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## ATTACHMENT O TO OMB CIRCULAR A-102

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## OFFICE OF MANAGEMENT AND BUDGET

(Circular No. A-102, Revised; Transmittal Memorandum No. 1)

## Standards Governing State and Local Grantee Procurement, Attachment O of OMB Circular A-102

August 1, 1979.

To heads of Executive Departments and Establishments

1. *Purpose:* This Memorandum transmits an amendment (revised Attachment O) to Office of Management and Budget (OMB) Circular A-102.

2. *Background:* This notice, pursuant to the authority of Pub. L. 93-400, the Office of Federal Procurement Policy Act and the Intergovernmental Cooperation Act, amends Attachment O to OMB Circular A-102 issued September 12, 1977, Federal Register, Vol. 42, No. 178, page 45828. The proposed revision was circulated to State and local interest groups in accordance with Circular A-85 procedures and Executive Order 12044 and to affected Federal agencies and contractor organizations. The proposed revision was published in the Federal Register December 6, 1978, Vol. 43, No. 235, page 57201, and a public hearing was held January 16, 1979. No regulatory analysis is required in accordance with Executive Order 12044. The amendment (1) reaffirms the maximum reliance on State and local government grantees management of their own procurement; (2) directs grantor agencies to rescind nonconforming provisions of current agency subordinate regulations and limits the issuance of additional requirements; (3) creates a grantee certification program to reduce the grantee agencies' burdensome pre-award review of individual procurements; (4) adds provisions to reduce the possibility of fraud and waste; and (5) expands coverage addressing small, minority, women and labor surplus contracting. The amendment, it is anticipated, will reduce administrative cost, paperwork and other such factors which contributed to inefficiency, waste and delay in implementing assistance programs.

3. *Action:* Remove the old Attachment O from the Circular and insert the new Attachment. Grantor agencies shall begin immediately to amend nonconforming subordinate regulations.

4. *Summary of Changes:* Section 1. Prohibits grantor agencies from adding additional requirements or subordinate regulations. This attachment strikes a

balance between agencies' stewardship role and the policy of placing the maximum reliance on grantees to conduct their own affairs. To avoid confusion, areas not covered by this prohibition are enumerated.

Section 2. Spells out the responsibilities that properly belong to the grantor or the grantee. To avoid burdensome detailed reviews of grantees' discretionary actions the substitution of grantors' judgment is prohibited, unless it is primarily a Federal question.

Section 3. Grantor agencies are encouraged to provide technical assistance to grantees rather than require submission for review.

Section 4. Proposes that grantor agencies conduct grantee procurement system reviews and that when a grantee procurement system meets the standards of this attachment it may be certified by the grantor agencies, thus reducing individual pre-award contract reviews by that agency or other agencies making grants. Both grantees and grantors expressed their concern about keeping the quality of the certification reviews constant. A paragraph was added to make reviews adhere to OFPP standards.

Section 5. Limits grantor agencies' authority to review protests. This is properly the responsibility of the grantee.

Section 6. Limits grantor pre-award review of grantee procurements to non-competitive and brand name procurements, and procurements by grantees who do not meet Attachment O standards.

Section 7. Expands the code of conduct from merely prohibiting the acceptance of gifts and gratuities to prohibiting the participation in the award of contracts to firms in which the employee has some financial interest.

Section 8. Expands the section requiring affirmative steps to ensure minority and small business participation in contracting under Federal grant programs, and encourages the placement of contracts in labor surplus areas and with women business enterprises.

Section 11. Explains when it is appropriate to use one of the following four methods of procurement, small purchase, competitive sealed bids, competitive negotiations and noncompetitive negotiations, and recognizes price competition need not be used for A/E contracts.

Section 12. Prohibits the use of a percentage of construction cost method of contracting, requires either a cost or price analysis of all procurement, and

states costs will be allowed if consistent with Federal cost principles.

Section 14C. Expands contract provision on inventions to cover copyrights and rights in data.

Section 14J. Adds provision requiring compliance with State Energy Conservation Plans.

5. *Effective Date:* This revision is effective October 1, 1979. Grantees may comply with this amendment immediately where they do not conflict with grantor agency regulations. Grantor agencies may implement this amendment immediately or allow grantee agencies to implement.

6. *For Further Information Contact:* Mr. Jack Nadol, Assistant for Intergovernmental Affairs, Office of Federal Procurement Policy, Telephone 202-395-8166.

James T. McIntyre, Jr.,  
Director.

## Procurement Standards

1. *Applicability.*

a. This Attachment establishes standards and guidelines for the procurement of supplies, equipment, construction, and services for Federal assistance programs. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and Executive orders.

b. No additional procurement requirements or subordinate regulations shall be imposed upon grantees by Executive agencies unless specifically required by Federal law or Executive orders or authorized by the Administrator for Federal Procurement Policy. This prohibition is not applicable to payment conditions issued in accordance with Treasury Circular 1075. Individual grantee requirements pursuant to section 10 of the basic circular or the provisions of this or other OMB circulars.

c. Provisions of current subordinate requirements not conforming to this attachment shall be rescinded by grantor agencies unless approved by the Office of Federal Procurement Policy (OFPP).

2. *Grantee/Grantor Responsibility*

a. These standards do not relieve the grantee of any contractual responsibilities under its contracts, the grantee is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered into in support of a grant. These include but are not

limited to: source evaluation, protests, disputes, and claims. Executive agencies shall not substitute their judgment for that of the grantee unless the matter is primarily a Federal concern. Violations of law are to be referred to the local, State, or Federal authority having proper jurisdiction.

b. Grantees shall use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements for Federal Assistance Programs conform to the standards set forth in this attachment and applicable Federal law.

### 3. Grantee Procurement Improvement.

Executive agencies awarding Federal grants or other assistance which require or allow for procurement by the recipients are encouraged to assist recipients in improving their procurement capabilities by providing them with technical assistance, training, publications, and other aid.

### 4. Procurement System Reviews.

a. Executive agencies are encouraged to perform reviews of their grantees' procurement systems if a continuing relationship with the grantee is anticipated or a substantial amount of the Federal assistance is to be used for procurement and review of individual contracts is anticipated. The purpose of the review shall be to determine: (1) whether a grantee's procurement system meets the standards prescribed by this Attachment or other criteria acceptable to the OFPP, such as provisions of the model procurement code for State and local government and (2) whether the grantee's procurement system should be certified by the reviewing agency. Such a review will also give an agency an opportunity to give technical assistance to a grantee to remedy its procurement system if it does not fully comply. In addition, such a review may provide a basis for deciding whether the grantee's contracts and related procurement documents should be subject to the grantor's prior approval, as provided by Section 6.

b. In conducting procurement system reviews, grantor agencies will evaluate a grantee's procurement system in terms of whether it complies with the standards prescribed by this Attachment and represents a fair, efficient and effective procurement system. To the maximum extent feasible, reviewers will rely upon State or local evaluations and analyses performed by agencies or organizations independent of the grantee contracting activity.

c. When a Federal grantor agency completes a procurement review, it shall

furnish a report to the grantee, with a copy to OFPP.

d. All agencies should normally rely upon the resultant findings or certification for a period of 24 months before another review is performed.

e. Reviews shall be conducted in accordance with standards and guidelines approved or issued by OFPP.

f. The reviews authorized by Section 6 are waived if a grantee's procurement system is certified.

### 5. Protest Procedures.

Grantor agencies may develop an administrative procedure to handle complaints or protests regarding grantee contractor selection actions. The procedure shall be limited as follows:

a. No protest shall be accepted by the grantor agency until all administrative remedies at the grantee level have been exhausted.

b. Review is limited to:

(i) Violations of Federal law or regulations. Violations of State or local law shall be under the jurisdiction of State or local authorities.

