOTPF employees who worked on the mansion project. In addition, November and December expenditures for DOTPF Maintenance and Operations employees working on the Governor's Mansion Renovation were not charged to the project.

Alaska Statute section 37.07.080(e) prohibits transfers between appropriations except as provided in an act making the transfers between appropriations.

Personal services expenditures related to the project should be included as a part of the total project costs and should not have been transferred to another account.

The Office of the Governor

The Office of the Governor in administering and making payments under two of the Snow Goose Productions contracts:

1. paid for expenses of the contractor that were not provided for by the contract. The contract stated that in full consideration of her services she would be paid \$40 per hour with no reference made to expenses (the second contract with her provided for expenses as well as \$40 per hour).
2. paid \$10,000 in advance of receiving the services.
3. paid a percentage handling charge for retail items, shipping, and services while the contract only allowed this handling charge on items purchased at wholesale by the contractor.
4. paid for items without invoices as required by the contract. In addition, they had not verified that the items had been received.
5. did not assure that competitive quotations were obtained where possible on items or services purchased.

The above problems resulted in some overpayments and two double payments totalling over \$3,600. While the Office of the Governor has adjusted subsequent billings for most of these overpayments (after it was brought to their attention), it indicates they need to improve their controls over contracts and contract payments.

F. Could Federal Funds have been used to finance the Governor's Mansion renovation?

Since the Governor's mansion is on the National Register of Historic Places, the question was raised whether Federal Funds were available for this project. The National Park Service of the U.S. Department of the Interior does provide project grants under its Historic Preservation Grants-in-Aid Program to states operating historic preservation programs. These grants, which are to be matched equally with State funds, can be used to help finance state surveys and plans for historic preservation, research, preservation for public benefit of National Register listed properties, and other costs necessary to accomplish the purposes of this program.

To obtain further information on this program, we contacted the Alaska Regional office of the National Park Service and were informed that in recent years, the total funding available under this program has been substantially reduced for all states. In addition, Federal funds provided to Alaska have been restricted to performing surveys and planning activities.

G. What department of the State of Alaska should be responsible for the Governor's Mansion?

There is a question of whether DOTPF or the Department of Natural Resources (DNR) should be responsible for the Governor's Mansion. In general, DOTPF is responsible for the construction (which includes major repairs) of public works, as well as the maintenance of State-owned buildings.

However, AS 41.35, Alaska Historic Preservation Act, provides that State-owned historic properties are under the control of DNR. To clarify this issue, we have requested an opinion from the Department of Law.

H. What happened to the furniture that was in the mansion before the renovation?

Part of the furniture that was in the mansion before the renovation was placed back in the mansion after the reconstruction phase. Some of these items were reupholstered and/or refinished.

Other furniture and decor items have been placed in storage, for example the Austrian Bentwood chairs that had been in the ballroom. Some of these items in storage will be auctioned at a later date.

The rest of the furniture was auctioned to the public on October 29, 1983 (the State received approximately \$7,200 for the sale of these items). However, the Department of Administration, Division of General Services and Supply (GSS), did not inform other State agencies of this excess furniture (to determine if they could use some of the items) as required by the State Property Accounting Manual. GSS had been specifically instructed by the Office of the Governor to hold all these excess items for auction to the public.

In addition, three items on the list to be auctioned (two decoupage wall plaques and a set of draperies) were never received by GSS, and are currently missing.

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APPENDIX A

GOVERNOR'S MANSION RENOVATION PROJECT

SCHEDULE OF CONTRACTS AND COSTS

(Note 1)

CONTRACTOR Subcontractor	Contract Description	Contract Amount Amendments *	Effective Date Price Method	Bid Method	Costs					Total Costs
					Materials	Labor Straight Overtime		Other Expenses	Profit O/H	
<u>Department of Transportation and Public Facilities</u>										
LINN A. FORREST ARCHITECTS, A.I.A.	Fire and intrusion detection system design.	\$ 16,500	9/3/81 Fixed	Informal Solicitation 3 Firms	\$ -0-	\$ 10,098	-0-	\$ -0-	\$ -0-	\$ 10,098
(Note 1)	Architectural services for Phase II, construction services.	18,000 6,204 *	6/17/83 Fixed	Informal Solicitation 3 Firms	-0-	16,300	-0-	7,904	-0-	24,204
Total FORREST		40,704			-0-	26,398	-0-	7,904	-0-	34,302
LARRY BREEDING	Basic fire sprinkler design	12,000	9/29/81 Fixed	Informal Solicitation 3 Firms	-0-	10,200	-0-	-0-	-0-	10,200
VERNON AKIN & ASSOCIATES (Note 1)	Design services for heating and sprinkler system	60,000	4/18/83 Fixed	Sole Source	-0-	40,083	-0-	19,917	-0-	60,000
AUGUST CORPORATION	Repair and replace roof, insulate attic	90,000	5/12/83 Cost Plus	Informal Solicitation 3 Firms	22,604	46,964	1,585	490	10,747	82,390
MIINE STONE & PLASTERING (Note 1)	Resurface south deck, clean rock work and replace	14,000 (8,000)* 6,000	6/9/83 Fixed	Informal Solicitation 2 Firms	-0-	-0-	-0-	6,000	-0-	6,000
HARBOR PLUMBING & HEATING (Note 1)	Plumbing, heating and electrical	600,000 300,000 * 100,000 * 131,576 *	6/20/83 Cost Plus	Bid (1 bidder)	102,777	184,278	-0-	69,412	59,089	415,556
August Corporation	Cutting, patching carpentry, and clean-up renovation				25,454	82,470	37,502	-0-	16,424	181,850

APPENDIX A

GOVERNOR'S MANSION RENOVATION PROJECT  
SCHEDULE OF CONTRACTS AND COSTS  
 (Note 1)  
 (Continued)

CONTRACTOR Subcontractor	Contract Description	Contract Amount Amendments *	Effective Date Price Method	Bid Method	Costs					
					Materials	Labor Straight	Overtime	Other Expenses	Profit O/I	Total Costs
Cochran Electric	Electrical, telephone cable, smoke/ intrusion system				47,010	196,004	31,640	-0-	-0-	274,654
M.L. Lawler, Inc.	Pipe insulation				7,846	21,477	14,494	-0-	1,208	45,025
Harri Plumbing	Install sprinkler system				23,986	20,137	10,127	-0-	7,034	61,284
Rhine Stone & Plastering	Plaster walls and ceilings				14,922	34,497	9,923	-0-	6,102	65,444
Associated Gravel	Pave driveway to garage				1,281	-0-	945	-0-	-0-	2,226
Reliable Sheet Metal	Sheetmetal work for ventilation system				2,558	14,173	-0-	-0-	-0-	21,731
Johnson Controls	Heating/pneumatic system design and installation				27,478	17,691	3,906	-0-	998	50,073
C. Klassen Concrete	Patch garage, basement, and bathroom floors				-0-	774	200	-0-	-0-	974
Poskin Construction	Install new water main				7,232	4,762	715	-0-	-0-	12,709
<b>Total HARBOR PLUMBING</b>		<u>1,131,526</u>			<u>260,544</u>	<u>581,263</u>	<u>104,452</u>	<u>69,412</u>	<u>110,855</u>	<u>1,131,526</u>
JERRY TAMM, P.E.	Provide on-site project management using computerized scheduling	25,000 10,000 * <u>\$ 35,000</u>	7/7/83 Fixed (Plus Car)	Sole Source	-0-	31,030	-0-	3,784	-0-	34,814

APPENDIX A

GOVERNOR'S MANSION RENOVATION PROJECT  
SCHEDULE OF CONTRACTS AND COSTS  
 (Note 1)  
 (Continued)

CONTRACTOR Subcontractor	Contract Description	Contract Amount Amendments *	Effective Date Method	Bid Method	Costs					Total Costs
					Materials	Labor Straight	Overtime	Other Expenses	Profit O/H	
COOGAN CONSTRUCTION/ CAPITOL CONSTRUCTION, Joint Venture (Note 1)	Architectural renovation work	300,000 100,000 * 335,217 *	7/19/83 Cost Plus	Prequalifi- cation Bid (5 responses, 3 bids opened)	16,842	115,333	67,354	82,274	75,499	357,302
Renoir Painting	Painting, stripping and detail work				15,848	90,069	48,191	-0-	26,799	180,907
F & C Enterprises	Alaska representative for Coastcraft, Inc.				489	967	-0-	-0-	103	1,559
Queen City, Inc. (Note 2)	Hardwood floors, tile, and carpet				68,650	23,287	13,654	-0-	9,839	115,430
JD Glass & Door	Storm windows, glass work and glazing				317	1,494	-0-	-0-	-0-	1,811
Coastcraft, Inc.	Mill work, cabinets, woodwork				78,208	-0-	-0-	-0-	-0-	78,208
<b>Total COOGAN/CAPITOL</b>		<u>735,217</u>			<u>180,354</u>	<u>231,150</u>	<u>129,199</u>	<u>82,274</u>	<u>112,240</u>	<u>735,217</u>
<b>Total DOTPF Contracts</b>		<u>2,110,447</u>			<u>463,502</u>	<u>967,088</u>	<u>240,236</u>	<u>189,781</u>	<u>233,842</u>	<u>2,094,449</u>
<b>DOTPF Direct Expenditures</b>										
Personal Services:										
Buildings Design and Construction (Note 3)					-0-	61,484	-0-	-0-	-0-	61,484
Maintenance and Operations (Note 1 & 3)					-0-	27,683	-0-	-0-	-0-	27,683
Other					-0-	-0-	-0-	17,449	-0-	17,449
<b>Total DOTPF</b>		<u>2,110,447</u>			<u>463,502</u>	<u>1,056,255</u>	<u>240,236</u>	<u>207,230</u>	<u>233,842</u>	<u>2,201,065</u>

