

ALASKA LEGISLATURE COMMITTEE FILES 1900-1900 00/2

4087 SJUD SB 341 (FILE 1)

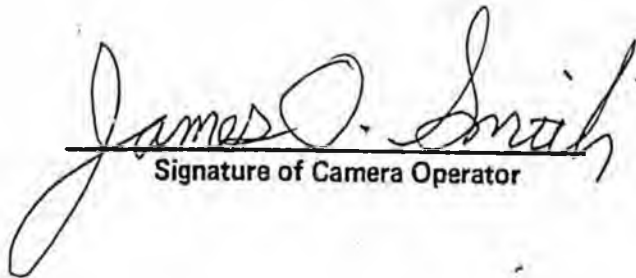
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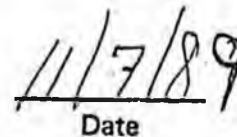


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Signature of Camera Operator


Date

SB

341

(FILE 1)



Commonwealth Electric Company

7811 Spring Street

Anchorage, Alaska 99502

907/349-8577

February 19, 1986

The Honorable
Patrick Rodey
Chairman
Judiciary Committee
The Senate of Alaska

Re: SB341 "The Procurement Bill"

Dear Senator Rodey,

I would like to take this opportunity to thank you and the members of your committee for providing the opportunity for me to offer my comments on the so called "Procurement Bill", SB341, on Saturday, February 15, 1986. In response to my testimony you requested that I provide you with some written comment on how I would like to see the definition of an "Alaskan Contractor" written for the application of the Alaska Bidders Preference section of the law. In response to that request I submit for your consideration the following definition as I would like to see it, of an Alaskan Contractor.

An Alaskan Contractor for the purposes of the establishment of qualifications under the Alaska Bidders Preference statute shall mean an Individual, Partnership, Corporation, or Joint Venture, properly licensed and registered to transact business in the State of Alaska; who upon submittal of verifiable documentation demonstrates to the contracting agency involved that it has an established place of business within the State of Alaska. An established business shall be defined as a place of business or headquarters location within the State of Alaska, managed and staffed by persons hired in or transferred to Alaska, for the purpose of operating a business or the Alaska Division of a business established outside of the State of Alaska. For the purpose of qualification under the Bidders Preference statute, the business or Alaska operation must demonstrate that it has been established for a minimum of xxx days prior to the time set for opening of the bids on the project in question. A joint venture of two or more firms must meet the same qualification requirements by either qualifying each entity of the joint venture or meeting the above criteria itself.

I feel very strongly that the State of Alaska should do everything in it's power to attract business and industry into the Alaska Marketplace. I believe that it is our constitutional right to travel and to do business anyplace in the entire United States and that we should set no limits on



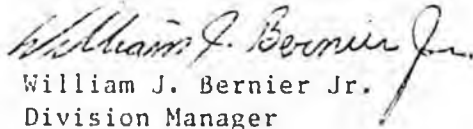
Commonwealth Electric Company

Page 2

who can or can not do business in Alaska. However I believe just as strongly that any business entity that is desiring to receive preferential treatment under the Alaska Bidders Preference statute, should be willing to demonstrate a commitment to the State of Alaska and it's people by establishing within the state, and becoming involved in the growth and improvement of our quality of life here in Alaska. We must convince business and industry that Alaska is a good place to do business not just a good place to make a profit. We must convince business and industry that local hire and local procurement of materials are good ideas.

Thank you and your committee for the time you have given me on this matter.

Sincerely,


William J. Bernier Jr.
Division Manager

WJB/dkm

QUESTIONS FOR BARBARA MORSE-QUINN

1. ASHA is a state agency, is it not?

Dixon, 6/9/83 AG's opinion

2. ASHA is required to conform to the state Administrative Procedure Act requirements, is it not?

Dixon

3. How much of ASHA's funding for construction of a building is state versus federal funds?

90:10 State/Federal

4. Aren't you (ASHA) supporting other legislation which would authorize ASHA to undertake lease financing transactions to finance state buildings? e.g., court building?

Yes, HB 519. Governor's bill.

5. AS 18.55.110 has been interpreted by the Department of Law to exempt ASHA from state law requirements in instances where federal policy or procedure conflict with state law and ASHA's failure to follow the federal directive would jeopardize its funding, has it not?

AG' 6/9/83 opinion

PROCUREMENT TECHNICAL ADVISORY COMMITTEE MEETING

DECEMBER 18, 1985

ATTENDANCE:

DEPT.	NAME	PHONE	ADDRESS
GOVERNOR	Mike Nizich	465-3616	MS/0101
X ADMINISTRATION	Bob Link	465-2250	MS/0200
	Marsha Hubbard	465-2200	MS/0200
	Gary Bader	465-2277	MS/0200
COMMERCE	Royce Lowe	465-2508	Box D Juneau 99811
C&RA	Roger Foisy	465-4779	Box BC Juneau 99811
CORRECTIONS	Carol A. Taplin	465-3376	Box T Juneau 99811
EDUCATION	Steve Hole	465-2800	810 West 10th Juneau 99810
DEC	Bill Publicover	465-2676	P.O. Box O JNU MS/1800
FISH & GAME	Beverly Reaume	465-4120	MS/1100
	Earnest Greek	465-4120	MS/1100
HEALTH & SOCIAL	Joanne Clark	465-3082	MS/0600
	Karen Perdue	465-3030	MS/0600
LABOR	John Stark	465-2720	MS/0700 P.O. 1149 Jun. 99801
X LAW	Dick Pegues	465-3672	MS/0300
	Jim Baldwin	465-3600	MS/0300
MILITARY AFFAIRS	Jerry Bowen	249-1375 249-1179	3601 C St. #620 Anch 99503
NATURAL RESOURCES	Chris Rutz	465-2421	Box M Jnu 99811
PUBLIC SAFETY	Sid LaMonica	465-4328	Pouch N 99811 MS/1200

REVENUE	Ervin B. Jones	465-2313	Pouch SA MS0400
X TRANSPORTATION	Daniel F. "lick	465-3911	Pouch Z MS2500
	Loren Rasmussen	465-3911	Pouch Z MS2500
UNIVERSITY	Barbara Peters	474-7468/814C	Gruening Bld Fbks 99775-5640
	Fred King	474-5033/3356	College Road Fbks 99701

COMPETITIVE SEALED BIDDING SUBCOMMITTEE

co-chair: Lauren Rasmussen (465-2960) & Bob Link (465-2250)
 staff: Pat Montgomery (DOA/465-2250)

GOVERNOR	Vern Jones	MS/0101	465-3616
ADMINISTRATION	Bob Link	MS/0210	465-2250
	Mark Obrien	MS/0210	465-2250
COMMERCE	Did not submit name		
C&RA	Roger Foisy	MS/2100	465-4708
CORRECTIONS	did not submit name		
EDUCATION	did not submit name		
DEC	Did not submit name		
FISH & GAME	Earnie Greek	MS1100	465-4120
	Beverly Reaume	MS1100	465-4120
HEALTH & SOCIAL	Gary Horton	MS0600	465-3082
	Joe Betit	MS0600	465-3082
	Newton Chase	MS0600	465-3037
LABOR	John Stark	MS700	465-2200
LAW	Did not submit name		
MILITARY AFFAIRS	Did not submit name		
NATURAL RESOURCES	Chris Rutz	Box M Jnu 99811	465-2421
PUBLIC SAFETY	Sid LaMonica	Box N MS/1200	465-4328
REVENUE	Ervin B. Jones	Box SA-MS0400	465-2313
TRANSPORTATION	Daniel F. Malick	Box Z-MS2500	465-3911
	Loren Rasmussen	Box Z-MS2500	465-2951
UNIVERSITY	Barbara Peters	814C Gruening Bld	474-7468
		Fairbanks 99775-5640	
	Fred King	3356 College Road	
		Fairbanks 99701	474-5033

OTHER PROCUREMENT METHODS SUBCOMMITTEE

co-chairs: Dick Pegues (465-3672) & Joanne Clark (465-3082)