(ii) Violations of grantee's protest procedures or failure to review a complaint or protest.

### 6. Grantor Review of Proposed Contracts.

Federal grantor pre-award review and approval of the grantee's proposed contracts and related procurement documents, such as requests for proposals and invitations for bids, is permitted only under the following circumstances:

a. The procurement is expected to exceed \$10,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation.

b. The procurement expected to exceed \$10,000 specifies a "brand name" product; or

c. The grantee's procurement procedures or operation fails to comply with one or more significant aspects of this Attachment. The grantor agency shall notify the grantee in writing, with a copy of such notification to the OFPP.

### 7. Code of Conduct.

Grantees shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

a. The employee, officer or agent:

b. Any member of his immediate family;

c. His or her partner; or

d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The grantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

Grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

### 8. Procurement Procedures.

The grantee shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by grantee officials to avoid the purchase of unnecessary or duplicative items. Consideration should be given to consolidation or breaking out to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency grantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

### 9. Contracting With Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms.

a. It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

(1) Including qualified small and minority businesses on solicitation lists.

(2) Assuring that small and minority businesses are solicited whenever they are potential sources.

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

(5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

(G) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in 1 through 5 above.

b. Grantees shall take similar appropriate affirmative action in support of women's business enterprises.

c. Grantees are encouraged to procure goods and services from labor surplus areas.

d. Grantor agencies may impose additional regulations and requirements in the foregoing areas only to the extent specifically mandated by statute or presidential direction.

#### 10. Selection Procedures.

a. All procurement transactions, regardless of whether by sealed bids or by negotiation, and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition consistent with this attachment. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business, (2) noncompetitive practices between firms, (3) organizational conflicts of interest, and (4) unnecessary experience and bonding requirements.

b. The grantee shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitations of offers, whether by competitive sealed bids or competitive negotiation, shall:

(a) incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a

clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

(b) clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

#### 11. Method of Procurement.

Procurement under grants shall be made by one of the following methods, as described herein: a) small purchase procedures; b) competitive sealed bids (formal advertising); c) competitive negotiation; d) noncompetitive negotiation.

a. Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than \$10,000. Grantees shall comply with State or local small purchase dollar limits under \$10,000. If small purchase procedures are used for a procurement under a grant, price or rate quotations shall be obtained from an adequate number of qualified sources.

b. In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(1) In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum, the following:

(a) A complete, adequate and realistic specification or purchase description is available.

(b) Two or more responsible suppliers are willing and able to compete effectively for the grantee's business.

(c) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(2) If formal advertising is used for a procurement under a grant, the following requirements shall apply:

(a) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(b) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(c) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(d) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the Grantee indicates that such discounts are generally taken.

(e) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.

c. In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under a grant, the following requirements shall apply:

(1) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(2) The request for proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(3) The grantee shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(4) Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.

(5) Grantees may utilize competitive negotiation procedures for procurement of Architectural/Engineering professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

d. Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

- (1) The item is available only from a single source;
- (2) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;
- (3) The Federal grantor agency authorizes noncompetitive negotiation; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

e. Additional innovative procurement methods may be used by Grantees with the approval of the Grantor Agency. A copy of such approval shall be sent to OFPP.

#### 12. Contract Pricing.

The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used. Grantees shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts under grants shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

#### 13. Grantee Procurement Records.

Grantees shall maintain records sufficient to detail the significant history of a procurement. These records shall include, but are not necessarily limited to, information pertinent to the following: rationale for the method of procurement, selection of contract type,

contractor selection or rejection, and the basis for the cost or price.

#### 14. Contract Provisions.

In addition to provisions defining a sound and complete procurement contract, any recipient of Federal grant funds shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by the provision, Federal Law or the Grantor Agency.

a. Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate contract terms, and which such sanctions and penalties as may be appropriate.

b. All contracts in excess of \$10,000 shall contain suitable provisions for termination, the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

c. All contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees shall contain a provision requiring compliance with Executive Order 11248, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

d. All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.

e. When required by the Federal grant program legislation, all construction contracts in excess of \$2,000 awarded by grantees and subgrantees shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition,

contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the grantor agency.

f. Where applicable, all contracts awarded by grantees and subgrantees in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

g. The contract shall include notice of grantor agency requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of grantor agency requirements and regulations pertaining to copyrights and rights in data.

h. All negotiated contracts (except those awarded by small purchase procedures) awarded by grantees shall include a provision to the effect that the grantee, the Federal grantor agency, the Comptroller General of the United

States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

Grantees shall require contractors to maintain all required records for three years after grantees make final payments and all other pending matters are closed.

i. Contracts, subcontracts, and subgrants of amounts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 308 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the grantor agency and to the U.S.E.P.A. Assistant Administrator for Enforcement (EN-329).

j. Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

Grantor Agencies are permitted to require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.

**15. Contract Administration.**

Grantees shall maintain a contract administration system insuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

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BILLING CODE 5110-01-M

## GLOSSARY OF PUBLIC PURCHASING TERMS

This Glossary of Public Purchasing Terms was developed and made available to HUD by the National Association of State Purchasing Officials and the Council of State Governments. It is reprinted from their 1975 publication "State and Local Government Purchasing;" a revised edition is scheduled to be published in 1981. Their address is P.O. Box 11910, Iron Works Pike, Lexington, Kentucky 40578, Telephone (606) 252-2291.

## Glossary of Public Purchasing Terms

### INTRODUCTION

This glossary contains selected terms and definitions related to state and local government purchasing that, in many cases, cannot be found in standard, general-purpose dictionaries. The selected definitions are intended to make the terms understandable and usable by public purchasing representatives; thus, practical rather than legally perfect definitions are included.

Some of the definitions have appeared in specialized and technical glossaries and dictionaries. Some of these definitions have been borrowed exactly as earlier used; others have been modified. The sources from which definitions have been borrowed, either in whole or in part, include:

*A Dictionary for Accountants.* Eric L. Kohler. Prentice-Hall, Inc., Englewood Cliffs, New Jersey, 1970.

*Dictionary of Purchasing Terms.* National Institute of Governmental Purchasing, Inc., Washington, D.C., 1970.

*Purchasing Handbook*, second edition. George W. Aljian, Editor-in-Chief, McGraw-Hill Book Co., Inc., 1966.

The definitions for the following words and phrases may be found in the *Uniform Commercial Code* and, to conserve space, are not reproduced here except for the very few having additional definitions peculiar to public procurement.

#### Definitions Contained in the *Uniform Commercial Code*

Accept	Contract	Insolvency proceedings	Properly payable
Acceptance	Contract for sale	Insolvent	Protest
Action	Contract right	Installment contract	Purchase
Aggrieved party	Customer	Instrument	Purchaser
Agreement	Debtor	Inventory	Receipt
Alteration	Defendant	Issue	Remedy
Bailee	Definite time	Issuer	Rights
Bearer	Delivery	Item	Sale
Bearer form	Delivery order	Lot	Sale on approval
Bill of lading	Document	Merchant	Sale or return
Bona fide purchaser	Document of title	Negotiation	Secondary party
Buyer	Equipment	Note	Secured party
Buyer in ordinary course of business	Fault	Notice	Security
Cancellation	Fungible	On demand	Seller
Certificate of deposit	Genuine	Order	Surety
Certification	Gives	Party	Term
Conforming to contract	Good faith	Presumed	Termination
Consignee	Goods	Presumption	Third party
Consignor	Holder	Proceeds	Unauthorized
Consumer goods	Holder in due course	Promise	Value
			Warehouse receipt

### GLOSSARY

**Acknowledgement**—A form used by a vendor to advise a purchaser that his order has been received. It usually implies acceptance of the order.

**Act of God**—A danger that could not be avoided by human power; any natural cause of damage which is irresistible (e.g., hurricane, flood, lightning), and which is in no way connected with negligence.