APPENDIX A

GOVERNOR'S MANSION RENOVATION PROJECT  
SCHEDULE OF CONTRACTS AND COSTS  
 (Note 1)  
 (Continued)

CONTRACTOR Subcontractor	Contract Description	Contract Amount Amendments *	Effective Date Price Method	Bid Method	Costs					Total Costs
					Materials	Labor Straight	Overtime	Other Expense	Profit O/II	
<u>Office of the Governor</u>										
SNOW GOOSE PRODUCTIONS	Restoration Advisory Committee Coordinator	\$ 5,000	2/8/83	Sole Source	-0-	4,160	-0-	839	-0-	4,999
SNOW GOOSE PRODUCTIONS	Provide Cost estimate study & continue as coordinator	14,000	3/24/83	Sole Source	-0-	4,360	-0-	9,625	-0-	13,985
SNOW GOOSE PRODUCTIONS	To be Renovation Project Coordinator, Interior decorator, & purchase furniture & other decor items. To sell to the State decor items purchased.	45,000	5/19/83	Sole Source Fixed	-0-	-0-	-0-	45,000	-0-	45,000
		<u>222,000</u>		Cost Plus	<u>132,273</u>	<u>-0-</u>	<u>-0-</u>	<u>68,750</u>	<u>12,132</u>	<u>213,155</u>
<u>Total Office of the Governor</u>		<u>286,000</u>			<u>132,273</u>	<u>8,520</u>	<u>-0-</u>	<u>174,214</u>	<u>12,132</u>	<u>277,139</u>
<u>Total Governor's Mansion Renovation</u>		<u>\$2,396,447</u>			<u>\$595,775</u>	<u>\$1,064,775</u>	<u>\$340,236</u>	<u>\$131,444</u>	<u>\$245,974</u>	<u>\$2,478,204</u>

APPENDIX A  
GOVERNOR'S MANSION RENOVATION PROJECT  
NOTES TO SCHEDULE OF CONTRACTS AND COSTS

Note 1 - Estimated Costs

We have included estimated costs (per DOTPF and the Office of the Governor) because the final cost figures were not yet available. We have also provided adjustments to contract amounts to match anticipated costs where necessary. The breakdown of these estimates are as follows:

	<u>Contract</u>	<u>Materials</u>	<u>Labor Straight</u>	<u>Other</u>	<u>Profit O/H</u>	<u>Total</u>
<u>DOTPF</u>						
Linn A. Forrest, Architects	\$ 6,204	\$ -0-	\$ -0-	\$ 7,904	\$-0-	\$ 7,904
Vernon Akin & Associates	-0-	-0-	-0-	19,917	-0-	19,917
Rhine Stone & Plastering	(8,000)	-0-	-0-	6,000	-0-	6,000
Harbor Plumbing & Heating	131,526	-0-	-0-	50,390	-0-	50,390
Coogan/Capitol J.V	335,217	-0-	-0-	58,675	-0-	58,675
Total DOTPF Contracts	<u>464,947</u>	<u>-0-</u>	<u>-0-</u>	<u>142,886</u>	<u>-0-</u>	<u>142,886</u>
<u>DOTPF Direct Exp.</u>						
Pers. Svcs. M & O	-0-	-0-	7,382	-0-	-0-	7,382
Total DOTPF	<u>464,947</u>	<u>-0-</u>	<u>7,382</u>	<u>142,886</u>	<u>-0-</u>	<u>150,268</u>
<u>Office of the Governor</u>						
Snow Goose Productions	222,000	4,528	-0-	8,364	296	13,188
Total Estimates	<u>\$686,947</u>	<u>\$4,528</u>	<u>\$7,382</u>	<u>\$151,250</u>	<u>\$296</u>	<u>\$163,456</u>

Since these figures are only best estimates of anticipated costs, the final actual cost of the renovation may vary from the schedule.

Note 2 - Queen City, Inc.

The costs for this sub-contract include approximately \$8,100 for subsistence, lodging, and related expenses.

Note 3 - DOTPF Direct - Personal Services

The Buildings and Construction personal services charges include approximately \$40,000 that had been transferred to an overhead account. The Maintenance and Operations charges of \$27,683 are from an operating project account (see E.1. of the Findings and Auditor's Comments section of this report).

Note 4 - Snow Goose Productions

The \$222,000 included in the contract amount column was the amount that had been encumbered for the purchasing of decor items. However, no amount had been specified in the face value of the contract (see B of the Findings and Auditor's Comments section of this report).

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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU



January 24, 1984

Mr. Gerald L. Wilkerson, C.P.A.  
Legislative Auditor  
Division of Legislative Audit  
Pouch W  
Juneau, AK 99811

Dear Mr. Wilkerson:

The Office of the Governor has reviewed the audit of the Governor's Mansion renovation project, entitled "A Special Report on the Department of Transportation and Public Facilities and the Office of the Governor Governor's Mansion Renovation Project."

We have the following comments regarding the report:

Section B:

In the discussion of contracting procedures under the subsection "Office of the Governor," the auditor neglects to mention that both the statutes and related regulations regarding professional services contracting also provide procedures for sole source contracting (AS 36.98.030(d)(1) and State Administrative Manual, Section 8122). Although the auditor acknowledges that the Office of the Governor obtained approval from the Department of Administration to negotiate the sole source contracts, there is no indication that procedures were followed as required by law.

Section E:

Item two - Advance or mobilization payments are a common practice in State contracting, and are acceptable to the Department of Administration in most cases. The Department of Administration has stated that agencies have the authority to determine when such payments are necessary for mobilization costs for a contract.

Mr. Gerald L. Wilkerson - 2 -

January 24, 1984

Item three - All questionable handling charges were deducted from payments prior to the completion of the contract. Payment was subsequently made only on those charges which the contractor was able to substantiate were wholesale charges or where she had been given a professional discount.

Item four - Payment was made by this office upon receipt from the contractor of her invoice, detailing each purchase and any applicable handling charges as required by the contract. These invoices were submitted with backup for each purchase consisting of invoices, statements, purchase orders, and/or cancelled checks.

Errors pointed out by the auditor were discovered prior to the completion of the contract. Adjustments were made prior to the completion of both the contract and the audit. No close-out audit had yet been done by this office, because the contract was still in progress, a fact the auditor fails to mention. Since adjustments were made prior to the completion of the contract, and the State, in fact, lost no money, charges of overpayments totaling over \$3,600.00 are premature.

Sincerely,



Laura J. Herman  
Executive Assistant  
for Administration

cc: Bill Sheffield  
Governor

John Shively  
Chief of Staff

Michael A. Nizich  
Director, Division of  
Administrative Services

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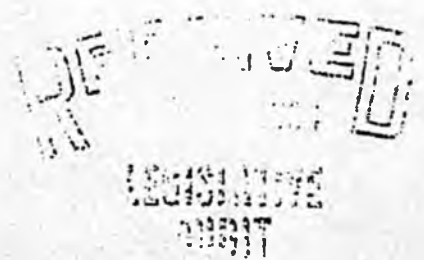
BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

P.O. BOX 1467  
JUNEAU, ALASKA 99802

SOUTHEAST REGION

(907) 364-4360



January 25, 1984

Re: Governor's Mansion  
Project

The Honorable Robert H. Bettisworth  
Alaska State House  
Pouch V  
Juneau, Alaska 99811

Dear Representative Bettisworth:

This is in response to the Special Report on the Governor's Mansion Project, December 29, 1983. Our response addresses only those areas involving DOT&PF actions.

Historical Background

- We believe this fairly represents the background on this project as we understand it.

Findings and Auditor's Comments

- A. The sources of funds for this project are accurately described. But, we very much disagree that the appropriation "transfers" were "originally intended for other purposes".

Chapter 82 SLA 81 appropriated \$5,200,000 to DOT&PF for energy, safety and architectural barrier changes.