GOVERNOR	Vern Jones	MS/0101	465-3616
ADMINISTRATION	Bob Schofield	MS/0210	465-2250
	Judy Burke	MS/0210	465-2277
	Gard Bader	MS/0210	465-2277
COMMERCE	Royce Lowe	Box D MS/0800	465-2508
C&RA	Roger Foisy	Box BC MS/2100	465-4708
CORRECTIONS	Al Szepanski	Box T MS/2000	465-3376
EDUCATION	Pat Young	Box F MS/0500	465-2814
	Steve Messing		465-2852
DEC	Did not submit name		
FISH & GAME	Jerry White	MS1100	465-4130
	Beverly Reaume	MS1100	465-4120
HEALTH & SOCIAL	Joanne Clark	MS0600	465-3082
	Deborah Smith	MS0600	464-3370
	David Bruce	MS0600	465-3090
LABOR	John Stark	MS700	465-2200
LAW	Dick Pegues	MS0300	465-3672
	Bob Meiners	MS0300	465-3672
	Tom Judson	MS0300	465-3672
MILITARY AFFAIRS	Jerry Bowen	3601 C St.#620	249-1375
		Anchorage 99503	249-1179
NATURAL RESOURCES	Chris Rutz	Box M Jnu 99811	465-2421
PUBLIC SAFETY	Sid LaMonica	Box N MS/1200	465-4328
REVENUE	Ervin B. Jones	Box SA-MS0400	465-2313
TRANSPORTATION	Daniel F. Malick	Box Z-MS2500	465-3911
	Loren Rasmussen	Box Z-MS2500	465-2951
UNIVERSITY	Barbara Peters	814C Gruening Bld Fbks 99775-5640	474-7468
	Fred King	3356 College Road Fbks 99701	474-5033

COMPETITIVE SEALED PROPOSAL SUBCOMMITTEE

co-chairs: Daniel F. Malick (465-3911) & Earnie Greek (465-4120)
 staff: Department of Transportation TBA

GOVERNOR	Vern Jones	MS/0101	465-3616
ADMINISTRATION	Bob Saviors	MS/0210	465-2250
	Judy Burke	MS/0210	465-2277
	Gary Bader	MS/0210	465-2277
COMMERCE	did not submit name		
C&RA	Roger Foisy	MS/2100	465-4708
CORRECTIONS	Chuck Fry	MS/2000	465-3376
EDUCATION	Steve Hole	810 W. 10th St. Juneau, AK	465-2800
DEC	Bill Publicover		465-2676
FISH & GAME	Earnie Greek	MS1100	465-4120
	Beverly Reaume	MS1100	465-4120
HEALTH & SOCIAL	Joanne Clark	MS0600	465-3082
	Joe Betit	MS0600	465-3082
	Newton Chase	MS0600	465-3037
	Frank Hickey	MS0600	465-2102
LABOR	John Stark	MS0700	465-2200
LAW	Dick Pegues	MS0300	465-3672
	Bob Meiners	MS0300	465-3672
	Tom Judson	MS0300	465-3672
MILITARY AFFAIRS	Did not submit a name		
NATURAL RESOURCES	Chris Rutz	Box M Jnu 99811	465-2421
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	Loren Rasmussen	Pouch Z-MS2500	465-2951
UNIVERSITY	Barbara Peters	814C Gruening Bld Fairbanks 99775-5640	474-7468
	Fred King	3356 College Road Fairbanks 99701	474-5033

Amendment

Ad A

SEC. 36.30.170 (d)

Page 13--line 20

When the lowest responsible and responsive bid exceeds available funds by less than 5% the bidder may be offered the opportunity to reduce their bid price to equal available funding, all other terms and conditions remaining the same as the original invitation to bid.

SEC. 36.30.300(a)

Page 17--line 26-27

...the authority to make the determination required by this section may be delegated to the Commissioner of the Department of Transportation and Public Facilities and the _____ of the University of Alaska (NOT BE DELEGATED)

not needed

In order of preference

1) 36.30.540.(4) & (5) delete entirely

2) 36.30.540.(4).a list of procurements made under this section [CHAPTER]... *under 520*

36.30.540.(5) a list of procurements made under this section [CHAPTER]...

3) 36.30.540.(4).a list of procurements made under *520* ~~this section, AS 36.30.190,~~ and by competitive sealed bids, *multi* under this chapter...

36.30.540.(5) a list of procurements made under ~~this section, AS 36.30.190,~~ and by competitive sealed bids under this chapter...

DOA
Bob Link
Comments

call

CSB, MSB, RFP,
SL & ERM -
excluded
SM -

Laura R - Jayne deji / bald

Patrick M. Rodey
Senator

Alaska State Legislature



Senate

1024 W. 6th Avenue, Suite 308
Anchorage, Alaska 99501
(907) 276-6731

During Session
Pouch V
Juneau, Alaska 99801
(907) 465-3717

March 6, 1986

Ms. Marsha Trump
Office of Senator Ted Stevens
U.S. Senate
Senate Hart Office Building
Room 522
Washington, D.C. 20510

Re: Status of ASHA under Alaska SB 341

Dear Ms. Trump:

Pursuant to our telephone conversation of earlier today, enclosed please find the following: a copy of SB 341 clipped at the relevant sections; the Alaska Supreme Court decision in ASHA v. Dixon, 496 P.2d 649 (1972); and a June 9, 1983 Attorney General's opinion construing AS 18.55.110 to exempt ASHA from the requirements of Alaska law if compliance would jeopardize its federal funding.

I hope these documents are responsive to your concerns. If I can be of any further assistance to you, please do not hesitate to call me.

Very truly yours,

Suzanne S. La Pierre
Senate Judiciary Counsel

Tom

① Add a severance provision

② As an amendment: to Article ~~2~~⁵ perhaps:

A written determination supporting an agency's decision ~~to award a contract~~ shall be issued in all cases in which a contract is awarded to a person not residing or maintaining a place of business ^{within} the state, when the supplies, ^{services} professional services or construction ^{which are the subject of the contract} could have been obtained from sources within the state.

③ 36.30.890. Add as a last sentence.

To the extent that any of the Alaska State Housing Authority's duties under this chapter conflict with its responsibilities under AS 18.55.110, the provisions of AS 18.55.110 shall control.

~~④ 36.30.930 (1)~~

~~a person who "negligently" ?~~

As an amendment

⑤ 36.30. ¹³⁰ ~~170~~ (b). The state is liable for damages under this section only to the extent it fails to conform substantially to the notice requirements of this section.

~~⑥ 36.30.170~~

- ~~delete (c)~~ ^(b) ~~resurrection~~
- ~~delete (d)~~

SB 341: State Procurement Practices
March 6, 1986, Page 2

This language is analagous to AS 22.20.037 relating to court system personnel rules, which provides:

- (a) Judicial employees shall be employed subject to classification and wage plans based on the merit principle and adopted to the special needs of the judiciary, as determined by the administrative director of courts. Except as otherwise provided by law, all employees of the Alaska court system and the Judicial Council are subject to the general state laws regarding leave, retirement and travel."

A separate page containing these proposed amendments is attached.

KF/k1

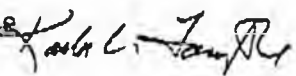
Memorandum

Alaska Court System

TO: Arthur H. Snowden, II
Administrative Director

DATE : March 6, 1986

FROM: Karla L. Forsythe
Staff Counsel



SUBJECT: SB 341 - State Procurement Practices

I have reviewed the latest work draft (dated February 26, 1986) of SB 341.

As you know, I worked closely with court system purchasing staff over the past two years to develop comprehensive procurement guidelines for the court system based on the Model Procurement Code. Although the guidelines reflect the Code's competitive principles, they have been drafted to accommodate the specific needs of the judiciary as a separate branch of government.

I am concerned that passage of SB 341 would require revision of the guidelines we worked so hard to develop. This concern is based upon two provisions of SB 341. Section 1 (2) (page 1, line 14) states that one of the purposes of the act is to make as consistent as possible the procurement practices among the branches of state government. Additionally, under proposed section 36.30.030 (page 5, lines 16-20) the court system is required to adopt its own procedures which must be substantially equivalent to the procedures described in SB 341.

Court system guidelines do not deviate in spirit or concept from the proposed legislation. However, many details have been drafted with the needs of the judiciary in mind, and therefore differ from the proposed bill. I am concerned that court system procedures will be challenged on the grounds that they are not "substantially equivalent" or "as consistent as possible" with executive branch practices.

I suggest the following amendments:

- 1. Change section 1, paragraph (2) to provide that one of the purposes of the act is to:

"establish consistent procurement principles for all branches of state government".

- 2. Change proposed section 36.30.030 to provide:

The administrative director shall adopt procedures to govern the procurement of supplies, services, professional services, and construction by the judicial branch. Procedures must be based on the competitive principles established under this act, and shall be adapted to the special needs of the judiciary as determined by the administrative director of courts.

*Tam -
incorporate
these
amendments*



March 3, 1986

The Honorable Pat Rodey
Senator
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Re: SB 341

Dear Senator Rodey:

I would like to thank you, as Chairman of the Senate Judiciary Committee, and the other committee members for receiving our comments on the State Procurement Code. As the written transcripts of last week's testimony will not be available for the committee's review before this week's action on the bill, I wanted to reiterate our request for exemption from this legislation. The bill, as proposed, will substantially impact the Alaska State Housing Authority (ASHA) in the following areas:

1. Increase the duration of vacancies between tenant occupancy to insure new State procedures are being followed;
2. Create a corresponding increase in waiting lists for public housing, as tenants will not be moved into vacated units as rapidly as they now are;
3. Reduce federal funds to ASHA based on intricate funding formulas that consider vacant unit turnover and occupancy levels;
4. Require increased personnel in management, maintenance and accounting for which the federal government will not pay;
5. Jeopardize ASHA's status as a "public housing authority" for continued receipt of federal funds at a time of federal cutbacks. These funds will revert to Seattle, Portland or San Francisco rather than stay in Alaska.