**Advertising**—*See*, Formal advertising; Legal notice.

**Advice of shipment**—A notice sent to a purchaser advising that shipment has gone forward and usually containing details of packing, routing, etc.

**Agency**—(1) A relationship between two parties by which one, the agent, is authorized to perform or transact certain business for the other, the principal; also, the office of the agent. (2) An administrative division of a government.

**Agent**—A person authorized by another, called a principal, to act for him.

**All-or-none bid**—A bid for a number of different items, services, etc., in which the bidder states that he will not accept a partial award, but will only accept an award for all the items, services, etc., included in the bid. Such bids are acceptable only if provided for in the Invitation for Bids or if the bidder quoted prices for all items, services, etc., and is actually the low bidder for every one.

**Alternate bid**—(1) A response to a call for alternate bids. *See*, Alternate bid, call for. (2) A bid submitted in knowing variance from the specifications. Such a bid is only acceptable when the variance is deemed to be immaterial.

**Alternate bid, call for**—An Invitation for Bids for a single need that can be filled by commodities of varying materials, dimensions, or styles. Bidders may submit one or more bids for each material, style, etc., and only one award will be made based on an assessment of what is best for the government, taking price as only one factor involved.

**Antitrust legislation**—Laws that attempt to prevent or eliminate monopolies or oligopolies and to prevent noncompetitive practices.

**Authorized price list**—A price list of the products and/or services covered in a contract which contains minimum essential information needed by users for placing orders.

**Appropriation**—Legislative sanction to use public funds for a specific purpose. Money set apart for a specific use.

**Approved brands list**—*See*, Qualified products list.

**Arbitrary and capricious action**—A willful and unreasoning action, without consideration of, and in disregard of, the facts and circumstances, without rational basis; grounds for a court to overrule or remand a discretionary decision or action by an administrative authority of the government.

**Arbitration**—A process by which a dispute between two contending parties is presented to one or more disinterested parties for a decision.

**Architect and Engineer (A&E)**—All professional services associated with the research, design, and construction of facilities.

**Arrival notice**—A notice sent by a carrier to a consignee advising of the arrival of a shipment.

**As is**—A term indicating that goods offered for sale are without warranty or guarantee, and that the purchaser takes the goods at his own risk without recourse against the seller for the quality or condition of the goods.

**Award**—The presentation of a purchase agreement or contract to a bidder; the acceptance of a bid or proposal.

**Back-door buying**—Making a purchase without going through the central purchasing authority.

**Back order**—That portion of an order which a vendor cannot deliver at the scheduled time and which he has reentered for shipment at a later date.

**Best interests of the State (city, county)**—A term frequently used in granting a purchasing official the authority to use his discretion to take whatever action he feels is most advantageous to the government. The term is used when it is impossible to anticipate adequately the circumstances that may arise so that more specific directions could be delineated by the law or regulation.

**Bid**—An offer, as a price, whether for payment or acceptance. A quotation specifically given to a prospective purchaser upon his request, usually in competition with other offerors. Also, an offer by a buyer to a seller, as at an auction.

**Bid-award file**—A file that is divided into commodity and item sections each of which contains listings of who was solicited for individual bids, what each response was, and other information. The bid-award file is used to compare past bids for award patterns that might reveal collusive agreements or to make other comparisons of data.

**Bid bond**—An insurance agreement in which a third party agrees to be liable to pay a certain amount of money in

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- the event that a specific bidder, if his bid is accepted, fails to sign the contract as bid. *See*, Bid deposit; Bid security.
- Bid deposit**—A sum of money or check, deposited with and at the request of the government, in order to guarantee that the bidder (depositor) will, if selected, sign the contract as bid. If the bidder does not sign the contract, he forfeits the amount of the deposit. *See*, Bid bond; Bid security. *See also*, Forfeiture of deposit or bond.
- Bid opening**—The process through which the contents of bids are revealed for the first time to the government, to the other bidders, and usually to the public. *See*, Public bid opening.
- Bid sample**—A sample required by the Invitation for Bids to be furnished by bidders as part of their bids to establish a quality level for the products being offered.
- Bid security**—A guarantee, in the form of a bond or deposit, that the bidder, if selected, will sign the contract as bid; otherwise, the bidder (in the case of a deposit) or the bidder or his guarantor (in the case of a bond) will be liable for the amount of the bond or deposit. *See*, Bid bond; Bid deposit.
- Bidder**—Any person who makes a bid.
- Bidders list**—A list maintained by the purchasing authority setting out the names and addresses of suppliers of various goods and services from whom bids, proposals, and quotations can be solicited. *See*, Prequalification of bidders; Qualified bidder.
- Bill**—A list of charges or costs presented by a vendor to a purchaser, usually enumerating the items furnished, their unit and total costs, and a statement of the terms of sale; an invoice.
- Bill of materials**—A list specifying the quantity and character of materials and parts required to produce or assemble a stated quantity of a particular product.
- Blanket order**—A purchase arrangement in which the purchaser contracts with a vendor to provide the purchaser's requirements for an item(s) or a service, on an as-required and often over-the-counter basis. Such arrangements set a limit on the period of time they are to be valid and the maximum amount of money which may be spent at one time or within a period of time. *See*, Open-end contract; Price agreement; Requirements contract.
- Blanket purchase**—*See*, Blanket order.
- Bona fide**—In good faith.
- Bond**—An obligation in writing, binding one or more parties as surety for another.
- Brand name**—A product name which serves to identify that product as having been made by a particular manufacturer. A trade name.
- Brand name specification**—A specification that cites a brand name, model number, or some other designation that identifies a specific product as an example of the quality level desired. *See*, Equal, Or equal.
- Breach of contract**—A failure without legal excuse to perform any promise which forms a whole or part of a contract. *See*, Forfeiture of deposit or bond.
- Breach of warranty**—Infraction of an express or implied agreement as to the title, quality, content, or condition of a thing sold.
- Bulk purchasing**—Purchasing in large quantities in order to reduce the price per unit; volume purchasing.
- Buyer**—*See*, Purchasing agent. *See also*, *Uniform Commercial Code*.
- Buyer's market**—Market conditions in which goods can easily be secured and economic forces of business tend to cause goods to be priced at the purchaser's estimate of value.
- Cash discount**—A discount from the purchase price allowed to the purchaser if he pays within a specified period. *See*, Discount.
- Cash on delivery (COD)**—Payment due and payable upon delivery of goods.
- Catalog**—A listing of item identifications arranged systematically.
- Caveat emptor**—"Let the buyer beware." A maxim that stands for the rule that the buyer should be careful in making a purchase because the burden of defective goods rests with him. The vendor can be made to take the responsibility for some defects through specifications and warranties.