Attached to the budget documentation for this appropriation was a list of projects totaling over \$20,000,000. The budget documents state: "This list exceeds the funding available and will necessarily have to be reduced to identify the highest priority projects ... In addition, the following specific projects are (emphasis added) to be funded from the total amount available ...

Southeast Electrical Systems Maintenance	69.3
Valdez Time Clock Heat System	17.6
Southeast Life Safety Improvements	220.0
Governor's Mansion Sprinkler System	185.0 "

The budget documents also direct that the limited funds should be used to perform a comprehensive upgrade program for all aspects of high priority facilities in order to minimize project administration costs by reducing the number of small projects; reduce contractor mobilization costs; and resolve design interrelationships among different upgrade requirements.

The four projects listed (H79361 Interior Buildings Retrofit, H79362 Interior Shops Energy Retrofit, H79363 Fairbanks Peger Road Energy Retrofit & H79364 Fairbanks Electrical Retrofit) were the result of an internal allocation of funds within this appropriation. As implied, they were not specifically included in the original budget documents by either name or cost.

Since the Governor's Mansion project is one of the four projects specifically mentioned in the budget documents, and because the funds were clearly used for the purposes intended, the department was clearly within its authority. In fact, to have limited this project to only the fire sprinkler system after it was determined that other life safety and energy code problems existed would have clearly violated legislatively approved directions to comprehensively upgrade high priority facilities.

The funds appropriated to the Department of Administration were likewise reduced from the original request. Therefore, they, too, were required to exercise statutory discretion to choose projects consistent with legislative purposes.

- B. We disagree that the intent of statutes and regulation was not followed when awarding various contracts for the project. We agree that certain established procedures were not followed, but note that several procedures could not be applied to this unique project.

1. Vernon Akin & Associates:

According to AS 36.98.030 a sole source contract is permitted if a waiver is granted. This waiver was signed by the Commissioner according to statutory requirements. The audit report suggests that the waiver did not contain sufficient written evidence to justify the waiver. However, no criteria exist for such a waiver. The waiver was therefore based on our understanding of the statutory requirements. Vernon Akins & Associates had just concluded a subcontract with another contractor on the mansion and he was by far the most knowledgeable engineer in Alaska with many years of prior experience on the mansion. There was no question among the staff familiar with this project that this firm could clearly perform the required tasks more satisfactorily than any other firm because of their prior work on the mansion. This is the

"test" required by statute and, hence, the reason the waiver was requested and approved.

2. The audit report fails entirely to note that Jerry Wood was selected according to procedures for contracts not exceeding \$25,000, so that AS 36.98 did not apply. During one of the many investigations on this project it was pointed out that the rental cost of a vehicle should be included in the "total amount of the contract." We disagree, but immediately issued instructions to ensure that the "total amount of the contract" including car rental would not exceed \$25,000 to avoid any potential for inadvertently stepping over the line on AS 36.98. This was possible because the fixed fee amount of the contract was only \$21,100. This confirmed our stated intent not to exceed \$25,000 and clearly assured that AS 36.98 did not apply. Please note the enclosed Attorney General's Opinion confirming the propriety of our action on this point. A review of the preliminary cost estimates for this contract, including contingencies, show the cost was always anticipated to be well below \$25,000. This is confirmed by the fixed fee amount in the contract of \$21,100. Accordingly, we take strong exception to the audit statement that the "contract clearly violates the spirit and intent of the law". We very carefully followed the spirit and intent of applicable law and suggest the audit comment is inappropriate.
- a). As a matter of fact the business and financial relationship between Jerry Wood and Fred Seeger was severed over two years before this contract was signed. This is more than 1 1/2 years beyond which the Attorney General's office proposed last year in analogous legislation as constituting a conflict of interest violation. Also, Fred Seeger was organizationally in no way responsible for this work, nor did he have any authority over it.

We agree that anytime there is a "perception" or "appearance" of impropriety there is cause for concern. But if we based all our decisions on certain people's "perception" of a problem, one can readily imagine government coming to a virtual standstill.

It is regrettable that a copy of the gentlemen's business card from their previous relationship received such wide circulation, but it hardly seems appropriate or responsible to use that as a basis for suggesting the contract may not be appropriate or that a conflict of interest existed.

- b). It is irrelevant that Mr. Wood was placed on the register improperly. Because the original contract amount was not over \$25,000, a register was not required; hence, it was not used for selection.

- c). Applicable law requires a contractor to have a business license before he begins work in the State. This was done.
- d). There are no statutory or procedural requirements on where a contractor states the location of his business. Mr. Wood stated his business mailing address as 1815 114th S.E., Everett, Washington 98205. He inadvertently stated the location of his business as our office, since he was working out of our office and the Governor's Mansion during the entire time he was on the project. It was an error to list our office as his business location, but his business mailing address was correctly noted.
- e). This item is essentially correct. The project was "substantially complete" on December 2, 1983. But we fail to see the significance of this statement. If it is intended to suggest there was no need for Jerry Wood on this project we would take strong exception.

Late in the project development we determined a cost-reimbursable contract would be much more cost effective than the normal lump sum approach about which our staff is most familiar. Mr. Wood first came to the project as an advisor at our request and at his own expense (we paid travel and per diem only) because of our increasing concerns about the project. As a result it was evident that he had strong project management capabilities for fast-track cost-reimbursable contracts and, importantly, that we could learn from him how to better administer these type contracts. Another advantage was he could serve as a buffer for our staff and share their capabilities with new management in the Department who perceived in-house staff may not be able to efficiently administer projects.

Therefore, Jerry Wood was hired to supplement our own staff's capabilities and to give this project the best attention possible. He left the job near the end as soon as his functions could be assumed by staff with minor impact on the job.

3. We agree that Policy & Procedure 70-7001 was not followed. Each of the responsible individuals has been notified officially that it is unacceptable to ignore or take lightly substantive requirements in procedures.

In partial mitigation, we have reviewed the process used and are satisfied that statutory requirements for obtaining informal bids were met and that a documented process was used to ensure competition. Although the process was documented, the required waiver to support the lack of formal advertising was not obtained.

4. Same as 3. above.

5. For project control on a cost-reimbursable contract, we believe it is essential for the contractor's management to be immediately available to expedite the acquisition of materials and promptly respond to problems on the job. Several highly qualified contractors are headquartered locally to ensure good competition. In order to provide the level of on-site management necessary, key contractor management personnel not in Juneau would need to relocate during the project at a decided extra cost compared with local contractors. This was confirmed on the bids opened for the decorative contract. Since this was a cost-reimbursable contract, as opposed to the more conventional "lump sum" approach normally used by the State, contractor innovation and other project cost saving techniques were not compromised. In other words, only the time and materials mark ups for overhead and profit are competitive in a cost-reimbursable contract.

The Department's Policy & Procedure on advertising is not applicable to the competitive contractor selection system used for this fast-track, cost-reimbursable contract.

In retrospect, regardless of the mitigating factors, we agree that statewide advertising of the project would have precluded the audit comment. We have requested our Standards & Technical Services Division to develop procedures for these types of contracts.

Meanwhile, we have instructed all personnel to advertise statewide should we encounter this type of project in the future.

We would like to underline that the statutory requirements to advertise this project were in fact met.

The undated contract is immaterial since work could not start until the Notice to Proceed was issued. Also, the payment and performance bonds were signed, dated and attached as part of the contract giving evidence of the effective date. A completion date is not appropriate because that responsibility rests with the State in a cost-reimbursable contract.

The bonus was offered to induce the contractor to accelerate his work schedule. This was particularly important in this cost-reimbursable contract to ensure successful completion of the job.

6. While the advertising period for this project was less than specified in P & P 70-7001 it also should be noted that this P & P is designed primarily for lump sum contracts. It is not appropriate for the cost-reimbursable contracts used for this project. A contractor can prepare a prequalification package and time and materials bid in markedly less time than for a typical lump sum project. The adequacy of preparation time is evidenced by the number of bidders (five, which is average for this size job) and by the absence of any complaints from contractors.

You are correct to note the lack of established procedures for prequalification of contractors. The department has never before been involved in major renovation of historic buildings, so it was never anticipated that such procedures would ever be needed. Given this fact we developed a process to ensure a top quality professional and long lasting renovation. Rather than starting from scratch, however, we used our existing professional services procedures, to the extent applicable, to ensure a workable and fair process. We can now see ways to improve the process for future jobs of this nature. But, regardless of short comings which may appear in hindsight, no contractors were prevented or restricted from participating and we were never in a position of being committed to award the work to an unqualified contractor. Our experience on this project will be most helpful in developing a procedure for these types of historic/renovation projects in the future. We have requested our Standards & Technical Services Division to develop such procedures.

- C. We feel the audit comments on the scope changes accurately describe the situation as we understand it.
- D. See B.2. for response to these items.
- E. No funds were transferred between appropriations on this project. Hence, it is factually incorrect to cite AS 37.07.080(e) which referring to which appropriation expenditures were charged.