Committee members are urged to read the attached letter from the Legislature's own auditors in regard to ASHA wherein the separate status of this agency is noted. To maintain ASHA other than as a separate legal entity of the State will cause jeopardy to federal housing funds and severely limit our abilities to leverage monies.



The Honorable Pat Rodey

Page 2

March 3, 1986

Application of the exemption afforded by ASHA's present enabling legislation (AS 18.55.110) has been significantly narrowed by opinion of the Attorney General dated June 9, 1983. Under this opinion, ASHA would be required to get a case-by-case exemption for each procurement made under any one of the several HUD-funded housing programs administered by ASHA. Unless HUD policies, when in conflict with state law, are recognized as controlling, ASHA's ability to provide housing services within the state will be limited to the state funding available through the Department of Community and Regional Affairs or other state-supported housing programs. We also fear that, absent specific exemption under SB 341, the already limited application of AS 18.55.10 will become unavailable under the doctrine of repeal by implication since the Procurement Bill specifically gives precedence to federal law and regulation only.

We think that the responsible public policy position in this matter is to exempt ASHA from this bill.

Sincerely,

ALASKA STATE HOUSING AUTHORITY

A handwritten signature in cursive script that reads "Barbara Morse-Quinn".

Barbara Morse-Quinn
Executive Director

BMQ/smr

Enclosure

cc: Senate Judiciary Committee Members
ASHA Board Members

STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811-3300

RECEIVED
ASHA

February 25, 1986

FEB 28 1986

Mr. Wayne I. Tucker
Office of Inspector General
Western Regional Office
P.O. Box 5400
Albuquerque, NM 87115

Route	FX 10
Route	DX 10
Route	FX 10
File	AS

Dear Mr. Tucker:

In your February 14, 1986 letter, you inquired about the audit coverage of certain federal funds expended by the Alaska Department of Commerce and Economic Development (DCED). Specifically, your concerns centered around Alaska State Housing Authority (ASHA) which is an independent, quasi-corporation that is related to DCED only in an administrative way as specified by State statute. Because of this operational separation, we exclude ASHA from our State Department audit of DCED.

A public accounting firm audits ASHA of which you have received a copy of their 1984 combined financial statements. The auditor's opinion references a scope exclusion which includes, "and certain federally subsidized activities." This exclusion relates to federally subsidized Department of Housing and Urban Development (HUD) programs referenced in Note 1 to the financial statements.

The HUD programs are audited by the same public accounting firm (Coopers and Lybrand) but are done so on a two-year cycle. The last audit report we received by this office was for the two years ended 3/31/84, and entitled "Examination of Financial Statements and Supplementary Data of: Annual Contribution Contracts, Preliminary Loan Contract, Section 8, S-014E."

If you haven't received a copy of this report, I would suggest you contact Mr. Paul Harris of ASHA. Furthermore, you may consider contacting HUD directly regarding federal compliance audit coverage of ASHA.

Mr. Wayne Tucker

-2-

February 25, 1986

If we can be of further assistance, feel free to contact me.

Sincerely,



Merle R. Jonson
Deputy Legislative Auditor
Division of Legislative Audit

cc: Paul Harris, ASHA

MEMORANDUM

State of Alaska RECEIVED
ASHA

TO: The Honorable Jim Robison
Commissioner
Department of Labor

DATE: June 9, 1983 JUN 13 '83

FILE NO: 366-625-83

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Applicability of
Title 36 to ASHA
(AS 18.55.110)

By: Jonathan B. Rubini
Assistant Attorney General
Government Affairs - Juneau

Route	ASHA
Route	
Route	
Route	
Route	

You have asked whether AS 18.55.110 generally exempts the Alaska State Housing Authority (ASHA) from the prevailing wage requirements of the Little-Davis Bacon Act, AS 36.05. And, if AS 18.55.110 provides only a partial exemption, you also ask whether Title 36 applies to the proposal to construct 40 units of senior citizen housing in Fairbanks.

I

We have previously opined that ASHA is a "state agency" within the ambit of Title 36. 1981 Inf. Op. Att'y Gen. (Sept. 22; J66-473-81). See also Alaska State Housing Authority v. Dixon, 496 P.2d 649 (Alaska 1972). As you note, the prior opinion did not address AS 18.55.110, which provides:

COOPERATION WITH AND AID OF FEDERAL GOVERNMENT. The authority may do all things necessary or desirable to cooperate with or act as agent for the federal government, or to secure financial aid for housing projects for veterans of World War II and other citizens of the state, provided that those projects may not be undertaken unless an acute shortage of housing exists. With respect to those projects, the authority may not be subject to limitations, restrictions or requirements of other laws, except those relating to land acquisition, prescribing or limiting the procedure or action to be taken in the development or administration of any buildings, property, public works, undertakings or projects of municipal or public corporations or agencies of the state.

It is our view that AS 18.55.110 should not be interpreted in so broad a fashion as to render state law inapplicable in almost any instance where federal funds are applied toward the development of a project. Though not explicitly addressing the scope of AS 18.55.110, the Dixon court stated that there is "no express exclusion of ASHA from the APA." 496 P.2d at 651. Consequently, interpreting AS 18.55.110 to provide a general exemption is not easily reconcilable with the analytic framework in Dixon. Furthermore, basic tenets of statutory construction require an interpretation of AS 18.55.110 which harmonizes AS 18.55.110 and Title 36. We note, in this regard, that the definitional scope of the Little Davis-Bacon Act, set out at AS 36.95.010, was amended as recently as 1978, presumably with knowledge that ASHA had been consistently viewed as a "state agency."

Rather than providing a broad exemption simply because a project receives federal assistance, we believe the more probable legislative intent was to provide an explicit statutory exemption in instances where the application of state law would jeopardize the receipt of federal assistance. (An analagous statutory exemption is established under AS 35.15.040.) By the statute's own terms, the focus of the exemption is "to secure [federal] financial aid for housing projects." If the receipt of federal assistance is not substantially impaired by the application of state law, there would seem to be no basis for the exemption. In many instances, state or local law can apply concurrently with federal law. The restricted interpretation of AS 18.55.110 is therefore consistent with the general rule that federal law need be exclusive only where the application of other law would thwart the objectives of federal law. See U.S. Const. art. IV.

Clearly, AS 18.55.110 provides an exemption whenever federal law requires the preemption of state or local laws. The more difficult inquiry is whether the exemption extends to those instances where the federal preemption is not legally mandated, but where ASHA is notified that federal funding would nonetheless be jeopardized were state or local law applicable. We believe that the absence of an explicit statutory or regulatory basis requiring the exemption of state or local law does not necessarily preclude the applicability of AS 18.55.110. To impose the statutory exemption only where a preemption of state or local law is explicit would belie the plain legislative intent to promote the receipt of federal funds. Indeed, to read the exemption to apply only where federal funds preempts state or local law, the constitutional prerequisite would render AS 18.55.110 superfluous. Consequently, we interpret AS 18.55.110 as exempting the

application of state or local law when a federal funding entity, properly exercising its discretion, notifies ASHA in writing that the receipt of federal funds would be jeopardized were state or local law deemed applicable. Moreover, to assure the coordinated implementation of state law, we would suggest that ASHA provide a written report, which includes the rationale and evidentiary basis for invocation of the statutory exemption, to the state agency responsible for the enforcement or implementation of the state law in dispute.

II

Since we interpret AS 18.55.110 to provide only a limited exemption, we next address whether Title 36 wage stipulations should apply to the Fairbanks facility.

The proposed project budget, which did not include the cost of Title 36 wages, estimated that the cost to provide the 40 units of elderly housing in Fairbanks would be \$4,492,010. Of that amount, four million dollars is to be obtained through a grant from the Department of Community and Regional Affairs (DCRA) 1/, and the balance from federal funds provided by the United States Department of Housing and Urban Development (HUD). In addition to the limited federal assistance available to pay the construction costs, the completed project qualifies for a substantial operation subsidy from HUD. (HUD's rent subsidy program subsidizes over a 40-year period the difference between a fixed percentage of an eligible tenant's income and the fair market rental value.)