- Caveat venditor**—"Let the seller beware." A maxim relating to situations where the vendor bears the responsibility for defects in the goods he sells.
- Central purchasing authority**—The administrative unit in a centralized purchasing system with the authority, responsibility, and control of purchasing activities.
- Centralized purchasing**—A system of purchasing in which the authority, responsibility, and control of purchasing activities is concentrated in one administrative unit.
- Certificate of compliance**—A supplier's certification that the supplies or services in question meet certain specified requirements.
- Certificate of non-collusion**—A statement signed by a bidder and submitted with his bid to affirm that his bid is made freely without consultation with any other bidder.
- Claim**—The aggregate of the operative facts which serve as a basis for a demand for payment, reimbursement, or compensation for injury or damage under law or contract; the assertion of such a demand.
- Code of ethics**—A written set of guidelines within which judgements and considerations of professional ethics and behavior should be made. *See, Purchasing ethics.*
- Collusion**—A secret agreement or cooperation between two or more persons to accomplish a fraudulent, deceitful, or unlawful purpose.
- Collusive bidding**—The response to bid invitations by two or more vendors who have secretly agreed to circumvent laws and rules regarding independent and competitive bidding. *See, Corrupt combination, collusion, or conspiracy in restraint of trade; Price fixing.*
- Commercial law**—That branch of the law that designates the rules that determine the rights and duties of persons engaged in trade and commerce.
- Commodity**—An article of trade, a moveable article of value, something that is bought or sold; any moveable or tangible thing that is produced or used as the subject of barter or sale.
- Competition**—The process by which two or more vendors vie to secure the business of a purchaser by offering the most favorable terms as to price, quality, and service.
- Competitive bidding**—The offer of prices by individuals or firms competing for a contract, privilege, or right to supply specified services or merchandise.
- Competitive negotiation**—A technique for purchasing goods and services, usually of a technical nature, whereby qualified suppliers are solicited, negotiations are carried on with each bidder, and the best offer (in terms of performance, quality of items, price, etc.), as judged against proposal evaluation criteria, is accepted; negotiated award.
- Confirming order**—A purchase order issued to a vendor, listing the goods or services and terms of an order placed verbally, or otherwise, in advance of the issuance of the usual purchase document.
- Conflict of interest**—A situation wherein an individual as part of his duties must make a decision or take action that will affect his personal interests.
- Consideration**—Acts, promises, or things of value exchanged by two parties and serving as the basis for a contract between them.
- Consultants and experts**—Those persons who are exceptionally qualified, by education or by experience, in a particular field to perform some specialized service.
- Contingency**—A possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminate at the present time.
- Contract**—A deliberate verbal or written agreement between two or more competent persons to perform or not to perform a specific act or acts. *See, Uniform Commercial Code.*
- Contract administration**—The management of all facets of contracts to assure that the contractor's total performance is in accordance with his contractual commitments and that the obligations of the purchaser are fulfilled. In government, this management is conducted within the framework of delegated responsibility and authority and includes the support of using agencies.

- Contract modification**—An alteration that introduces new details or cancels details but leaves the general purpose and effect of the contract intact.
- Contract record**—A record providing full particulars regarding the orders placed for delivery of goods in a contract so that the volume of purchases against the contract can be determined.
- Contractor**—One who contracts to perform work or furnish materials in accordance with a contract.
- Contractual services**—Services furnished under a contract in which charges, effective periods, and extent of work are defined.
- Convenience termination clause**—A contract clause which permits the government to terminate, at its own discretion, the performance of work in whole or in part, and to make settlement of the vendor's claims in accordance with appropriate regulations.
- Cooperative purchasing**—The combining of requirements of two or more political entities in order to obtain the benefits of volume purchases and/or reduction in administrative expenses.
- Corrupt combination, collusion, or conspiracy in restraint of trade**—A phrase referring to an agreement between two or more businesses to stifle, control, or otherwise inhibit free competition in violation of state and/or federal antitrust statutes. *See, Collusive bidding; Price fixing.*
- Damages**—Compensation, usually in money, for injury to goods, persons, or property.
- Debarment**—A shutting out or exclusion for cause (as a bidder from the list of qualified bidders).
- Debt**—Any obligation to pay money. Ordinarily the term debt means a sum of money due by reason of a contract expressed or implied. Broadly, the word may include obligations other than to pay money, such as the duty to render services or deliver goods.
- Default**—Failure by a party to a contract to comply with contractual requirements; vendor failure.
- Defect**—A nonconformance of an item with specified requirements.
- Delivery schedule**—The required or agreed time or rate of delivery of goods or services purchased for a future period.
- Delivery terms**—Conditions in a contract relating to freight charges, place of delivery, time of delivery, and method of transportation.
- Descriptive literature**—Information, such as charts, illustrations, drawings, and brochures which show the characteristics or construction of a product or explain its operation, furnished by a bidder as a part of his bid to describe the products offered in his bid. The term includes only information required to determine acceptability of the product, and excludes other information, such as that furnished in connection with the qualifications of a bidder or for use in operating or maintaining equipment.
- Design specification**—A purchase specification delineating the essential characteristics that an item bid must possess to be considered for award and so detailed as to describe how the product is to be manufactured; generic specification.
- Designation of special purpose**—A technique used when purchasing items for a special use for which no items of that kind are produced (e.g., sewing machines for teaching blind people to sew), accomplished by sending out the specification that is used for the basic item with a description of the special purpose for which the item will be used, and a questionnaire asking what modifications bidders are willing to make in their standard products to meet the particular needs.
- Discount**—An allowance or deduction granted by the seller to the buyer, usually when certain stipulated conditions are met by the buyer, which reduces the cost of the goods purchased. However, discounts may be granted by the seller without reference to stipulated conditions. An example of such use of discount is the application of discount to a nominal or "list" price to establish the "net" or actual price. *See, Cash discount; Quantity discount; Standard package discount; Trade discount.*
- Discount schedule**—The list of discounts applying to varying quantities of goods or applicable to differing classifications of purchasers.
- Disposition**—Acting to remove from the premises and control of a using agency goods that are surplus or scrap.

- Disposition can be accomplished by transferring, selling, or destroying the goods.
- Emergency purchase—A purchase made without following the normal purchasing procedure in order to obtain goods or services quickly to meet an emergency.
- Equal, Or equal—A phrase(s) used to indicate the substitutability of products of similar or superior function, purpose, design, and/or performance characteristics. *See*, Brand name specification.
- Equal Employment Opportunity Program—A plan to include minority groups or other disadvantaged persons in the work force of businesses affected by the plan.
- Equipment—Personal property of a durable nature which retains its identity throughout its useful life. *See*, *Uniform Commercial Code*.
- Escalation clause—A clause in a purchase contract providing for upward adjustment of the contract price if specified contingencies occur; price escalation clause.
- Ethics—*See*, Code of ethics; Purchasing ethics.
- Evaluation of bid—The process of examining a bid after opening to determine the bidder's responsibility, responsiveness to requirements, and other characteristics of the bid relating to the selection of the winning bid.
- Exhaustion of administrative remedies—A legal doctrine to the effect that where an administrative remedy is provided by statute, relief must be first sought from the administrative body, and all attempts to obtain such administrative relief must be used up before the complaining party may look to the courts for relief.
- Expedite—To hasten or to assure delivery of goods purchased in accordance with a time schedule, usually by contact by the purchaser with the vendor.
- Express warranty—Any affirmation of fact or promise made by a seller to a buyer which relates to the goods and becomes part of the basis of the bargain.
- Extend, option to—A part of a contract which contemplates a continuance of the original contract for a further time upon compliance with the conditions for the exercise of the option.
- Fair market value—A price that would induce a willing purchaser to purchase or a willing seller to sell in an open market transaction; the price a property would bring at a fair sale between parties dealing on equal terms.
- Fair-trade statute—A state law providing that a manufacturer may legally set a minimum resale price for his products and that retailers and distributors must observe that minimum.
- Fidelity bond—A bond which secures an employer up to an amount stated in the bond for losses caused by dishonesty or infidelity on the part of an employee.
- Field purchase order—A limited and specific purchase order used in situations where authority to make the type of purchase involved has been delegated to using agencies.
- Firm bid—A bid that binds the bidder until a stipulated time of expiration.
- Fiscal year—A period of 12 consecutive months selected as a basis for annual financial reporting, planning, or budgeting.
- Fixed price contract—A contract which provides for a firm price under which the contractor bears the full responsibility for profit or loss.
- Forfeiture of deposit or bond—A loss by omission, negligence, or misconduct for the performing of or the failure to perform a particular act, (e.g., not accepting a contract when an award is made); breach of contract. *See*, Bid bond; Bid deposit; Fidelity bond; Performance bond.
- Formal advertising—The placement of a notice in a newspaper or other publication according to legal requirements to inform the public that the government is requesting bids on specific purchases that it intends to make. *See*, Legal notice.
- Formal bid or offer—A bid which must be forwarded in a sealed envelope and in conformance with a prescribed format to be opened at a specified time.
- Forward purchasing—The purchasing of quantities exceeding immediate needs, e.g., in anticipation of a price increase or a future shortage.
- Forward supply contract—A contract for future supply of definite quantities of materials or services over a fixed