We consider our FY 84 Operating Budget to be a proper appropriation to charge certain Design & Construction personnel costs working on the Governor's Mansion particularly when so much of this time was consumed in responding to the extraordinary number of inquiries and investigations on this project. However, to respond to your concern we have directed that these personnel costs in question be charged to the Governor's Mansion project to the extent funding allows.

We strongly disagree with the suggestion to transfer Maintenance & Operations costs to the project. These costs were incurred at the very end of the job. As you know our Maintenance & Operations staff has had a continuing responsibility for up keep on the Governor's Mansion for as long as anyone can recall. The Maintenance & Operations work was closely in line with this responsibility.

- F. No comment. Not applicable to DOT&PF involvement.
- G. No comment.
- H. No comment. Not applicable to DOT&PF involvement.

Representative Bettisworth

-7-

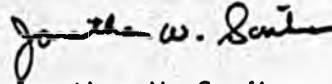
January 25, 1984

Appendix A:

The original Jerry Wood contract was for a fixed fee of \$21,100 to perform the work anticipated. Up to an additional \$3,900 at the rate of \$300/day was entirely at the discretion of the State. The car rental was later charged against this \$3,900 to ensure the total original contract amount did not exceed \$25,000. The Appendix should be changed to indicate these facts.

We trust this response is satisfactory.

Sincerely,



Jonathan W. Scribner  
Deputy Commissioner

JWS/sh

Enclosure

cc: H. Glen Glenzer, Jr.  
Acting Commissioner

# MEMORANDUM

State of Alaska

cc Glen Wenger  
cc Jack Cienoweth  
cc Don Dieckmeyer

TO: Jonathan W. Scribner  
Deputy Commissioner  
Southeast Region  
Department of Transportation  
and Public Facilities

DATE: January 10, 1984

FROM: Norman C. Gorsuch  
Attorney General

SUBJECT: Interpretation of  
AS 36.98

By: Jack McGee  
Assistant Attorney General  
Transportation Section-Juneau

The question you raised in your memo of January 3, 1984 can be re-phrased as follows:

Must the value of a rental car be included in determining whether the \$25,000 limit for professional services contracts set out in AS 36.98 is satisfied?

AS 36.98.010 authorizes the state to enter into professional service contracts without going through the competitive bidding process when "the total amount of the contract does not exceed \$25,000." The use of the word "total" here indicates that the value of all remuneration received by a contractor must be included when one is calculating the "total amount" of the contract. It follows, therefore, that the value of a rental car must be included in determining whether the \$25,000 limit of AS 36.98.010 is reached.

It is my understanding that in Mr. Wood's contract relating to the Governor's Mansion, it was originally contemplated that the value of a leased car would not be included in determining total value of the contract. After the issue was raised, however, DOT/PF personnel were specifically directed to insure that Mr. Wood's contract did not exceed the sum of \$25,000 including the value of vehicle rental. See appendix #1. This instruction, it seems to me, served to correct the original misunderstanding. As a result, there was no violation of AS 36.98.010.

JM:ehc

# MEMORANDUM

State of Alaska  
Department of Transportation & Public Facilities

W. J. LeBoff, P. E.  
Acting Chief  
Building Design & Construction  
B/D/PF

Charles S. Matlock  
Acting Director  
B. D. Design & Construction  
B/D/PF

DATE August 9, 1983

FILE NO

TELEPHONE NO

SUBJECT

Consultant Contract  
Governor's Mansion  
Project No. H-79164

Please take the appropriate action to insure that the Consultant Contract for  
being used does not exceed the contract amount of \$25,000.00, including  
extended services and vehicle rental.

CSM:JUL:ma

Appendix #1

# STATE OF ALASKA

AUDIT DIVISION  
POUCH W  
JUNEAU, ALASKA 99811

## THE LEGISLATURE

### BUDGET AND AUDIT COMMITTEE

January 26, 1984

Members of the  
Legislative Budget and Audit Committee:

We have reviewed the Department of Transportation and Public Facilities, and the Office of the Governor responses to our preliminary report on the Governor's Mansion Renovation Project. Our comments on the submitted responses are listed below:

#### Department of Transportation and Public Facilities

#### Findings and Auditor's Comments

- B.2. We reiterate our statement in the report "in our opinion, the original contract amount exceeded \$25,000, and therefore should have been advertised in accordance with AS 36.98". In addition, the amount paid on this contract and its amendment totaled \$34,814.
- E. Costs related to the Governor's Mansion Renovation should all be charged to the project and recorded in the accounting records accordingly. If sufficient funds are not available, it is not appropriate to record these costs in overhead or operating accounts. Rather, to cover these overexpenditures, the Department should request additional funds through either a revised program or a supplemental appropriation.

In addition, the Maintenance and Operations costs incurred at the end of the job were due to the mansion renovation and not general maintenance. As such, these appropriately should be charged to the project.



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

# MEMORANDUM

# State of Alaska

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

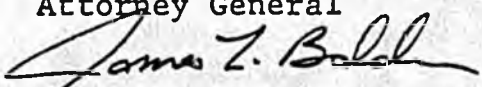
DATE: January 26, 1984

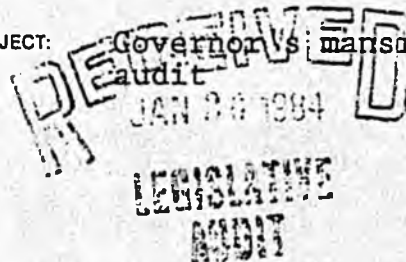
FILE NO: 366-353-84

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch  
Attorney General

SUBJECT: Governor's mansion  
audit

  
By: James L. Baldwin  
Assistant Attorney General  
Governmental Affairs-Juneau



In connection with your audit of the renovation of the governor's mansion, you have asked for our advice and interpretation of various statutes. In answering your questions, we have first set out your question, followed by our response.

1. In light of ... [AS 41.98.170 and AS 41.35.040], what should the Department of Natural Resources (DNR) involvement have been with respect to the Governor's Mansion renovation project (the Governor's Mansion is on the National Register of Historic Places)? Should DNR have been the State Agency that budgeted for the mansion renovation? If DNR should have been more involved in the project such as receiving the appropriation and planning for the renovation what are the remedies that could/should occur?

We believe that the provisions of AS 41.35 do not apply to the governor's mansion renovation project. The mansion has never been designated a historic site as provided in AS 41.35.-030. The mansion remains the official residence of the governor and has been consistently managed by the Department of Transportation and Public Facilities (DOTPF) as an operating facility of the state. In any case, the placement of the mansion on the National Register of Historic Places does not constitute a designation under AS 41.35.030. The Department of Natural Resources (DNR) is not responsible for administering the financing of the renovation of the mansion. That responsibility rests with DOTPF.

2. If the original amount of a contract is \$25,000, and is later amended up to a total of \$35,000 (as is the case with the Jerry Wood, P.E. contract with DOTPF), should this contract be required to comply with AS 36.98 provisions? Or is it exempt because the original contract was \$25,000?

AS 36.98 applies only to professional service contracts which exceed \$25,000. AS 36.98.010. The consequences of exceeding this amount through amendment of the original contract are

not specified in AS 36.98 or the implementing regulations. A former version of the state administrative manual in effect before the enactment of AS 36.98 provided that "If an amendment to a contract has the effect of placing the agreement, as amended, within the category of those requiring [Department of] Administration approval, such approval must be obtained." Administrative Manual, § 8114 (rev. Nov. 1980). Under that rule, the amendment to the Wood contract should have been justified as a sole source procurement in the same manner as provided in AS 36.98.030(d)(1). The operative effect of the state administrative manual is in doubt after the enactment of AS 36.98. Deputy Commissioner Scribner correctly noted this deficiency in his letter of September 28, 1983, in which he set out his determinations concerning the amendment. It is relevant to note that under 17 AAC 07.070 only the commissioner of transportation and public facilities can waive the public solicitation requirements imposed by AS 36.98. However, Scribner alone approved the amendments. We believe that DOTPF and DQA must amend 17 AAC 07 and 2 AAC 15 to provide for the approval and processing of amendments which increase the total contract price so that the \$25,000 threshold is exceeded. Under existing law and departmental practices, DOTPF acted reasonably when it amended the Wood contract.

A regulation which prescribes procedures for the amendment of professional services contracts is necessary to avoid evasion of the purposes of AS 36.98. Without some limitation of the power to amend, the \$25,000 threshold imposed by AS 36.98.010 is meaningless. Until these limitations are adopted by regulation, we believe that amendments which, if added to the original contract amount, cause the contract amount to exceed \$25,000, the amendment must be justified in the same manner as an original contract covered by all of the provisions of AS 36.98.

The treatment of the expense attributable to the contractor's rental car is determined by the intent of the parties to the contract. If the rental is considered to be compensation for services performed, the value of the rent must be considered part of the contract amount. However, if the vehicle is considered to be a tool provided by the contracting agency with the specific intent to reduce the cost of performance, the rental cost should not be considered a part of the contract amount. DOTPF accounted for the rental car as if it were compensation for the contractor.