We are advised by the area office of HUD that their current program to promote the development and operation of senior citizen facilities does not impose an absolute ceiling on project costs. We are further advised that HUD does not assert that the federal prevailing wage requirements preempt state law. Typically, state prevailing wage requirements can supplant federal minimum wages on projects funded in part with federal money. See 1980 Inf. Op. Atty Gen. (August 21; J66-544-80) (citation of relevant Solicitor of Labor opinion letters).

In the immediate context, however, a novel question is raised due to the fact that different types of wage inde are

1/ The DCRA grant is the maximum grant allowed by state regulation, 19 AAC 85.092(5).

respectively employed by HUD and the state. HUD proposes use of a "residential construction" wage index on the Fairbanks project, while the state has only a single, "commercial construction" wage index. While estimates vary, the estimated cost of applying Title 36 to the Fairbanks project is between \$300,000 -- \$500,000. By letter of May 11, 1983, as supplemented by letter of May 16, 1983, copies of which are attached, HUD advised ASHA that it will not participate in any projects, including the Fairbanks project, where "excessive" state prevailing wage rates apply. "Excessive," here, refers at the least to instances where the federal minimum wage is determined by reference to an applicable "residential construction" rate, while Title 36 wage rates reference a "commercial construction" index. All three projects planned for construction during the 1983 construction season -- Fairbanks, Wasilla, Sitka -- present comparable discrepancies between federal and state prevailing wage indexes.

The letters of May 11 and 16 indicate that HUD views the imposition of state prevailing wages established under a "commercial construction" index as excessive where a federal "residential construction" index has been developed. 2/ Since the letters provide the requisite written notification that the receipt of federal funds would be jeopardized were Title 36 prevailing wage requirements applicable, ASHA may assert the exemption established under AS 18.55.110. 3/

2/ We note, though, that HUD's asserted authority to decline participation in an otherwise qualified project solely due to the application of what are viewed as "excessive" state prevailing wages is not beyond question. We have not been directed to any specific statutory or regulatory authority to inform the determination of what constitutes an "excessive" state prevailing wage. Typically, HUD participation is limited to those projects which satisfy defined cost limitations. The general rule in Alaska is that the eligible project cannot exceed \$92,200/unit. However, since the Fairbanks facility exceeds the \$92,200 limitation, even without the Title 36 wages, we believe that the state would be in a difficult posture were it to argue that HUD acted unreasonably in determining not to participate in the Fairbanks project due to the application of "excessive" state prevailing wages.

3/ The discussion in this opinion assumes that HUD's use of a "residential" wage index on the Fairbanks facility is proper. Whether it is appropriate to employ a "residential" wage index

Hon. Jim Robison, Commissioner
366-625-83

June 9, 1983
Page 5

Our final observation is that the question of whether Title 36 wage rates apply to housing projects which are jointly funded by both the state and HUD raises a myriad of complex legal and policy concerns. Unfortunately, as long as there remains a broad discrepancy between the prevailing wage rates established by the different scales, and as long as the HUD program does not impose articulable cost limitations, there can be no clear and decisive legal resolution. Ultimately, it is a policy decision whether to insist that Title 36 applies, and to risk the denial of federal assistance. We do note, though, that were the state to establish a "residential construction" wage rate, the prospect of continued conflict would be substantially diminished.

If we can be of further assistance, feel free to call.

JBR/jb

cc: Richard Lyon, Commissioner
Department of Commerce and Economic
Development

Kevin Bruce
Special Assistant
Office of the Governor

Julia Tucker
General Counsel, ASHA ✓

Susan Olsen
Area Counsel, HUD

Bob Landau
Assistant Attorney General
Anchorage

3/ (continued)

to a four-story facility with an elevator built to commercial specifications, as we are advised is descriptive of the Fairbanks facility, is beyond the scope of this opinion. ASHA, of course, may pursue whatever administrative or judicial avenues are available to raise this issue. If ASHA were to pursue a review of the wage determination, during the pendency of the review, it would be impossible to assess whether the exemption afforded under AS 18.55.110 is applicable.

Offered: 2/4/86
Referred Rules

Original sponsors: Sturgulewski and Rodey

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2

CS FOR SENATE BILL NO. 204 (Finance)

3

I. THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to contracts for architectural,
7 engineering, and land surveying services; and provid-
8 ing for an effective date."

9

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

10

* Section 1. AS 36.90 is amended by adding a new section to read:

11

Sec. 36.90.100. COMPLIANCE OF CONTRACTS WITH PROFESSIONAL REGIS-

12

TRATION REQUIREMENTS. The state or a political subdivision of the
13 state may not award a contract for architectural, engineering, or land
14 surveying services to

15

(1) an individual who is not registered under AS 08.48 to
16 perform the architectural, engineering, or land surveying services
17 required by the contract;

18

(2) a partnership that is not qualified under AS 08.48.251
19 to provide the architectural, engineering, or land surveying services
20 required by the contract; or

21

(3) a corporation that is not authorized under AS 08.48.241
22 to offer the architectural, engineering, or land surveying services
23 required by the contract.

24

* Sec. 2. AS 36.98 is amended by adding a new section to read:

25

Sec. 36.98.043. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING

26

CONTRACTS. (a) Notwithstanding the provisions of AS 36.98.010(3) and
27 36.98.040, a state agency shall negotiate a contract with the most
28 qualified and suitable firm or person of demonstrated competence for
29 architectural, engineering, or land surveying services. The state

1 agency shall award a contract for those services at fair and reason-
2 able compensation as determined by the state agency, after considera-
3 tion of the estimated value of the services to be rendered, and the
4 scope, complexity, and professional nature of the services.

5 (b) If negotiations with the most qualified and suitable firm or
6 person under (a) of this section are not successful, the state agency
7 shall negotiate a contract with other qualified persons or firms of
8 demonstrated competence, in order of public ranking. The state agency
9 may reject all or part of a proposal.

10 (c) This section does not apply to contracts awarded in a situa-
11 tion of public necessity if the person responsible for execution of
12 the contract on behalf of the state agency certifies in writing that a
13 situation of public necessity exists.

14 (d) Notwithstanding the other provisions of this section, a
15 state agency may include price as a ^(amended) factor in selecting architectural,
16 engineering, and land surveying services when, in the judgment of the
17 state agency, the services required are repetitious in nature and the
18 scope, nature, and amount of services required are ^{adequately} sufficiently de-
19 fined by measurable and objective standards to reasonably enable firms
20 and individuals making proposals to compete with a clear understanding
21 and interpretation of the services required. In order to include
22 price as a factor in selection, the state agency shall involve in the
23 evaluation of the proposals at least one person who is registered in
24 the state to perform the architectural, engineering, or land surveying
25 services that are the primary services to be provided by the contract.

26 (e) This section does not apply to a contract that incorporates
27 both design and construction services.

28 * Sec. 3. This Act applies to requests for bids or proposals for archi-
29 tectural, engineering, and land surveying services issued after the

1 effective date of this Act.

2 * Sec. 4. This Act takes effect immediately in accordance with AS 01.--

3 10.070(c).

4

CS FOR SENATE BILL NO. 341 (JUDICIARY)

WORK DRAFT (COOK 2-27-86)

AMENDMENTS

Those submitting:

Department of Administration
Department of Community and Regional Affairs
Department of Fish and Game
Department of Health and Social Services
Department of Labor
Department of Natural Resources
Department of Transportation and Public Facilities

Department of Administration comments
CSSB-341 (Cook 2/27/86)

SEC.36.30.050. (d)

Page 7-line 20

...list and the department shall furnish names of Alaskan vendors on a rotating basis from the list in response to each request.

SEC.36.30.110. (a)

Page 10-line 6

...received, purchase description, and a description of all contractual terms and conditions applicable to the procurement.

SEC.36.30.230.

Page 18-line 6

[CONTRACT IS AWARDED] notice of intent to award is issued.