- period. May be drawn off by "draw-off orders," or delivered at a fixed and predetermined rate set out in the contract.
- Fraud—A positive act resulting from a willful intent to deceive another with the purpose of depriving him of his rights or property.
- Full cost recovery funding—*See, Industrial funding.*
- General provisions—The mandatory (by law or regulation) clauses for all contracts by type of purchase or contract. Clauses devised especially for a given purchase are called special provisions.
- Generic name—Relating to or characteristic of a whole group or class; not protected by trademark registration.
- Generic specification—*See, Design specification.*
- Goods—Anything purchased other than services or real property. *See, Uniform Commercial Code.*
- Gross negligence—The degree of lack of care that shows a reckless disregard for life or safety, or that indicates a conscious indifference to the rights of others.
- Guarantee—To warrant, stand behind, or ensure performance or quality, as a supplier in relation to his product.
- Identical bid—A bid that agrees in all respects with another bid.
- Imprest funds—Funds set aside as a cash reserve for expenditures made in accordance with established policies and controls; petty cash.
- Improper influence—Domination by the actions of one person over the actions of another so as to prevent the proper exercise of the latter's discretion.
- Industrial funding—Full financing of program activities out of sale of goods or services furnished; full cost recovery funding.
- Ineligible bidder—A supplier who, by reason of financial instability, unsatisfactory reputation, poor history of performance, or other similar reasons, cannot meet the qualifications for placement on the bidders list or for award.
- Informal bid—An unsealed competitive offer conveyed by letter, telephone, telegram, or other means.
- Inspection—Critical examination and/or testing of items to determine whether they have been received in the proper quantity and in the proper condition, and to verify that they conform to the applicable specifications.
- Inspection report—A report to inform the purchasing authority of the quality or condition of the items delivered.
- In-state preference—*See, Preference.*
- Invitation for Bids—A request, verbal or written, which is made to prospective suppliers requesting the submission of a bid on commodities or services.
- Item—Any product, material, or service.
- Labor surplus area—A geographical section of concentrated unemployment or underemployment, as designated by the U.S. Department of Labor.
- Late bid or proposal—A bid or proposal which is received at the place designated in the Invitation for Bids after the hour established by the invitation as the time by which all bids or proposals must be received.
- Latent defect—A defect which could not be discovered by ordinary and reasonable inspection.
- Lead time—The period of time from date of ordering to date of delivery which the buyer must reasonably allow the vendor to prepare goods for shipment.
- Lease—A contract conveying from one person (lessor) to another (lessee) real estate or personal property for a term in return for a specified rent or other compensation.
- Lease-purchase agreement—A rental contract in which the renting party's periodic payments or parts thereof are applied both to fulfill the rental obligation and as installments for eventual ownership of the commodity upon completion of the agreement.
- Legal notice—The notice that is required by law. Legal notice for some purchases may be the posting of an announcement of the purchase in a public place, the notification of the appropriate bidders from the bidders list, a formal advertisement in a newspaper or newspapers, or a combination of these methods. *See, Formal advertising.*

- Negligence**—The failure to do that which an ordinary, reasonable, prudent man would do, or the doing of some act which an ordinary, prudent man would not do. Reference must always be made to the situation, the circumstances, and the knowledge of the parties.
- Negotiated award**—*See*, Competitive negotiation.
- Net price**—Price after all discounts, rebates, etc., have been allowed.
- Net terms**—*See*, Discount.
- No bid**—A response to an Invitation for Bids stating that the respondent does not wish to submit a bid. It usually operates as a procedural device to prevent debarment from the bidders list for failure to submit bids.
- Nonresponsive bid**—A bid that does not conform to the essential requirements of the Invitation for Bids; nonconforming bid, unresponsive bid.
- Obsolescent**—Becoming obsolete, due usually to technological development.
- Obsolete**—Out of date; no longer in use.
- Offer**—The act of one person that gives another person the legal power to create a contract to which both of them are parties; to perform such an act.
- Oligopoly**—A market situation in which a few companies control or dominate the market for a product or service.
- Open-account purchase**—A purchase made by a buyer who has established credit with the seller. Payment terms are usually stated to require payment of invoice on or before a specific date or dates; also, to require payment of invoice in full, or less a certain percentage for prompt payment. Such terms are agreed upon between buyer and seller at the time of placing the order, or before.
- Open-end contract**—A contract in which quantity or duration is not specified, such as a requirements contract. *See*, Blanket order; Price agreement; Requirements contract; Term contracting.
- Open-market purchase**—A purchase, usually of a limited dollar amount, which is made by buying from any available source, as opposed to buying from a bidder who has responded to an Invitation for Bids.
- Option**—The right, acquired for consideration, to buy or sell something at a fixed price within a specified time.
- Option to extend**—*See*, Extend, option to.
- Option to renew**—A contract clause that allows a party to elect to reinstitute the contract for an additional term.
- Or equal**—*See*, Equal, Or equal.
- Order**—A request or command issued to a supplier for goods or services at a specified price. *See*, *Uniform Commercial Code*.
- Order form**—A form by which a supplier is informed of an order.
- Order level**—The level of stock of any item at which an order is initiated for more supplies of that item.
- Order record**—A central numerical register of orders issued.
- Packing list**—A document which itemizes in detail the contents of a particular package or shipment.
- Partnership**—An agreement under which two or more persons agree to carry on a business for profit, sharing in the profits and losses by an agreed to proportion, but each being liable for losses to the extent of all of his personal assets.
- Patent**—A grant made by a government to an inventor, which gives the inventor the exclusive right to make, use, and sell the invention for a period of years.
- Patent clearance**—A letter or other formal communication stating that the reporting requirements of the patent rights clause contained in a contract have been complied with by the contractor.
- Penalty clause**—A clause in a contract specifying the sum of money to be paid if the contractor defaults on the terms of his contract, particularly in respect to time.
- Performance bond**—A contract of guaranty executed subsequent to award by a successful bidder to protect the government from loss due to his inability to complete the contract as agreed. *See*, Forfeiture of deposit or bond.
- Performance record**—Record to indicate a supplier's ability to keep delivery promises and reliability, together with consistency of quality of the product.