3. DOTPF advertised one of its [construction] contracts only three days (over a five day period) and restricted respondents to firms located in the City and Borough of Juneau. Was this a violation of the Statute? If

this violated the statutes and/or DOTPF P & P's, what are the remedies?

The advertising requirement for DOTPF construction contracts (financed entirely by state appropriation) are imposed by AS 37.05.230(2). AS 35.15.040(b). That subsection provides:

(2) if the amount of the contractual services, purchase, or sale is estimated to exceed \$5,000, sealed bids shall be solicited, when practicable, by publication in a newspaper calculated to reach prospective bidders and by posting notices in public places within the area where the work is to be performed or material furnished and in addition the department may also designate a trade journal for publication; the department shall also solicit bids by sending notices by mail to all active prospective bidders known to it and all bids shall be sealed when received, and shall be opened in public at the hour stated in the notice; the department may limit the solicitation of bids or negotiate directly if it finds that it is in the best interests of the state;

AS 37.05.230(2)(emphasis added). The statute does not set out with specificity the manner in which publication of a request for bids is made. These details are apparently covered by "policies" set out in an internal DOTPF publication. We believe it is not appropriate to provide for contract procedures which apply to the public in policy manuals. This topic should be set out in administrative regulations. The adoption of regulations to prescribe agency conduct is required if the subject matter covered "affects the public or is used by the agency in dealing with the public." AS 44.62.640(2). DOTPF must review the departmental policy and procedures manual to determine if any subjects covered there must be adopted as administrative regulations under the procedures specified in AS 44.62.180 - 44.62.290.

Generally, the failure to comply with competitive bid provisions established by law makes the resulting public contract void. However, for the contracts questioned by this audit, the minimum requirements prescribed by law (AS 37.05.230(2)) were complied with. Internal policies were waived by implication. Generally, the failure to follow internal policies and procedures does not void a contract. We believe that no violation of the competitive bid laws occurred.

4. The Office of the Governor has a contract with Phyllice Bradner dba Snow Goose Productions .... Is this a legal contract since it does not contain the amount of the contract on the first page?

Should the stated amount of the contract include the amount of furniture purchases and mark-up (total encumbered for this contract is \$267,000 including services and purchases)? Could the Governor be held personally liable if the contract is deemed invalid?

Since there appears to be no control on the amount she can purchase and bill the State for, would the State (and/or the Governor) be liable for all purchases she makes for the mansion?

Is the scope of Services (Article II, Appendix B:) such that it is non-standard and should have been reviewed by the Department of Law?

What remedies are available if this contract or parts of it are deemed invalid?

It appears that the Office of the Governor used a standard form contract which did not contain provisions for setting out the contract amount on page 1. However, the updated professional services contract forms with all of the features required by AS 36.98 were not provided to agencies until after June 1, 1983. Pending adoption of the updated contract forms, DOA informally required the hand insertion of the contract amount on page 1. This informal policy was followed for the Snow Goose contract. Consideration of this issue does not stop with the requirement that the amount be stated, but what amount should be attributed to this contract. The Office of the Governor considers the contract amount to be \$45,000. You have asked if the contract amount should include the approximately \$267,000 worth of antique furnishings purchased by the contractor. We believe the contract amount for the professional services contract should have been an amount in excess of \$45,000. The services of this contractor were obtained to assist the state in purchasing antiques. However, the contractor not only served as a consultant but, she was also compensated as if she were a supplier of the antiques. The contractor was permitted to mark-up the cost of an item for "handling" and was reimbursed for freight. The contract provided not only for the procurement of professional services but also for the purchase of goods. The cost of these charges should have been included in the contract amount of the professional services contract. Under the contract, as written, the

contractor received a set percentage of the purchase price for handling. This form of compensation should be avoided because the contractor has no incentive to seek bargains for the state. Alternatively, the purchase of the antiques could have been treated as a separate contract with Snow Goose. It is a close question whether the services necessary to locate, purchase and provide for the delivery of antiques comes within the definition of the term "professional services" set out in AS 36.98.080(2). It is probable that a noncompetitive supply contract could have been awarded to purchase antiques because of their unique, one of a kind nature. Presumably, for these items, a certification can be made that no competition exists. See AS 37.05.230(1)(i).

We believe the contract did not contain terms which varied the provision of the standard form contract. AS 36.98.-045. However, because of the delegation provisions, the contract should have been reviewed by the Department of Law before award. This review would have been desirable but not mandated by law. DOA should have obtained this review before awarding the contract to Snow Goose. Snow Goose was delegated by contract the power to act as a state purchasing officer with little control over the exercise of the contractor's discretion. While we believe this contract is valid, in the future a state agency can avoid criticism for a similar delegation if it makes a delegation only to the extent necessary to obtain a sufficient number of price quotes. The agency should then review the quotes with the assistance of the professional and make the purchase.

5. Was it a conflict of interest for a DOTPF official to be involved in the decision to make the Wood contract?

We issued an opinion on this subject in which we concluded that there was not a conflict of interest resulting from this contract. 1983 Inf. Op. Att'y Gen. (Nov 16; 366-124-84). A copy of that opinion is attached.

JLB/pjg

Enc.

# MEMORANDUM

# State of Alaska

TO: Jonathan W. Scribner  
Deputy Commissioner  
Southeast Region  
Department of Transportation  
and Public Facilities

DATE: November 16, 1983

FILE NO: 366-124-84

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch  
Attorney General

SUBJECT: Review of department's project management contract for conflict of interest

By: Diane T. Colvin  
Assistant Attorney General  
Department of Law

You asked us to review the contract award made to Jerry D. Wood by the Department of Transportation and Public Facilities. Mr. Wood was hired in conjunction with renovation of the Governor's mansion to provide project management services. On August 4 the Ombudsman issued an opinion in response to a complaint received on the project services contract. One of the Ombudsman's findings was that the contract involved a conflict of interest, because of Mr. Wood's business relationship with Fred Seeger, Deputy Commissioner, Department of Transportation and Public Facilities. You have asked us to review the conflict of interest issue.

According to your response of August 9 to the Ombudsman, Mr. Seeger suggested Jerry Wood for the management services project initially. After that recommendation was made, you claim that Mr. Seeger had no further involvement in the award of the contract to Mr. Wood. You have also informed us that although Mr. Seeger and Mr. Wood did have a prior business relationship, that relationship was severed at least two years ago.

As you may know, the applicable standard for conflict of interest is the common law. This is a strict standard, prohibiting not only actual conflicts of interest but also requiring avoidance of even the appearance of impropriety. See 1982 Op. Att'y Gen. No. 15 (Dec. 3).

Based on the facts you provided, we find no conflict of interest in the award of the Wood contract because Mr. Seeger did not and could not benefit as a private person from the contract. The issue arose because of the previous business relation between the two individuals. However, if as you state, the relationship was severed two years ago, the potential for conflict is tenuous. Even under the common law, the amount of time involved here between the business association and the award of the contract diminishes the possibility of a conflict.

Jonathan W. Scribner  
Deputy Commissioner  
Southeast Region -- DOT-PF  
366-124-84

November 16, 1983  
Page 2

The conflict issue is, unfortunately, enhanced in this case because the Wood contract was awarded on a sole source basis. While there may have been justification for sole source in this particular instance, it would have been preferable, had time and circumstances allowed, to solicit proposals in order to avoid raising the issue of conflict of interest.

If you have further questions, please contact us.

DTC:eja

Reesi-

dency

# |

## I. REQUEST

Bill/Resolution No: HB 323  
 Title: Residency & Residency Requirements  
 Sponsor: House State Affairs  
 Requestor: House State Affairs

## II. FISCAL DETAIL

Agency Affected: Revenue  
 Program Category Affected: Coll. & Mgt.  
 BRU, Program of Subprogram(s) Affected:  
 Administration & Support

## EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	1.0	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	3.0	1.3	1.4	1.5	-
500 EQUIPMENT	-	2.0	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
TOTAL OPERATING	-0-	6.0	1.3	1.4	1.5	-

CAPITAL	-	-	-	-	-	-
---------	---	---	---	---	---	---

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

GENERAL FUND	-0-	6.0	1.3	1.4	1.5	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-
Sport Fish Fund	-0-	(18.2)	(38.5)	(40.8)	(43.4)	-
Game Fund		(14.1)	(30.0)	(31.8)	(33.6)	

## POSITIONS:

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

## III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

## IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Cecilia A. Wagener

Phone: 465-2376

Division: Public Services

Date: 4/13/83

Approved by Commissioner: Robert D. Heath

Date: 4/14/83

Department: Revenue

## Distribution:

Original to Legislative Finance

Copy to Office of Management and Budget (for Legislature introduced bills)

Copy to Department (for Governor introduced bills)

Copy to Sponsor

Copy to Requestor (if different from Sponsor)

#### IV. ANALYSIS (HB 323)

Three thousand is needed to initially design and print applications and the permanent I.D. card and to order enough laminating jackets for the fiscal year. Each subsequent fiscal year, we will have the cost of additional laminating jackets. The equipment cost is for three laminating machines; one for the Public Services Counter in Anchorage, one for Fairbanks, and one for Juneau. The travel expenditure is for the Records & Licensing Supervisor to go to Anchorage and Fairbanks and instruct the counter employees.