SEC.36.30.320. (e)

Page 21-line 15

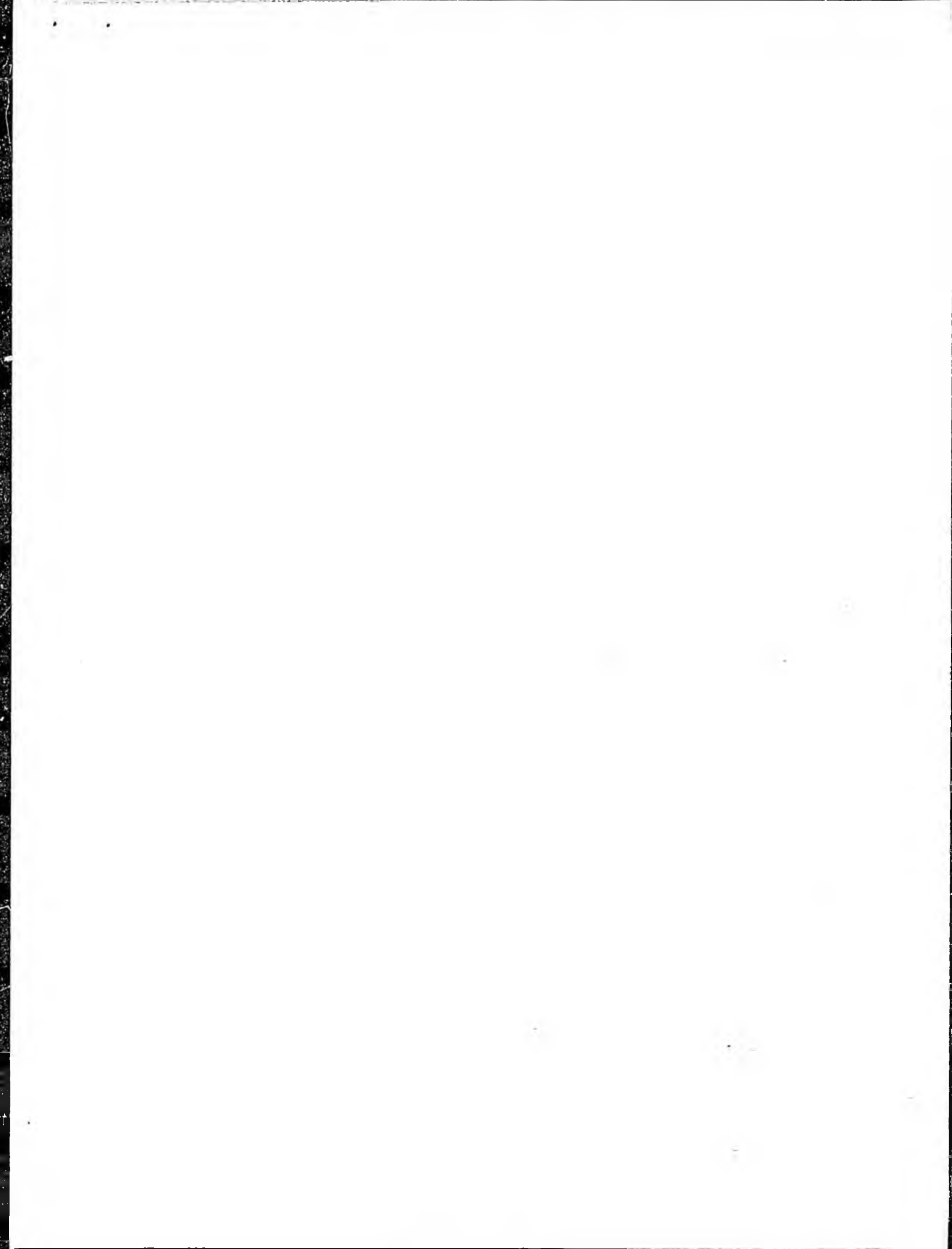
Notices shall be [MAILED] provided to those active prospective contractors on the appropriate list maintained under AS 36.30.050 designated by the commissioner.

SEC.36.30.540. (4)&(5)

Page 29-line 7

(4) a list of procurements made under this chapter, except those made under 36.30.320, from out-of-state sources during the previous two fiscal years together with the total number of procurement contracts entered into during that period with out-of-state contractors and the total value of these contracts; and

(5) a list of procurements made under this chapter, except those made under 36.30.320, from in-state sources during the previous two fiscal years together with the total number of procurement contracts entered into during that period with in-state contractors and the total value of these contracts.



DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

CSSB 341 PROCUREMENT BILL
AMENDMENTS

Page 51, Line 5-11,
Delete all material.
Renumber subsections.

Page 52, Lines 26-29,
Page 53, Lines 1-3,
Delete all material and insert:

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

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

Page 72, Lines 20-21,
Delete all material after the word "allocation".

Page 78, Lines 6-8,
Delete all material.

Page 87, Lines 20-29,
Delete all material.

CSSB341 PROCUREMENT BILL

AMENDMENTS

Section 36.30.050

Page 7

Lines 13, 14, 15

Section 36.30.050. LIST OF CONTRACTORS. (c) The lists [may] shall be used by the chief procurement officer or an agency when issuing invitations to bid or requests for proposals under this chapter. The lists may be used by the Legislative Council, the court system, and the Alaska Railroad Corporation.

(d) The lists [shall] may be used [in providing notice of intent] to make a small procurement [. A procurement officer who intends to make a procurement] under AS 36.30.320. [shall request names from the appropriate list and the department shall furnish names on a rotating basis from the list in response to each request.]

Section 36.30.100

Page 9

Lines 26, 27

Section 36.30.100. GENERAL POLICY. (a) Except as otherwise provided in this chapter, or unless specifically exempted by law, an agency contract shall be awarded by competitive sealed bidding.

(b) Competitive sealed bidding is not required

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

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

(3) for the purchase of products or services manufactured or provided by an employment program;

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

(5) for professional services; [or]

(6) for concessions operated on state property [.] ;

Page 2.

(7) for aircraft charters involving hazardous flying conditions where safety of agency personnel is involved; or

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

Section 36.30.130

Page 12

Lines 25, 26

Section 36.30.130. PUBLIC NOTICE OF INVITATION TO BID.
(a) The procurement officer shall give adequate public notice of the invitation to bid at least 21 days before the date for the opening of bids. If a determination is made in writing that a shorter notice period is necessary for a particular bid, the 21-day period may be shortened. The determination shall be made by the chief procurement officer for bids for supplies, services, or professional services. The determination shall be made by the commissioner of transportation and public facilities for bids for construction or acquisition of property for the state equipment fleet. Notice shall be published in the Alaska Administrative Journal. The time and manner of notice must be in accordance with regulations adopted by the commissioner of administration. When practicable, notice may include

Section 36.30.170

Page 15

Line 19, 20, 21

(d) The provisions of (b) and (c) of this section do not apply to construction contracts for highways and public works [if the construction contracts exceeds \$5,000.] in excess of \$5,000 or other procurements specified under this chapter in excess of \$50,000.

Section 36.30.240

Page 18

Line 18

Sec. 36.30.240. DISCUSSION WITH RESPONSIBLE OFFERORS AND REVISIONS TO PROPOSALS. As provided in the request for proposals, and under regulations adopted by the commissioner, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors reasonably susceptible of being selected for award shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may at the discretion of the procurement officer be permitted after submissions and

Page 3.

before the award of the contract for the purpose of obtaining best and final offers. In conducting discussions, the procurement officer may not disclose information derived from proposals submitted by competing offerors.

Section 36.30.655

Page 39

Line 22, 23, 24

Section 36.30.655. LIST OF PERSONS DEBARRED OR SUSPENDED. The commissioner shall maintain a list of all persons debarred or suspended from consideration for award of contracts [.] and shall provide lists of those names to the agencies on a monthly basis.

Section 36.30.930

Page 51

Line 5

Sec. 36.30.290. CIVIL AND CRIMINAL PENALTIES. The following penalties apply to violations of this chapter:

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

Health and Social Services

Page 2

AS 36.30.005(b)

Line 18 Control over construction of State owned facilities and
the State equipment fleet...

DEPARTMENT Health & Social Services

CSSB341 PROCUREMENT BILL

AMENDMENTS

Page 3

Sec. 36.30.005(d) - new section

Line 11(a) - (4) Nothing in this section diminishes the authority
established in existing statute for any agency to
establish facility or equipment standards, to regulate
construction or acquisition, as otherwise prescribed.

Sec. 18.20.130. Definitions. In AS 18.20.010 — 18.20.130

(1) "hospital" means an institution or establishment, public or private, devoted primarily to providing diagnosis, treatment, or care over a continuous period of 24 hours each day for two or more nonrelated individuals suffering from illness, physical or mental disease, injury or deformity, or any other condition for which medical or surgical services would be appropriate;

(2) "governmental unit" means the state, a municipality, or other political subdivision, or a department, division, board or other agency of any of them;

(3) "department" means the Department of Health and Social Services. (§ 40-6-1 ACLA 1949; am § 2 ch 112 SLA 1957; am § 2 ch 63 SLA 1964; am § 6 ch 104 SLA 1971; am § 1 ch 72 SLA 1978)

Effect of amendments. — The 1978 amendment rewrote paragraph (1).

Article 2. Alaska Hospital and Medical Facilities Survey and Construction Act.

Section

- 140. Purpose
- 141. Department functions
- 150. Duties of department
- 160. Priority of projects
- 170. Application for construction projects

Section

- 180. Approval of applications
- 190. Inspection of projects
- 200. Acceptance of grants
- 210. Definitions
- 220. Short title

Collateral references. — 40 Am. Jur. 2d, Hospital and Asylums, §§ 3, 4.

41 C.J.S., Hospitals, § 5.

Depreciation of property by the erection of a hospital by a municipality as a "taking" or "damaging" within the constitutional provision. 4 ALR 1012.