- Performance specification**—A specification setting out performance requirements that have been determined to be necessary for the item involved to perform and last as required.
- Perishable goods**—Goods which are subject to spoilage within a relatively short time.
- Personal property**—Everything which is not real property, which is subject to ownership, and which has exchangeable value.
- Petty cash**—*See, Imprest funds.*
- Pilot model**—A model, usually handmade, used in production planning for production engineering studies. *See, Mock-up; Prototype.*
- Political subdivision**—A subdivision of a State which has been delegated certain functions of local government, and which can include counties, cities, towns, villages, hamlets, boroughs, and parishes.
- Preference**—An advantage in consideration for award of a contract granted to a vendor by reason of the vendor's residence, business location, or business classification (e.g., small business).
- Prepaid**—A term denoting that transportation charges have been or are to be paid at the point of shipment.
- Prequalification of bidders**—The screening of potential vendors in which a government considers such factors as financial capability, reputation, management, etc., in order to develop a list of bidders qualified to bid on government contracts. *See, Bidders list; Qualified bidder.*
- Price**—The amount of money that will purchase a definite quantity, weight, or other measure of a commodity.
- Price agreement**—A contractual agreement in which a purchaser contracts with a vendor to provide the purchaser's requirements at a predetermined price. Usually it involves a minimum number of units, orders placed directly with the vendor by the purchaser, and a limited duration of the contract (usually one year). *See, Blanket order; Open-end contract; Requirements contract; Term contracting.*
- Price at the time of delivery**—A term used in sales contracts when market prices are so volatile that a vendor will not give a firm price or use an escalator clause but will only agree to charge the price that he is charging all customers for similar purchases on the day he ships or delivers the goods in question.
- Price competition**—The selection of a contractor, from two or more competing firms, based either solely on prices submitted, or on the final prices resulting from negotiation with all competing contractors within a range.
- Price control**—The fixing or restricting of prices especially by a governmental agency.
- Price escalation clause**—*See, Escalation clause.*
- Price fixing**—Agreements among competitors to sell at the same price, to adopt formulas for the computation of selling prices, to maintain specified discounts, to establish lower prices without prior notification to others, or to maintain predetermined price differentials between different quantities, types, or sizes of products. *See, Collusive bidding; Corrupt combination, collusion, or conspiracy in restraint of trade.*
- Price maintenance**—The establishment by a manufacturer or wholesaler of a price for an item below which he will not sell or permit his product to be sold by others.
- Price protection**—An agreement by a vendor with a purchaser to grant the purchaser any reduction in price which the vendor may establish on his goods prior to shipment of the purchaser's order. Price protection is sometimes extended for an additional period beyond the date of shipment.
- Price rebate**—An allowance on price, usually given after the completion of the contract and most frequently based on some relationship with the business turnover.
- Price schedule**—The list of prices applying to varying quantities or kinds of goods.
- Principal**—One who employs an agent; a person who has authorized another to act on his account and subject to his control.
- Priority**—The degree of precedence given to a particular requisition, order, or contract to obtain completion, delivery, or performance on a particular date at the expense, if necessary, of competing demands to the same supplier or facility.
- Procurement**—The process of obtaining goods or services, including all activities from the preparation and processing of a requisition, through receipt and approval of the final invoice for payment. The acts of preparing

- specifications, making the purchase, and administering the contract are involved. *See*, Purchasing cycle.
- Professional behavior**—*See*, Code of ethics; Purchasing ethics.
- Program**—A scheme of action to accomplish a definitive objective covering a major area of an organization's responsibility.
- Proprietary article**—An item made and marketed by a person or persons having the exclusive right to manufacture and sell it.
- Proprietary information**—Information or data describing technical processes, tools, or mechanisms that a business wishes to keep from general public view in order to maintain its competitive position in the market. *See*, Trade secret.
- Proposal**—An offer made by one party to another as a basis for negotiations for entering into a contract.
- Proposal evaluation criteria**—Weighted standards, relating to management capability, technical capability, approach in meeting performance requirements, price, and other important factors that are used for evaluating which bidder in a competitive negotiation has made the most advantageous offer.
- Protest**—A complaint about a governmental administrative action or decision brought by a bidder or vendor to the appropriate administrative section with the intention of achieving a remedial result.
- Prototype**—A model suitable for evaluation of design, performance, and production potential of a system, subsystem, or component. *See*, Mock-up; Pilot model.
- Public**—The people of an area.
- Public bid opening**—The process of opening and reading bids, conducted at the time and place specified in the Invitation for Bids and/or the advertisement, and in the view of anyone who wishes to attend. *See*, Bid opening.
- Public policy**—That which is deemed by courts to be general and well-settled public opinion relating to the duties of men and government.
- Public record**—All information about government activities that is available for public inspection.
- Purchase order**—A purchaser's document used to formalize a purchase transaction with a vendor. A purchase order, when given to a vendor, should contain statements as to the quantity, description, and price of the goods or services ordered; agreed terms as to payment, discounts, date of performance, transportation terms, and all other agreements pertinent to the purchase and its execution by the vendor. Acceptance of a purchase order constitutes a contract.
- Purchase requisition**—A form used to request the purchasing department to purchase goods or services from vendors.
- Purchasing agent**—An administrator whose job includes soliciting bids for purchases and making awards of purchase contracts; buyer.
- Purchasing cycle**—The cycle of activities carried out by a purchasing department in the acquisition of goods and services. *See*, Procurement.
- Purchasing ethics**—Moral principles that apply to the personnel of the purchasing department and all people who are involved in the purchasing process, particularly with respect to the use of government funds and relationships between buyers and sellers. *See*, Code of ethics.
- Purchasing manual**—A formal collection of instructions relative to procedures to be followed by all parties when making use of or dealing with the purchasing department in procurement actions.
- Purchasing official**—The administrative official who most directly oversees the activities of purchasing agents and those other aspects of property management that are joined as separate or subordinate sections under individual administrative control.
- Purchasing, public**—The process of obtaining goods and services for public purposes following procedures implemented to protect public funds from being expended extravagantly or capriciously.
- Qualified bidder**—A bidder determined by the government to meet minimum set standards of business competence, reputation, financial ability, and product quality for placement on the bidders list. *See*, Bidders list; Prequalification of bidders.
- Qualified products list**—A specification which is developed by evaluating various brands and models of an item and

- listing those that are determined to be acceptable as the only ones for which bids may be submitted; an approved brands list.
- Quality assurance—A planned and systematic series of actions considered necessary to provide adequate confidence that a product that has been purchased will perform satisfactorily in service.
- Quality control—The procedures and policies used to ensure adequate quality of goods produced or received.
- Quantity discount—An allowance determined by the quantity or value of a purchase. *See, Discount.*
- Quotation—A statement of price, terms of sale, and description of goods or services offered by a vendor to a prospective purchaser; the stating of the current price of a commodity; the price so stated.
- Receiving report—A form used by a receiving function to inform others, such as the purchasing and accounting departments, of the receipt of goods purchased.
- Renegotiation—Deliberation, discussion, or conference to change or amend the terms of an existing agreement.
- Renew, option to—*See, Option to renew.*
- Reordering level—The stock level at which a requisition for the replenishment of the stock should be initiated.
- Repudiation of contract—A positive and unequivocal refusal to perform a contract.
- Requirements contract—A contract in which the vendor agrees to supply all the purchaser's requirements that arise for an item or items within a specified period. *See, Blanket order; Open-end contract; Price Agreement; Term contracting.*
- Requisition—An internal document by which a using agency requests the purchasing department to initiate a procurement.
- Research and development (R&D)—The process by which new products or new product forms are created; precedes production.
- Responsible bidder—A bidder whose reputation, past performance, and business and financial capabilities are such that he would be judged by the appropriate government authority to be capable of satisfying the government's needs for a specific contract.
- Responsive bidder—A bidder whose bid does not vary from the specifications and terms set out by the government in the Invitation for Bids.
- Restraint of trade—The effect of contracts or combinations which eliminate or stifle competition, effect a monopoly, artificially maintain prices, or otherwise hamper or obstruct the course of trade and commerce as it would be carried on if left to the control of natural and economic forces.
- Restrictive specifications—Specifications that unnecessarily limit competition by eliminating items that would be capable of satisfactorily meeting actual needs.
- Rules and regulations—Governing precepts and procedures made by an administrative body or agency under legislative authority that sometimes have the force and effect of law.
- Salvage—Property that is no longer useful as a unit in its present condition but has some value in addition to its value as scrap, usually because parts from it may be recovered and reused.
- Sample—*See, Bid sample.*
- Scheduled purchase—A purchase for which a bid opening date is prescheduled so that using agencies' requirements for the period covered by the contract can be gathered and combined for the Invitation for Bids.
- Scrap—Property that has no value except for its basic material content.
- Sealed bid—A bid which has been submitted in a sealed envelope to prevent dissemination of its contents before the deadline for the submission of all bids; usually required by the purchasing authority on major procurements to ensure fair competition among bidders.
- Seasonal—Depending upon the seasons, either climatic or economic, and usually cyclic on an annual basis.
- Seasonal rate—A rate instituted for specified articles or commodities and effective only for certain periods of the year.
- Seller's market—A market condition where demand is greater than supply; sellers can set prices and terms of sale, and prices are high or rising.