According to data received from the Department of Labor and the Committee for Older Alaskans, the percentage rate of senior citizens in our state is fairly stable from year to year.

Using FY 82 as the base, it is estimated that there will be a six percent increase in resident sales every year. It is also estimated that three percent of the resident sales are sold to residents sixty years or older.

We are recommending that this bill be amended to include an effective date of January 1, 1984, because license changes traditionally take place at the beginning of a calendar year. If implemented in the middle of the year, some licensees who could be eligible would have already purchased their license. Middle of the year implementation would also require special printing and mailing costs. Time is also needed to properly inform the public of the new law so that all who are eligible can apply.

Assuming that the bill goes into effect 1/1/84, there will be no effect in FY 83. There will be losses to both the Sport Fish and Game Funds in each subsequent fiscal year. FY 84 has a much smaller loss because only half of the fiscal year will be effected.

Introduced: 4/5/83  
Referred: State Affairs  
and Judiciary

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE  
2 HOUSE BILL NO. 323  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to residency and residency require-  
7 ments; and providing for an effective date."

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

9 \* Section 1. AS 01.10 is amended by adding a new section to read:

10 Sec. 01.10.055. RESIDENCY. (a) A person establishes residency  
11 in the state by being physically present in the state with the intent  
12 to remain in the state indefinitely and to make a home in the state.

13 (b) A person demonstrates the intent required under (a) of this  
14 section

15 (1) by maintaining a principal place of abode in the state  
16 for at least 30 days or for a longer period if a longer period is  
17 required by law or regulation; and

18 (2) by providing other proof of intent as may be required  
19 by law or regulation, that may include proof that the person is not  
20 claiming residency outside the state or obtaining benefits under a  
21 claim of residency outside the state.

22 (c) A person who establishes residency in the state remains a  
23 resident during an absence from the state unless during the absence  
24 the person establishes or claims residency in another state, territory  
25 or country, or performs other acts or is absent under circumstances  
26 that are inconsistent with the intent required under (a) of this  
27 section to remain a resident of this state.

28 \* Sec. 2. AS 08.04.110 is repealed and reenacted to read:

29 Sec. 08.04.110. PERSONAL REQUIREMENTS. An applicant for the

1 certified public accountant certificate shall be at least 19 years of  
2 age and of good moral character.

3 \* Sec. 3. AS 08.08.207(a) is amended to read:

4 (a) Every person who desires subsequently to qualify as a gen-  
5 eral applicant for admission to the Alaska Bar without having been  
6 graduated from an approved law school shall register as a law clerk as  
7 provided by this section. The person [MUST BE A BONA FIDE RESIDENT OF  
8 THE STATE AND] shall present satisfactory proof that the person has  
9 been granted a bachelor's degree (other than bachelor of laws) by a  
10 college or university offering the degree on the basis of a four-year  
11 course of study and has successfully completed the first year of  
12 studies at a law school.

13 \* Sec. 4. AS 08.88.171 is amended to read:

14 Sec. 08.88.171. ENTITLEMENT TO LICENSE. (a) A person is enti-  
15 tled to a real estate broker license [IF THE PERSON IS A RESIDENT OF  
16 THE STATE,] if the person passes the real estate brokers examination,  
17 if the person applies for a license within six months after the person  
18 has taken the real estate brokers examination, if the person has had  
19 at least 24 months of active and continuous experience as a licensed  
20 real estate salesman, if the person is not under indictment for, or  
21 seven years have elapsed since the person has completed a sentence  
22 imposed upon conviction of, forgery, theft, extortion, conspiracy to  
23 defraud creditors, or any other felony involving moral turpitude, and  
24 if the person is an owner of a real estate business or employed as a  
25 real estate broker by a corporation or a partnership, and if that  
26 corporation or partnership does not have an existing licensed broker.  
27 Unless the broker fails to pay the biennial renewal fee or unless the  
28 broker's license is suspended or revoked under AS 08.88.071(a)(3), the  
29 real estate broker's license continues in effect so long as the broker

1 is an owner of a real estate business, or the broker is employed as a  
2 real estate broker by a corporation or a partnership. If the broker  
3 stops being an owner of a real estate business, or stops being em-  
4 ployed as a real estate broker by a corporation or partnership, the  
5 broker's license is suspended from the time the broker stops until

6 (1) the broker again becomes an owner of a real estate  
7 business or is again employed as a real estate broker by a corporation  
8 or a partnership; or

9 (2) the broker is employed by a licensed real estate broker  
10 as an associate real estate broker, in which case the real estate  
11 broker license is returned to the commission, and the commission  
12 issues the broker an associate real estate broker license.

13 (b) A person is entitled to an associate real estate broker  
14 license [IF THE PERSON IS A RESIDENT OF THE STATE,] if the person  
15 passes the real estate brokers examination, if the person applies for  
16 a license within six months after the person has taken the examina-  
17 tion, if the person has had at least 24 months of active and continu-  
18 ous experience as a licensed real estate salesman, if the person is  
19 not under indictment for, or five years have elapsed since the person  
20 has completed a sentence imposed upon conviction of, forgery, theft,  
21 extortion, conspiracy to defraud creditors, or any other felony in-  
22 volving moral turpitude, and if the person is employed by a licensed  
23 real estate broker as an associate real estate broker. Unless the  
24 associate broker fails to pay the biennial renewal fee or unless the  
25 associate broker's license is suspended or revoked under AS 08 88.-  
26 071(a)(3), the associate real estate broker's license continues in  
27 effect so long as the associate broker is employed by a licensed real  
28 estate broker as an associate broker. If the associate broker stops  
29 being employed by a licensed real estate broker, the associate

1 broker's license is suspended from the time the associate broker stops  
2 until

3 (1) the associate broker again is employed by a real estate  
4 broker as an associate broker; or

5 (2) the associate broker becomes an owner of a real estate  
6 business, in which case the associate broker's associate real estate  
7 broker license is returned to the commission, and the commission  
8 issues the associate broker a real estate broker license.

9 (c) A person is entitled to a real estate salesman license [IF  
10 THE PERSON IS A RESIDENT OF THE STATE,] if the person passes the real  
11 estate salesman examination, if the person applies for a license  
12 within six months after the person has taken the examination, if the  
13 person is at least 19 years old, if the person is not under indictment  
14 for forgery, theft, extortion, conspiracy to defraud creditors, or any  
15 other felony involving moral turpitude, or, if convicted of such an  
16 offense, the person has completed the sentence imposed upon conviction,  
17 and if the person is employed by a real estate broker. Unless  
18 the salesman fails to pay the biennial renewal fee or unless the real  
19 estate salesman's license is suspended or revoked under AS 08.88.-  
20 071(a)(3), a real estate salesman's license continues in effect so  
21 long as the salesman is employed as a salesman by a licensed real  
22 estate broker. If the salesman stops being employed as a real estate  
23 salesman, the real estate salesman's license is suspended from the  
24 time the salesman stops until the salesman [HE] again is employed as a  
25 salesman by a licensed real estate broker.

26 (d) A licensee shall promptly inform the commission of a change  
27 in business association that affects the status of the licensee's  
28 license under this section.

29 \* Sec. 5. AS 09.55.130 is amended to read'

1           Sec. 09.55.130. RESIDENCE REQUIREMENTS FOR ACTION TO DECLARE  
2 MARRIAGE VOID. When a marriage has been solemnized [IN THE STATE] and  
3 the plaintiff is a resident of the state, an action to declare the  
4 marriage void may be brought at any time. [IF THE MARRIAGE HAS NOT  
5 BEEN SOLEMNIZED IN THE STATE, THE ACTION MAY BE MAINTAINED ONLY WHEN  
6 THE PLAINTIFF HAS BEEN A RESIDENT FOR AT LEAST ONE YEAR BEFORE THE  
7 COMMENCEMENT OF AN ACTION.]

8 \* Sec. 6. AS 16.05.400(b) is amended to read:

9           (b) A sport fishing, hunting or trapping license is not required  
10 of a resident who is 60 years of age or more and has been a resident  
11 for one year [30 CONSECUTIVE YEARS] or more. The commissioner of  
12 revenue shall issue a permanent identification card without charge to  
13 persons who qualify by age and residence and who complete the forms  
14 required by the commissioner for implementation of this subsection. A  
15 person who is issued a permanent identification card under this sub-  
16 section shall have it in [HIS] possession while sport fishing, hunting  
17 or trapping.