Power of municipal corporation to provide hospital. 25 ALR 612.

Hospital as within tax exemption provision not specifically naming hospitals. 144 ALR 1483.

Licensing and regulation of nursing or rest homes. 97 ALR2d 1187.

Validity and construction of zoning regulations expressly referring to hospitals, sanitariums, nursing homes. 27 ALR3d 1022.

Validity and construction of statute requiring establishment of "need" as precondition to operation of hospital or other facilities for the care of sick people. 61 ALR3d 278.

Housing facilities for former patients of mental hospital as violating zoning restrictions. 100 ALR3d 876.

Sec. 18.20.140. Purpose. The purpose of AS 18.20.140 — 18.20.220 is to make an inventory of existing hospitals and medical facilities, community mental health centers and facilities for the mentally retarded, to survey the need for construction of hospitals and medical facilities, community mental health centers and facilities for the mentally retarded, and to develop a program and plan of construction for each. (§ 2 ch 87 SLA 1955; am § 3 ch 63 SLA 1964)

NOTES TO DECISIONS

18.20.130
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10 — 18.20.220
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The moneys used to construct the Ketchikan hospital were spent for a public purpose. Lien v. City of Ketchikan, Sup. Ct. Op. No. 146 (File No. 275), 383 P.2d 721 (1963).

And that purpose does not become nonpublic when the hospital is turned over to a charitable, nonprofit corporation for operation, rather than being operated by the city itself. The public purpose remains unchanged. Lien v. City

of Ketchikan, Sup. Ct. Op. No. 146 (File No. 275), 383 P.2d 721 (1963).

As public purpose depends on character of use. — The test of whether a public purpose is being served does not depend on the religious or nonreligious nature of the agency that will operate the leased property, but upon the character of the use to which the property will be put. Lien v. City of Ketchikan, Sup. Ct. Op. No. 146 (File No. 275), 383 P.2d 721 (1963).

Sec. 18.20.141. Department functions. The department shall be the sole agency for the administration of the plan as required by the federal act. The department shall develop and administer any programs necessary for compliance with the federal act. (§ 4 ch 63 SLA 1964)

Sec. 18.20.150. Duties of department. The department shall (1) for each of the following groups of facilities: Group 1. Hospitals and medical facilities; Group 2. Community mental health centers; Group 3. Facilities for the mentally retarded;

(A) make a statewide inventory of existing public, nonprofit and proprietary facilities;

(B) survey the need for construction of these facilities;

(C) on the basis of the inventory and survey, develop a program for the construction of public and other nonprofit facilities for each of these groups which will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate facility services to all residents of the state;

(2) prepare and submit to the surgeon general a state plan, including the hospital and medical facilities, community mental health centers and facilities for the mentally retarded construction program developed under (1) of this section. The plan will provide for the establishment, administration, and operation of hospital and medical facilities, community mental health centers and facilities for the mentally retarded, and construction activities in accordance with the requirements of the federal act and the regulations promulgated under it; before the submission of the plan to the surgeon general, the department shall give adequate publicity to a general description of the provisions proposed to be included, and hold a public hearing where persons or organizations with a legitimate interest in the plan may express their views. After approval of the plan by the surgeon general, the department shall publish a brief summary of the provisions in at least one newspaper of general circulation in the state, and shall make copies of the plan available upon request to interested persons, and from time to time but not less often than annually, the commissioner shall review the construction program and submit to the surgeon gen-

eral any modifications which he finds necessary, and which are not inconsistent with the requirements of the federal act;

(3) provide for adequate facilities to furnish needed services for persons unable to pay for them in accordance with regulations prescribed under the federal act;

(4) submit any reports that the surgeon general considers necessary for compliance with the federal act;

(5) do all things on behalf of the state necessary to obtain benefits under the federal act. (§ 4 ch 87 SLA 1955; am § 5 ch 63 SLA 1964)

Sec. 18.20.160. Priority of projects. The state plan shall set out the relative need for the projects included in the construction program determined in accordance with the regulations prescribed under the federal act, and provide for the construction, maintenance and operation to the extent financial resources permit, in the order of the relative need. (§ 5 ch 87 SLA 1955)

Sec. 18.20.170. Application for construction projects. The state, a political subdivision of the state, or a public or other nonprofit agency requesting federal funds for a health facility construction project shall apply to the department. The application shall conform to federal and state requirements. (§ 6 ch 87 SLA 1955; am § 6 ch 63 SLA 1964)

Opinions of attorney general. — The expenditure of state money in the construction of a hospital operated by a religious nonprofit group under the terms and conditions imposed by the federal govern-

ment under the Hill-Burton Act is a public purpose and not prohibited by the constitution or laws of the state. 1959 Op. Att'y Gen., No. 19.

Sec. 18.20.180. Approval of applications. The commissioner of the department shall give every applicant an opportunity for a fair hearing. If, after giving reasonable opportunity for development and presentation of applications in the order of relative need, the commissioner of the department finds that a project application complies with the requirements of AS 18.20.170 and conforms with the state plan, he shall approve and recommend the application and forward it to the surgeon general. (§ 7 ch 87 SLA 1955)

Sec. 18.20.190. Inspection of projects. The commissioner of the department shall inspect each construction project approved by the surgeon general from time to time. If the commissioner finds that work has been performed upon the project or purchases have been made in accordance with the approved plans and specifications, he shall certify to the surgeon general that this is the fact and that payment of an installment of federal funds is due the applicant. (§ 8 ch 87 SLA 1955)

Sec. 18.20.200. Acceptance of grants. The department may accept on behalf of the state and may deposit separate and apart from

public money and funds, a grant from the federal government, or gift or contribution from any source made to assist in meeting the cost of carrying out the purposes of AS 18.20.140 — 18.20.220. Federal funds received and not expended for these purposes shall be repaid to the United States. (§ 9 ch 87 SLA 1955)

Sec. 18.20.210. Definitions. In AS 18.20.140 — 18.20.220

(1) "department" means the Department of Health and Social Services;

(2) "federal act" means Title VI of the Public Health Service Act (42 U.S.C. 291 et seq.) concerning hospitals and medical facilities and the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (P.L. 88-164) concerning facilities for the mentally retarded and community mental health centers, both as now or hereafter amended;

(3) "hospital" includes a public health center and general, tuberculosis, mental, chronic disease, and other type of hospital, and related facilities, including laboratory, outpatient department, nurses' homes, and training facilities, and central services facilities operated in connection with a hospital, but does not include a hospital furnishing primarily domiciliary care;

(4) "medical facilities" means diagnostic and treatment centers, rehabilitation facilities and nursing homes as those terms are defined in the federal act and other medical facilities for which federal aid may be authorized under the federal act;

(5) "nonprofit hospital" and "nonprofit medical facility" means a hospital or medical facility owned and operated by a nonprofit corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of a private shareholder or individual;

(6) "public health center" means a publicly owned facility providing public health services, including related facilities such as laboratory, clinic, and administrative offices operated in connection with the public health center;

(7) "surgeon general" means the Surgeon General of the Public Health Service or any other federal agency designated to administer the federal act;

(8) "community mental health center" means a facility providing services for the prevention or diagnosis of mental illness, or care and treatment of mentally ill patients, or rehabilitation of such persons, which services are provided principally for persons residing in a particular community or communities in or near which the facility is situated;

(9) "facility for the mentally retarded" means a facility specially designed for the diagnosis, treatment, education, training, or custodial care of the mentally retarded, including facilities for training specialists and sheltered workshops for the mentally retarded, but only if such workshops are part of facilities which provide or will provide comprehensive services for the mentally retarded;

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(10) "nonprofit facility for the mentally retarded" and "nonprofit community mental health center" mean, respectively, a facility for the mentally retarded and a community mental health center which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual; and the term nonprofit private agency or organization means an agency or organization which is such a corporation or association or which is owned and operated by one or more of such corporations or associations. (§ 3 ch 87 SLA 1955; am §§ 7 — 9 ch 63 SLA 1964; am § 6 ch 104 SLA 1971)

Opinions of attorney general. — A nursing home is considered a hospital for the purpose of the licensing provisions. 1963 Op. Att'y Gen., No. 7.

Sec. 18.20.220. Short title. AS 18.20.140 — 18.20.220 may be cited as the Alaska Hospital and Medical Facilities Survey and Construction Act. (§ 1 ch 87 SLA 1955)

Article 3. Payment of Hospital Charges.

<p>Section 230. Leaving general hospital without arranging for payment 240. Posting of law required</p>	<p>Section 250. Receipt of services without intent to pay a misdemeanor 260. Definitions</p>
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Collateral references. — 40 Am. Jur. 2d, Hospitals and Asylums, §§ 6, 12, 13. 41 C.J.S., Hospitals, §§ 6, 7. Liability of incompetent's estate for care and maintenance furnished by public institution or hospital before incompetent's acquisition of any estate or property. 33 ALR2d 1257.