- Service**—Work performed to meet a demand, especially work that is not connected with manufacturing a product.
- Service contract**—A contract that calls for a contractor's time and effort rather than for a concrete end product.
- Shipping list**—A memorandum listing all items shipped at one time on a given order.
- Single-source procurement**—An award for a commodity which can only be purchased from one supplier, usually because of its technological, specialized, or unique character.
- Small business**—A designation for certain statutory purposes referring to a firm, corporation, or establishment having a small number of employees, low volume of sales, small amount of assets, or limited impact on the market.
- Small Business Administration**—A federal agency created to foster and protect the interests of small business concerns.
- Solicitation**—The process of notifying prospective bidders that the government wishes to receive bids on a set of requirements to provide goods or services. The process might consist of public advertising, the mailing of Invitations for Bids, the posting of notices, or telephone calls to prospective bidders.
- Sovereign immunity**—The principle which absolves the sovereign (State, city, county) from responding in damages for past injuries to another party.
- Specification**—A description of what the purchaser requires and, consequently, what a bidder must offer to be considered for an award.
- Specifications committee**—A committee whose purpose is to advise and assist the central purchasing authority in establishing specifications. This committee may also offer advice and assistance in developing standards. *See*, Standards committee.
- Spot purchase**—A one-time purchase made in the open market out of necessity or to take advantage of a bargain price.
- Standard**—A characteristic or set of characteristics for an item that, for reasons of quality level, compatibility with other products, etc., is generally accepted by the manufacturers and users of that item as a required characteristic for all items of that sort.
- Standard commercial supplies**—Articles which, in the normal course of business, are customarily maintained in stock by a manufacturer or any dealer, distributor, or other commercial dealer for the marketing of such articles.
- Standard package discount**—An allowance applied to goods supplied in the vendor's regular package. *See*, Discount.
- Standard specification**—A specification established through a standardization process to be used for all or most purchases of the item involved.
- Standardization (of specifications)**—The process of examining specifications and needs for items of similar end usage and drawing up one specification that will meet the needs for most or all purchases of that item.
- Standards committee**—A committee whose purpose is to advise and assist the central purchasing authority in establishing standards and, in some cases, specifications. *See*, Specifications committee.
- Standing order**—*See*, Blanket order.
- Stock**—A supply of goods maintained on hand in a supply system to meet anticipated demands.
- Stock control**—Control of the level of stock by control over the movement of goods into and out of stores.
- Stock record**—A record kept of items of materials in stock, usually located at a central point and showing stock level position.
- Storage**—The holding of goods in a designated place for safekeeping; a space or a place for the safekeeping of goods.
- Supplemental agreement**—Any contract modification which is accomplished by the mutual action of the parties.
- Supplier**—A firm that regularly furnishes needed items to a business or government; a vendor.
- Supplies**—Items which are consumed or expended in the course of being used.
- Surplus property**—Inventory not required by one using agency or all using agencies at the present time or in the foreseeable future.
- Tabulation of bids**—The recording of bids and bidding data that was submitted in response to a specific invitation for the purposes of comparison, analysis, and record-keeping.
- Term contracting**—A technique in which a source or sources of supply are established for a specified period of time,

- usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price. *See*, Blanket order; Open-end contract; Price agreement; Requirements contract.
- Terms and conditions**—A phrase generally applied to the rules under which all bids must be submitted and the terms that are included in most purchase contracts which are often published by purchasing authorities for the information of all potential bidders.
- Terms of payment**—All purchase transactions require a payment for the goods or services received and, excepting an unusual exchange or barter agreement, payment is made in negotiable funds in accordance with the terms agreed between the buyer and seller. There are three basic payment terms: cash, open account, and secured account.
- Testing**—A phase of inspection involving the determination by technical means of the physical and chemical properties of items, or compounds thereof, requiring not so much the element of personal judgment as the application of recognized and established scientific principles and procedures.
- Title**—The means whereby a person's ownership of property is established.
- Token bid**—A perfunctory offer submitted by a bidder with no serious intent of being the lowest bid; usually submitted when the bidder wishes to maintain eligibility for the bidders list or as a collusive device.
- Total supply**—A concept of purchasing, the objective of which is to plan in advance and provide for the broadest scope of purchasing and purchasing-related activities as possible in order to minimize costs, increase managerial effectiveness, and improve operational efficiency. Total supply is not only concerned with ordering but also with requirements planning, logistics, and general procurement management.
- Trade discount**—A deduction from an established price for items or services, often varying in percentage with volume of transactions, made by the seller to those engaged in certain businesses and allowed irrespective of the time when payment is made. *See*, Discount.
- Trade name**—*See*, Brand name.
- Trade secret**—Any aspect of a business or its operations which is known only to the manufacturer. *See*, Proprietary information.
- Trademark**—Generally, any sign, symbol, mark, word, or arrangement of words in the form of a label adopted and used by a manufacturer or distributor to designate his particular goods, and which no other person has the legal right to use.
- Trade-off analysis**—The process of determining the "best" course of action by weighing the advantages and disadvantages associated with available alternatives. The selected course will usually involve a compromise with some resources (e.g., time) traded-off for another (e.g., money).
- Ultra vires action**—An action which is beyond the power or purpose of a corporation, city, county, or other body, but not an action which is merely performed in an unauthorized manner or without authority.
- Unit price**—The price of a selected unit of a good or service (e.g., price per ton, labor hour, foot).
- Unit price extension**—The calculation of the total price of goods by multiplying the price per unit by the number of units purchased.
- Unresponsive bid**—*See*, Nonresponsive bid.
- Unsuccessful bidder**—An offeror whose bid is not accepted for reasons of price, quality, failure to comply with specifications, etc.
- Using agency**—A unit of government that requisitions items through central purchasing.
- Value**—Intrinsic worth. The amount of money for which goods or services can be exchanged. *See*, *Uniform Commercial Code*.
- Value analysis**—An organized effort directed at analyzing the function of systems, products, specifications and standards, and practices and procedures for the purpose of satisfying the required functions at the lowest total cost of ownership.
- Vendor**—A supplier.

Vendor failure—*See, Default.*

Vendor file—The accumulated record maintained by the central purchasing authority of information relevant to his business relationship with the government, including application for inclusion on the bidders list, record of performance under contracts, correspondence, and the results of special-purpose analyses.

Void—Without legal effect; unenforceable.

Volume purchasing—*See, Bulk purchasing.*

Waiver of bid(s)—A process, usually statutory, whereby a government purchasing office may procure items without formal bidding procedures because of uniqueness of circumstances related to that procurement action.

Waiver of mistake or informality—The act of disregarding errors or technical nonconformities in the bid which do not go to the substance of the bid and will not adversely affect the competition between bidders.

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
HOUSING MANAGEMENT  
WASHINGTON, D. C. 20411

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$300

POSTAGE AND FEES PAID  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HUD-401



**FIRST CLASS**

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
COMMUNITY PLANNING AND DEVELOPMENT

**NOTICE**

CPD 79 - 31

*Very old*



October 1979  
Expires March 1980

**TO:** All Regional Administrators, Regional Directors for CPD, Area Managers, CPD Division Directors, and CDBG Entitlement Recipients

**SUBJECT:** Revised Attachment O of OMB Circular A-102 *Have attached copy w/ latest date. ph*

This Notice transmits a revised Attachment O, Procurement Standards, of OMB Circular A-102, Uniform Requirements for Grants-In-Aid to State and Local Governments. The revision was published in the Federal Register, Vol. 44, No. 159, page 47874, on August 15, 1979.