18 \* Sec. 7. AS 16.35.130 is amended to read:

19           Sec. 16.35.130. BOUNTY NOT TO BE PAID. No bounty may be paid  
20 under AS 16.35.050 - 16.35.120 to a person who does not maintain [FOR  
21 THE IMMEDIATELY PRECEDING YEAR HAS NOT MAINTAINED] a permanent place  
22 of abode inside the game management unit or part of the game manage-  
23 ment unit in which the animal was taken and a bounty is paid, or to a  
24 person who does not maintain [HAS NOT CONTINUALLY MAINTAINED HIS]  
25 legal residence in the state, or to a salaried employee of a federal  
26 or state agency which is engaged in fish or game protection, manage-  
27 ment, research activity, or to any person whose bounty claim results  
28 from a trophy hunt as publicly declared by the Department of Fish and  
29 Game.

1 \* Sec. 8. AS 18.56.101(1)(B) is amended to read:

2 (B) who, not being a bona fide resident of the terri-  
3 tory or state at the time of entry into the service, has been a  
4 resident of the territory or state for at least one year at the  
5 time of the loan application [AND HAS BEEN A RESIDENT OF THE  
6 TERRITORY OR STATE FOR AT LEAST FIVE YEARS]; and

7 \* Sec. 9. AS 21.27.090(a)(2) is amended to read:

8 (2) if for a resident agent's or broker's license: be a  
9 bona fide resident [FOR A PERIOD OF NOT LESS THAN ONE YEAR OF CON-  
10 TINUOUS RESIDENCY, IMMEDIATELY] before issuance of license, and ac-  
11 tually residing in Alaska; or if a corporation, be other than an  
12 insurer and maintain a lawfully established place of business in this  
13 state, except as provided in AS 21.27.270;

14 \* Sec. 10. AS 26.15.130(a) is amended to read:

15 (a) Qualifications for loans under AS 26.15.010 - 26.15.160 are:

16 (1) persons who served in the armed forces of the United  
17 States for 90 days or more, or whose service was for less than 90 days  
18 because of injury or disability incurred in the line of duty, between  
19 April 6, 1917, and November 11, 1918, and beginning September 16,  
20 1940, to November 7, 1975, or in a combat zone during any period of  
21 armed conflict, who were separated from the armed forces with a dis-  
22 charge other than dishonorable, and

23 (A) who, at the time of induction into the service,  
24 were residents of the territory or state, who had been residents  
25 for not less than one year immediately before their induction,  
26 and who returned to the territory or state after discharge as  
27 residents with the intention of remaining in the territory or  
28 state; or

29 (B) who, not being bona fide residents of the

1           territory or state before their entry into the service, have been  
2           residents of the territory or state for one [FIVE] or more years;

3           (2) persons who were dependent on a member of the armed  
4           forces or a veteran of World War II at the time of the member's or  
5           veteran's death, if

6           (A) the member or veteran was a resident of the terri-  
7           tory or state for one year before induction into the service; and

8           (B) the member or veteran [HE] served in the armed  
9           forces for at least 90 days between September 16, 1940, and July  
10          25, 1947, but no benefits for loans accrue to dependents of an  
11          enlistee or re-enlistee for time served after November 1, 1945,  
12          regardless of whether the enlistment or reenlistment was before  
13          or after November 1, 1945; and

14          (C) the member or veteran [HE] died before the offi-  
15          cial date of the termination of that war; and

16          (D) the member's or veteran's [HIS] discharge was not  
17          dishonorable;

18          (3) persons who have served in the Alaska Army National  
19          Guard or the Alaska Air National Guard or the Alaska Naval Militia for  
20          not less than six years and who have not received a discharge other  
21          than honorable.

22       \* Sec. 11. AS 38.08.030(a)(2) is amended to read:

23               (2) submit proof acceptable to the commissioner that the  
24               applicant [HE] is a resident of the state at the time of application,  
25               and that the applicant [HE] has been a resident of the state for not  
26               less than one year [THREE YEARS] immediately preceding the date the  
27               [HIS] application was submitted [, OR THAT HE HAS BEEN A RESIDENT FOR  
28               20 YEARS CUMULATIVELY];

29       \* Sec. 12. AS 44.81.210(a)(20) is amended to read:

*(Check on 2 bills we may delete Sec 12)*

1 (20) make loans to individual commercial fishermen for  
2 limited entry permits; a loan under this paragraph may be made only to  
3 an individual commercial fisherman who has been a state resident for a  
4 continuous period of ~~two~~ [FIVE] years immediately preceding the date  
5 of application for the loan and who has had a crewmember or commercial  
6 fishing license under AS 16.05.480 or a permit under AS 16.43 for any  
7 one of the past five years, and who has actively participated in the  
8 fishery during that period; loans made under this paragraph are sub-  
9 ject to the provisions of AS 44.81.230;

10 \* Sec. 13. The following laws are repealed: AS 08.54.110(2), 08.54.-  
11 140(2), 08.54.142(a)(1); AS 14.43.130; AS 18.55.470(4); AS 21.27.220(1);  
12 AS 29.63.065(d)(1); AS 38.05.058; AS 38.08.040(b); AS 39.25.155(g); AS 43.-  
13 26.095(b)(3).

14 \* Sec. 14. This Act takes effect immediately in accordance with AS 01.-  
15 10.070(c).

# STATE OF ALASKA

Bill Sheffield, Governor

C

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

February 24, 1983

RECEIVED  
FEB 28 1983

The Honorable Joe L. Hayes  
Speaker of the House  
of Representatives  
State of Alaska  
Pouch V  
Juneau, AK 99811

FEB 24 1983

Dear Speaker Hayes:

In your letter of February 10, 1983, you requested that I provide you an update on our analysis of ~~public lands programs~~ in the following areas: longevity bonus program and the settlement reached in Vest v. Schafer; the pioneers home program; requirements for registered guides; the student loan program and the case of Andress v. Baxter challenging the program; and the State land disposal programs in the case of Gilman v. Martin challenging various aspects of these programs.

### PIIONEER'S HOME PROGRAM

On November 26, 1982, this office issued a comprehensive opinion on the Pioneer's Home. Basically, the opinion concluded that although there were numerous, serious and potentially fatal attacks that could be mounted against the program, this office could defend the Pioneer's Home program if it was challenged. A copy of this opinion is attached to this letter.

### STUDENT LOAN PROGRAM - ANDRESS V. BAXTER

The constitutionality of the two-year residence requirement for the student loan program was challenged in Andress v. Baxter. The briefing in the case is complete and we are waiting for the Federal District Court to set a date for oral argument. We are defending the two-year residency requirement and believe that it is a constitutional provision. We cannot, of course, guarantee that the court will agree with our position. A copy of our brief before the Federal District Court is attached.

### STATE LAND DISPOSAL PROGRAM - GILMAN V. MARTIN

In Gilman v. Martin, a challenge was mounted against the Kenai Land Disposal program that contained features similar to the state land disposal program; namely, a one-year residency requirement for qualification, and discounts that increased based

on length of residency. The Alaska Supreme Court requested the state to file an amicus brief concerning those provisions. The state filed such a brief, defending the programs as being constitutional. A copy of that brief is attached. We also asked the court for an expedited decision, and the court granted our motion. We are waiting the Supreme Court's decision.

Since both the student loan program and the state land disposal program are in active litigation, I am constrained from giving a full and frank evaluation of the potential chances of success or failure in a written public document. I would, however, be pleased to give you or your staff a more detailed oral briefing of our views of these two cases if such a briefing would be helpful.

#### REQUIREMENTS FOR REGISTERED GUIDES

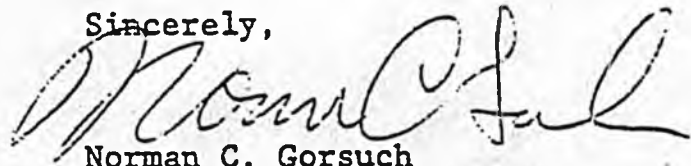
The Alaska Supreme Court has recently made it clear that residence requirements for occupational licensing are invalid under the privileges and immunities clause of the U.S. Constitution. Noll v. Alaska Bar Association, P2d (AK 1982). We therefore anticipate that the governor will soon introduce legislation deleting all these residence requirements including those for guides. However, the bill will leave local experience requirements unchanged.

#### LONGEVITY BONUS PROGRAM - VEST V. SCHAFER

The longevity bonus program presently requires that a person have resided in the state 25 years commencing prior to statehood in order to be eligible for the program. The constitutionality of that requirement was challenged in Vest v. Schafer and a settlement agreement was signed last August by our office, the plaintiff, and the Legislative Council. That agreement provides that the Council shall use its best efforts to secure legislation which treats equally all bona fide Alaska of the age of 65 or older. "Bona fide residents" are defined in the agreement as those who have resided in the state for one year. The settlement also states that any benefits enacted this session shall be retroactive to July 1, 1982 for the plaintiff and others in the class. If legislation which meets these criteria is passed, the suit will be dismissed. Again, since the program is the subject of litigation, a more thorough evaluation would be

inappropriate herein. I would be happy to meet with you or your staff to give a more detailed oral evaluation. A copy of the settlement agreement is attached.