Sec. 18.20.230. Leaving general hospital without arranging for payment. Departure of a patient from a general hospital without making or offering to make arrangements with hospital officials or office personnel to pay at a later date for the services rendered or items furnished is evidence of intent not to pay. (§ 3 ch 40 SLA 1960)

Sec. 18.20.240. Posting of law required. Every hospital shall post a printed copy of AS 18.20.230 — 18.20.260 in a conspicuous place in each room occupied by patients and in the lobby of the hospital. No person may be convicted for a violation of AS 18.20.230 — 18.20.260 unless it appears to the satisfaction of the court that the provisions of this section have been substantially complied with by the hospital. (§ 4 ch 40 SLA 1960)

Sec. 18.20.250. Receipt of services without intent to pay a misdemeanor. A person who requests and receives hospital care including board, room, surgical care, medical care, or related services or drugs or

DEPARTMENT Health & Social Services

CSSB341 PROCUREMENT BILL

AMENDMENTS

p. 7 Sec. 36.30.050

(d) The lists may [SHALL] be used in providing notice of intent to make a small procurement. A procurement officer who intends to make a procurement under AS 36.30.320 may [SHALL] request names from the appropriate list and the department shall furnish names on a rotating basis from the list in response to each request.

Health and Social Services

Page 9

AS 36.080(d) - new section

Line 11-a The department shall have the sole responsibility for construction or procurement or any related services related to leased property or structures including those referenced in AS 36.30.005(b).

DEPARTMENT Health & Social Services

CSSB341 PROCUREMENT BILL
AMENDMENTS

Page 17

Sec. 36.30.220(a)

Line 21 chapter shall establish a maximum overhead rate.

Line 23 ...posals, the agency must include its [STANDARD]
overhead rate within its

DEPARTMENT Health & Social Services

CSSB341 PROCUREMENT BILL

AMENDMENTS

Page 52

AS 36.30.990 (10)

Line 28 ...gram authorized by law or regulation;

DEPARTMENT Health & Social Services

CSSB341 PROCUREMENT BILL

AMENDMENTS

pp. 71-72 Sec. 40. AS 37.05.316 is amended to read:

Sec. 37.05.316 GRANTS TO NAMED RECIPIENTS. When an amount is appropriated or allocated to a department as a grant for a named recipient which is not a municipality, the department to which the appropriation or allocation is made shall promptly notify the named recipient of the availability of the grant and request the named recipient to submit a proposal to provide the goods or services specified in the appropriation act, or both, for which the appropriation or allocation is made. At the same time, the department may issue a request for proposals from other qualified persons to provide the same goods or services, or both, in the same area. The department shall grant to [CONTRACT WITH] the named recipient unless the Office of the Governor, with due regard for any local expertise or experience among those making proposals, determines that an award of the grant [CONTRACT] to a different party would better serve the public interest. If the grant [CONTRACT] is awarded to another party than that named by the legislature, the basis of that action shall be stated in writing at the time the grant is issued and a copy of the written statement shall be sent to the Legislative Budget and Audit Committee. A grant [CONTRACT] shall be executed within 60 days after the effective date of the appropriation or allocation. [THE PURCHASE OF THE GOODS OR SERVICES, OR BOTH, SHALL BE IN ACCORDANCE WITH AS 36.30.100(B) [AS 37.05.230(1) (B)].]

DEPARTMENT LABOR

CSSB341 PROCUREMENT BILL
AMENDMENTS

No ammendments required or requested.



DEPARTMENT of NATURAL RESOURCES

CSSB341 PROCUREMENT BILL

AMENDMENTS

Sec 36.30.050 (d) page 7 line 17

"The lists (shall) may be used in providing notice of intent to make small procurements."

Sec 36.30.050 (d) page 7 line 19

"... procurement under AS 36.30.240 (shall) may request names from the appropriate list."

Sec 36.30.130 (a) page 12 line 21

"Notice (shall) may be published in the Alaska Administrative Journal."

Sec 36.30.130 (b) page 13 line 3-4

"The State, employees, or agents of the State, are not liable for damages caused by failure to comply with this section."

Sec 36.30.210 (b) page 17 line 10-11

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

Sec 36.30.210 (d) page 17 line 17-18

("(d) The provisions of AS 36.30.115(b)-(e) apply to competitive sealed proposals.")

Sec 36.30.250 (a) page 18 line 25-27

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

Sec 36.30.255 (b) page 19 line 2-7

(" (b) In determining whether a proposal is advantageous to the state, the procurement officer shall take into account, in accordance with regulations of the commissioner, whether the offeror qualifies as an Alaskan bidder under AS 36.30.170 (b) or is offering the services of an employment program as defined in AS 36.30.100 (c). ")

DEPARTMENT of NATURAL RESOURCES

CSSB341 PROCUREMENT BILL

AMENDMENTS

Sec 36.30.300 (a) page 19 line 24-29

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

Sec 36.30.300 (a) page 20 line 3-4

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

Sec 36.30.365 page 22 line 14

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

Sec 36.30.510 page 27 line 27

"for each contract awarded under competitive sealed proposals over \$2500. "

Sec 36.30.520 (a) page 28 line 9

" a record listing all sole source procurement contracts over \$2500 made under AS 36.30.300 and emergency procurements over \$2500 made under AS 36.30.310."

Sec 36.30.565 page 30 line 14

" ... protests shall be filed within (10) 5 days after notice of intent to award..."

Sec 36.30.930 (1) page 51 line 5

"... a person who knowingly or intentionally contracts for or purchases.."

DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

CSSB341 PROCUREMENT BILL

AMENDMENTS

WORK DRAFT, Cook, 2/27/86

Section 36.30.115, Page Number 10, Line 12.

After (a) delete [Within 24 hours] and insert Immediately.

And if this is not an acceptable alternative then we propose this amendment,

After (a) Within, delete [24] and insert 72.

DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

CSSB341 PROCUREMENT BILL

AMENDMENTS

WORK DRAFT, Cook, 2/27/86

Section 36.30.170, Page Number 15, Lines 19 - 21.

Delete the complete (d) which states as follows:

[(d) The provisions of (b) and (c) of this section do not apply to construction contracts for highways and public works if the construction contract exceeds \$5,000.]

DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

CSSB341 PROCUREMENT BILL

AMENDMENTS

WORK DRAFT, Cook, 2/27/86

Section 36.30.210, Page Number 16, Lines 26.

After license and, delete [within 24 hours] and insert immediately.

And if this is not an acceptable alternative than we propose this amendment,

After within, delete [24] and insert 72.

DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

CSSB341 PROCUREMENT BILL

AMENDMENTS

WORK DRAFT, Cook, 2/27/86

Section 36.30.115, Page Number 10, Line 29.

After by the, delete [procurement officer] and insert Department.

DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

CSSB341 PROCUREMENT BILL

AMENDMENTS

WORK DRAFT, Cook, 2/27/86

Section 36.30.115, Page Number 10, Line 25.

After by the, delete [state] and insert bidder.

DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

CSSB341 PROCUREMENT BILL

AMENDMENTS

WORK DRAFT, Cook, 2/27/86

Section 36.30.115, Page Number 10, Line 13.

After of bids, delete [each] and insert the apparent low.

DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES

CSSB341 PROCUREMENT BILL
AMENDMENTS

WORK DRAFT, Cook, 2/27/86

Section 36.30.610, Page Number 35, Line 22.

Delete the _____ (under line).



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

RECEIVED
 ASHA

JAN 24 1986

JAN 24 '86

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

EX cc
DEX cc
Route Ea. Dept
EX Sec
Board

Dear Ms. Morse-Quinn:

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

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

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

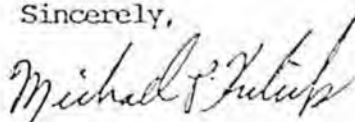
I am not in a position to discuss how HUD's legislation compares with that of other federal agencies. It is my impression, however, that HUD may have more authority, than other agencies, to become directly responsible

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

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

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

Sincerely,



Michael P. Kulick
Manager



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

MG

RECEIVED
 ASHA

JAN 24 1986

JAN 24 '86

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

Route	EX Sec
Route	DEX cc
Route	All Depts
Site	EX Sec
	4m-3 extra

Dear Ms. Morse-Quinn:

Subject: Senate Bill 8001 : Now SB 54
 Proposed State Procurement Act

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

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

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

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

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

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

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

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

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

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

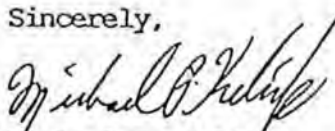
As you point out in your paragraph (12), HUD's policies, procedures and contract provisions, as well as its regulations, do govern the distribution and administration of federal monies designated for public housing projects. Section 36.30.890 of the proposed bill, therefore, provides only a limited exemption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

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

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

Thank you for this opportunity to comment.

Sincerely,



Michael P. Kulick
Manager



U.S. Department of Housing and Urban Development

Anchorage Office, Region X
701 "C" Street, Box 64
Anchorage, Alaska 99513

RECEIVED
ASHA

JAN 31 '86

JAN 31 1986

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

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

lead's cc

Dear Ms. Morse-Quinn:

Subject: Senate Bill 8001
Proposed State Procurement Act

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

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

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

Sincerely,

Michael P. Kulick
Michael P. Kulick
Manager

INTER OFFICE MEMORANDUM

DATE January 31 1986

FROM: Dick Pryor, Contracts and Budgeting Officer

TO: Barbara Morse-Quinn, Executive Director

SUBJECT: Procurement Bill Study Group

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

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

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

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

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

INTER OFFICE MEMORANDUM

DATE January 31 1986

FROM: Dick Pryor
TO: Barbara Morse-Quinn
SUBJECT: Procurement Bill Study Group

Page 2

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

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

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

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

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

1. Section 36.36.015. As written the inability of DOA to delegate authority to contract for technical services and professional services would be very cumbersome for ASHA.
2. Section 36.30.040. Most of the things mentioned in this section are governed by HUD policy and handbooks for the housing programs and would present conflicts not exempted by Section 36.30.890.

INTER OFFICE MEMORANDUM

DATE January 31 1986

FROM: Dick Pryor
TO: Barbara Morse-Quinn
SUBJECT: Procurement Bill Study Group

Page 3

3. Section 36.30.110. The requirement for a contractor at the time of bidding to submit names and Alaska Business Licenses is considered by HUD to be unduly restrictive on the bidding process.
4. Section 36.30.120. HUD policy is to require a 5% bid bond for all contracts. Anything higher is considered excessive and would not be allowed by HUD.
5. Section 36.30.160(b). An allowance for correction of mistakes in bid after bid opening is an unacceptable practice and should not be permitted for any reason.
6. Section 36.30.170. The Alaska bidder preference is unacceptable to HUD.
7. Section 36.30.200(b). The requirement to obtain written determinations from DOA or DOT/PF for entering into a contract by means other than competitive bid is considered by HUD to be unduly burdensome for ASHA in administering HUD approved and funded programs.
8. Section 36.30.270. The requirement for review by the Department of Law of contracts rather than by HUD's legal counsel is unacceptable to HUD, and review by both is burdensome and time consuming if their reviews conflict.
9. Section 36.30.430 and .460. The same comment as in 9 above apply regarding the Alaska Department of Law review.
10. Section 36.30.735(b). The reference to the Alaska State Housing Authority should be deleted and replaced by a more general term referring to all public authorities. Alaska State Housing Authority does not engage in any of the activities governed by the existing statute (44.65.060) which has been incorporated in this section.
11. Section 36.30.890. ASHA must comply with extensive policy, handbooks, contract provisions, and other requirements of HUD that are in conflict with this procurement code. The provision for only federal statute or regulations to prevail is

INTER OFFICE MEMORANDUM

DATE January 31, 1986

FROM: Dick Pryor

TO: Barbara Morse-Quinn

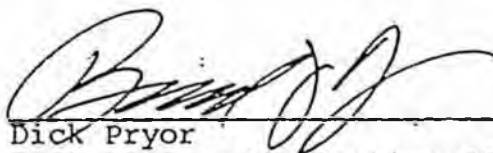
SUBJECT Procurement Bill Study Group

Page 4

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

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

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



Dick Pryor
Contracts and Budgeting Officer

DP/laj

Encls.

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

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

*Source: Comptroller, Alaska State Housing Authority
 ** Federally Assisted Housing Funds



January 31, 1986

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

ATTENTION: Becky Bear

Re: SB 341

Dear Commissioner Lounsbury:

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

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

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



The Honorable Loren Lounsbury

Page 2

January 31, 1986

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

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

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

Sincerely,

ALASKA STATE HOUSING AUTHORITY

A handwritten signature in cursive script that reads "Barbara Morse-Quinn".

Barbara Morse-Quinn
Executive Director

BMQ/smr

Enclosures:

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

cc: ASHA Board Members



February 5, 1986

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

Re: SB 341

Dear Mr. Rasmussen:

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

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

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

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

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

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



Mr. Loren Rasmussen

-2-

February 5, 1986

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

Sincerely,

ALASKA STATE HOUSING AUTHORITY

A handwritten signature in cursive script that reads "Barbara Morse-Quinn".

Barbara Morse-Quinn
Executive Director

BMQ:mrm

Enclosures

cc: ASHA Board Members
Commissioner Richard Knapp

Gabe

COMMERCE AND ECONOMIC DEVELOPMENT

Register 80, January 1982

3AAC 95.015

PART 9.
ALASKA STATE HOUSING AUTHORITY

Chapter

- 95. Procurement
(3 AAC 95.110 - 3 AAC 95.320)
- 96. Acquisition of Real Property and Improvements
(3 AAC 96.010 - 3 AAC 96.250)
- 97. Disposition of Real Property
(3 AAC 97.010 - 3 AAC 97.330)
- 98. Public Housing
(3 AAC 98.010 - 3 AAC 98.190)

CHAPTER 95.
PROCUREMENT

Article

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

ARTICLE 1.
PROCUREMENT BY COMPETITIVE SOLICITATION

Section

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

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

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

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

- (1) public solicitation of bids through an invitation to bid;
- (2) public opening of bids; and
- (3) contract award, if any, to the lowest responsive and responsible bidder. (Eff. 11/26/81, Register 80)

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

- (1) public solicitation of proposals through a Request for Proposals;
- (2) public opening of proposals;
- (3) negotiations and discussions with responsible offerors whose proposals have been determined in writing by the executive director or his designee to be reasonably susceptible of being selected for award; and
- (4) a contract award, if any, to the responsible offeror whose proposal is most advantageous to ASHA. (Eff. 11/26/81, Register 81)

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

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

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

- (1) the date of the invitation to bid or request for proposal;
- (2) the closing time for the submission of bids or proposals;
- (3) the place for the submission of bids or proposals;
- (4) the time and place for the opening of the bids or proposals;
- (5) the place where bid or proposal forms or other relevant information regarding the bid or proposal may be obtained;

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

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

3AAC 05.055. PUBLIC NOTICE. (a) At least 20 days before the last day set for the submission of bids or proposals, or 10 days if it is anticipated by ASHA that the contract will not exceed \$25,000, the invitation to bid or request for proposals will be:

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

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

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

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

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

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

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

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

3AAC 05.065. SUBMISSION OF BIDS AND PROPOSALS. (a) Bids and proposals must be submitted in sealed envelopes. The outside of an envelope must identify the contents as either a bid or proposal and must set out the date and time of the bid or proposal opening.

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

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3AAC 95.105

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

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

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

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

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

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

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

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

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

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

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

- (1) the bid or proposal fails to conform to the requirements of the invitation to bid or request for proposals or is otherwise non-responsive;
- (2) the bidder or offeror is not responsible;
- (3) the bidder or offeror has failed to satisfactorily perform on a previous contract with ASHA or a governmental entity;
- (4) the bidder or offeror has unpaid taxes, fees, fines, or other charges due ASHA or a governmental entity;
- (5) the bidder or offeror is currently dishonored or ineligible from bidding on ASHA, federal, state, or other governmental entity contracts;
- (6) the bid or proposal is late;
- (7) the bid or proposal is unsigned;
- (8) the bid or proposal is unreasonable as to price;
- (9) the bid or proposal contains an ambiguity or uncertainty as to any term or condition; or
- (10) the executive director determines in writing that acceptance of the bid or proposal is not in the best interest of ASHA. (Eff. 11/26/81, Register 80)

3AAC 95.125. RESPONSIBILITY OF BIDDERS AND OFFERORS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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ARTICLE 2.
PROCUREMENT BY NEGOTIATION

Section

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

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

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

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

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

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

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

- (1) the rates or charges are set by law;
- (2) there is only one source of procurement within the State of Alaska and the contract amount is under \$50,000; or
- (3) there is only one source of procurement within the borough where the goods or services are to be utilized and the contract amount is under \$10,000. (Eff. 11/26/81, Register 80)

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

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

(c) Contract award under this section must be at

- (1) a negotiated price lower than the lowest rejected bid by a responsible and responsive bidder under the original solicitation; and
- (2) the lowest negotiated price offered by a responsible and responsive offeror. (Eff. 11/26/81, Register 80)

ARTICLE 3.

PROCUREMENT PROTESTS

Section

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

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