Sincerely,

A handwritten signature in cursive script, appearing to read "Norman C. Gorsuch".

Norman C. Gorsuch  
Attorney General.

Enclosure

RM/NCG/rm

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

November 26, 1982

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

RECEIVED  
FEB 28 1983

The Honorable Carole J. Burger  
Commissioner  
Department of Administration  
Pouch C  
Juneau, Alaska 99811

Re: Pioneers' Homes; Our files:  
366-188-83 and J99-101-80

Dear Mr. Wilkerson and Ms. Burger:

### I. INTRODUCTION

The Division of Legislative Audit has posed to this department two interpretation questions concerning the statutes establishing the Alaska Pioneers' Homes program. The Department of Administration has sought the assistance of this department with administrative regulations that raise fundamental questions as to the validity of the program.

The Alaska Pioneers' Homes program is one of the oldest Alaska institutions. It was established by the First Territorial Legislature in 1913 and has continued uninterrupted for nearly 70 years. Its operation was continuously approved by Congress until 1959, when Alaska became a state and congressional review of

territorial actions was no longer necessary (Organic Act, §§ 9, 20). Originally geared to prospectors, the program has always had as its goal the housing and care of persons who have lived in Alaska a significant period of time.

Relatively recent United States Supreme Court opinions have placed that fundamental element of the program in severe jeopardy -- the Court has ruled that discriminations between persons based on length of residency are often unconstitutional. The opinions of the Court leave only a few narrow arguments available to save the program.

## II. SUMMARY

In a September 20, 1982, letter, the Division of Legislative Audit posed two questions regarding the legislative intent behind AS 47.25.030, one of the statutes governing the Pioneers' Homes program. AS 47.25.030 provides, in relevant part:

A citizen of the United States over 65 years of age who is a resident of the state and has been a resident for not less than 15 years continuously immediately preceding his application, but who is not destitute, may on application be admitted to the home upon his agreement to pay to the state a sum for each day as the Department of Administration considers sufficient to compensate the state for the cost of care and support of the person at the home.

The division wished to know the intent behind the "sufficient to compensate the state" language and whether the legislature wanted destitute persons (those eligible for admission to the Homes

Gerald L. Wilkerson and  
Carole J. Burger  
366-188-83 and J99-101-80

November 26, 1982  
Page 3

under AS 47.25.020) to have priority in admission over those able to pay.

In addition, the Department of Administration has requested our assistance in drafting and reviewing proposed regulations for the Pioneers' Homes. These regulations include implementation of the statutory standards for admission set forth in AS 47.25.020, AS 47.25.030 and AS 47.25.035. Briefly, these standards are that persons of any age who are "destitute and in need of the aid or benefit of the home because of physical disability or other cause" and have continuously resided in the state for 15 years may be admitted to the home without payment. Non-destitute persons over the age of 65 who have continuously resided in the state for 15 years may also be admitted upon payment of a certain sum to the state which is "sufficient to compensate" the state for their care. The 15-year continuous residency requirement may be forgiven if the applicant has otherwise resided in the state for 30 years.

Under AS 44.62.060(b), this department must review each regulation and make a written statement concerning a regulation's "legality, constitutionality, and consistency with other regulations." AS 44.62.060(b)(1). The lieutenant governor may not accept regulations for filing unless there is such a statement from this office approving the regulations. This opinion sets out our constitutional analysis of those regulations.

The courts analyze residency requirements under different standards of review, depending on whether the right or benefit denied is a "fundamental political right" or "a basic necessity of life." Memorial Hospital v. Maricopa County, 415 U.S. 20 (1974); Hawaii Boating Association v. Water Transportation Facilities, 651 F.2d 661 (9th Cir. 1981); Williams v. Zobel, 619 P.2d 448, 453 (Alaska 1980), rev'd on other grounds; Zobel v. Williams, \_\_\_ U.S. \_\_\_, 72 L.Ed 2d 672 (1982). If access to the Pioneers' Homes is considered to be access to a "basic necessity of life," then the state must show that a distinction based on length of residence is "absolutely necessary to promote a compelling state interest" -- a test that is rarely met. Williams v. Zobel, 619 P.2d at 453. The Pioneers' Homes residency requirement would not survive this analysis.

On the other hand, if the Pioneers' Homes program does not involve access to a "basic necessity of life," then a much less strict standard of review is used, and arguments can be advanced for the constitutionality of the program.

We believe that the Pioneers' Homes program arguably does not involve access to a "basic necessity of life" so as to invoke the strict standard of review. Consequently, there are defenses of the constitutionality of the entire program.

Finally, it is our opinion that the destitute and disabled have priority in admission to the Pioneers' Homes and

the statutory requirement that non-destitutes pay an amount "sufficient to compensate the state" was not intended to mandate the recovery of all costs of a person's care.

Our conclusion that the Pioneers' Homes program can possibly be sustained does not mean that we believe a court would, if faced with the question, necessarily rule that it is constitutional. In other words, while there are legitimate arguments to defend it, we cannot guarantee their success in court. Indeed, there are numerous serious and potential fatal attacks that could be mounted against the entire program. But, since the program has continued uninterrupted for approximately 70 years, we believe that it is appropriate for the courts rather than this department to make the final judgment rejecting all serious arguments in support and, if it is the proper conclusion, stopping the program. In the absence of that court ruling, therefore, we believe it is appropriate to continue the program and finish the proposed regulation project.

### III. ANALYSIS

#### History

Before addressing these questions, a brief overview of the history of the Pioneers' Homes program is helpful. The Pioneers' Homes program has been an important institution in Alaska for almost 70 years.

In 1913 the first territorial legislature in Alaska accepted the offer of the United States government to turn over

Gerald L. Wilkerson and  
Carole J. Burger  
366-188-83 and J99-101-80

November 26, 1982  
Page 6

some Marine barracks buildings in Sitka for use as a home for indigent ailing persons who wished to stay in Alaska. Chapter 80, SLA 1913, set up a three-member, unpaid board of trustees to manage and control "a home for indigent prospectors and others who have spent their years in Alaska and become dependent." The home was declared open to "[e]very worthy pioneer, or other person, who shall have been a resident of the Territory of Alaska for five years preceding his application for admission and who shall need the aid or benefit of said Home in consequence of physical disability or other cause within the scope of the regulations of the board." 1/ The legislature appropriated \$10,000 for the operation of the Sitka home. 2/

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1. Although nothing in the 1913 act specifically limited eligibility to men, this apparently was the intent, as evidenced by § 6, ch. 64, SLA 1915 (setting up the allowance program discussed later in this memorandum): "Women who are otherwise qualified to apply for relief under this Act, may make application hereunder, and if entitled thereto shall receive the allowance herein provided for, notwithstanding the fact that as women they might not be eligible to be received in the Alaska Pioneers' Home."

2. Also in 1913, the legislature established the Board of Aged Prospectors Home Commission, to "investigate as to the climatic and other conditions of the several hot springs in Interior Alaska, the adaptability of same for use as a home for aged prospectors, the title price and possible methods of securing same, and to secure options on property adjoining any such springs as may be determined upon as desirable for such purpose." Ch. 78, SLA 1913. Apparently nothing became of this investigation, since this legislation was repealed in 1923. Ch. 7, SLA 1923. A Pioneers' Home was finally opened in Fairbanks in 1967.

Gerald L. Wilkerson and  
Carole J. Burger  
366-188-83 and J99-101-80

November 26, 1982  
Page 7

The home opened on September 2, 1913, with 5 residents, and quickly expanded to 51 residents by February, 1915. According to the initial report of the board, operations were successful. A copy of that report is enclosed with this opinion.

In 1915 the legislature enacted an alternative program for Alaska's impoverished older residents. Chapter 64, SLA 1915 established a predecessor program to the current longevity bonuses (AS 47.45): any "pioneer" 65 or older, who had resided in Alaska for ten consecutive years since 1905 and who was "entitled to the benefits of the Alaska Pioneers' Homes" could, in lieu of applying for admission to the Homes, apply to the Homes' board of trustees for a monthly allowance not to exceed \$12.50, to be paid out of the "revenues" of the Homes "in excess of suitable provisions for inmates of said Homes and those likely to be admitted thereto," and set according to the applicant's needs. The board could in its discretion deny the application if it found the applicant's case not "worthy." In 1917 the age requirement for women was lowered to 60, and the ceiling on allowances for them raised to \$25 a month. Chapter 49, SLA 1917. Chapter 17, SLA 1919 increased the residency requirement to 15 years immediately preceding the application, and specifically excluded from eligibility "Natives or other Indians," who were defined as not being