A copy of this Notice is being provided directly to entitlement recipients, but not to discretionary grant recipients. Therefore, Area Offices are requested to send a copy of the revised Attachment O to each locality with an active Small Cities program. Additional copies of this Notice are being provided to Area Offices for this purpose and for staff use.

Robert C. Embry, Jr.  
Assistant Secretary for  
Community Planning and  
Development

CCC:DISTRIBUTION: W-3-1, R-1, R-2, R-3-1, R-5, R-5-1, R-5-2, 023, 023-2, 023-3



U.S. Department of Housing and Urban Development  
COMMUNITY PLANNING AND DEVELOPMENT

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Special Attention of:

**Transmittal** Handbook No.: 1300.17

CPD Staff  
CDBG Grantees

Issued: March 1, 1982

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1. This Transmits : Handbook 1300.17, Uniform Requirements for Assistance to State and Local Governments, OMB Circular A-102
  
  2. Purpose: The Office of Management and Budget (OMB) has promulgated Uniform administrative requirements for grants-in-aid to State and local governments in its Circular A-102 (Revised), January 1981. This Handbook is a reprint of that Circular.
  
  3. Filing Instructions: Insert Handbook 1300.17, dated March 1, 1982

## PROCUREMENT STANDARDS

1. Applicability

a. This Attachment establishes standards and guidelines for the procurement of supplies, equipment, construction and services for Federal assistance programs. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable Federal law and executive orders.

b. No additional procurement requirements or subordinate regulations shall be imposed upon grantees by executive agencies unless specifically required by Federal law or executive orders or authorized by the Administrator for Federal Procurement Policy. This prohibition is not applicable to payment conditions issued in accordance with Treasury Circular 1075, individual grantee requirements pursuant to Section 10 of the basic circular or the provisions of this or other OMB circulars.

c. Provisions of current subordinate requirements not conforming to this Attachment shall be rescinded by grantor agencies unless approved by the Office of Federal Procurement Policy (OFPP).

2. Grantee/Grantor Responsibility

a. These standards do not relieve the grantee of any contractual responsibilities under its contracts. The grantee is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements entered in support of a grant. These include but are not limited to source evaluation, protests, disputes, and claims. Executive agencies shall not substitute their judgment for that of the grantee unless the matter is primarily a Federal concern. Violations of law are to be referred to the local, State, or Federal authority having proper jurisdiction.

b. Grantees shall use their own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements for Federal Assistance Programs

conform to the standards set forth in this Attachment and applicable Federal law.

### 3. Grantee Procurement Improvement

Executive agencies awarding Federal grants or other assistance which require or allow for procurement by the recipients are encouraged to assist recipients in improving their procurement capabilities by providing them with technical assistance training, publications, and other aid.

### 4. Procurement System Reviews

a. Executive agencies are encouraged to perform reviews of their grantees' procurement systems if a continuing relationship with the grantee is anticipated or a substantial amount of the Federal assistance is to be used for procurement and review of individual contracts is anticipated. The purpose of the review shall be to determine: (1) whether a grantee's procurement system meets the standards prescribed by this Attachment or other criteria acceptable to the OFPP, such provisions of the Model Procurement Code for State and local government; and (2) whether the grantee's procurement system should be certified by the reviewing agency. Such a review will also give an agency an opportunity to give technical assistance to a grantee to remedy its procurement system if it does not fully comply. In addition, such a review may provide a basis for deciding whether the grantee's contracts and related procurement documents should be subject to the grantor's prior approval, as provided by Section 6.

b. In conducting procurement system review, grantor agencies will evaluate a grantee's procurement system in terms of whether it complies with the standards prescribed by this Attachment and represents a fair, efficient and effective procurement system. To the maximum extent feasible, reviewers will rely upon State or local evaluations and analyses performed by agencies or organizations independent of the grantee contracting activity.

c. When a Federal grantor agency completes a procurement review, it shall furnish a report to the grantee, with a copy to OFPP.

d. All agencies should normally rely upon the resultant findings or certification for a period of 24 months before another review is performed.

e. Reviews shall be conducted in accordance with standards and guidelines approved or issued by OFPP.

f. The reviews authorized by Section 6 are waived if a grantee's procurement system is certified.

#### 5. Protest Procedures

a. Grantor agencies may develop an administrative procedure to handle complaints or protests regarding grantee contractor selection actions. The procedure shall be limited as follows:

a. No protest shall be accepted by the grantor agency until all administrative remedies at the grantee level have been exhausted.

b. Review is limited to:

(i) Violations of Federal law or regulations. Violations of State or local law shall be under the jurisdiction of State or local authorities.

(ii) Violations of grantee's protest procedures or failure to review a complaint or protest.

#### 6. Grantor Review of Proposed Contracts

Federal grantor pre-award review and approval of the grantee's proposed contracts and related procurement documents, such as requests for proposal and invitations for bids, is permitted only under the following circumstances:

a. The procurement is expected to exceed \$10,000 and is to be awarded without competition or only one bid or offer is received in response to solicitation.

b. The procurement expected to exceed \$10,000 specifies a "brand name" product; or

c. The grantee's procurement procedures or operation fails to comply with one or more significant aspects of this Attachment. The grantor agency shall notify the grantee in writing, with a copy of such notification to the OFPP.

#### 7. Code of Conduct

Grantees shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- a. The employee, officer or agent;
- b. Any member of his immediate family;
- c. His or her partner; or
- d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The grantee's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

Grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

#### 8. Procurement Procedures

The grantee shall establish procurement procedures which provide that proposed procurement actions shall be reviewed by grantee officials to avoid the purchase of unnecessary or duplicative items. Consideration should be given to consolidation or breaking out to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, grantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

9. Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms

a. It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

(1) Including qualified small and minority businesses on solicitation lists.

(2) Assuring that small and minority businesses are solicited whenever they are potential sources.

(3) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

(4) Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

(5) Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

(6) If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in 1 through 5 above.

b. Grantees shall take similar appropriate affirmative action in support of women's business enterprises.

c. Grantees are encouraged to procure goods and services from labor surplus areas.

d. Grantor agencies may impose additional regulations and requirements in the foregoing areas only to the extent specifically mandated by statute or presidential direction.

10. Selection procedures

a. All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and

free competition consistent with this Attachment. Procurement procedures shall not restrict or eliminate competition. Example of what is considered to be restrictive of competition include, but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business; (2) noncompetitive practices between firms; (3) organizational conflicts of interest; and (4) unnecessary experience and bonding requirements.

b. The grantee shall have written selection procedures which shall provide, as a minimum, the following procedural requirements:

(1) Solicitations of offers, whether by competitive sealed bids or competitive negotiation shall:

(a) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

(b) Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(2) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

#### 11. Method Procurement

Procurement under grants shall be made by one of the following methods, as described herein: (a) small purchase procedures; (b) competitive sealed bids (formal advertising); (c) competitive negotiation; (d) noncompetitive negotiation.

a. Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than \$10,000. Grantees shall comply with State or local small purchase dollar limits under \$10,000. If small purchase procedures are used for a procurement under a grant, price or rate quotations shall be obtained from an adequate number of qualified sources.

b. In competitive sealed bids (formal advertising), sealed bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

(1) In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum, the following:

(a) A complete, adequate and realistic specification or purchase description is available.

(b) Two or more responsible suppliers are willing and able to compete effectively for the grantee's business.

(c) The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

(2) If formal advertising is used for a procurement under a grant the following requirements shall apply:

(a) A sufficient time prior to the date set for opening of bids, bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.

(b) The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the invitation.

(c) All bids shall be opened publicly at the time and place stated in the invitation for bids.

(d) A firm-fix-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the grantee indicates that such discounts are generally taken.

(e) Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.

c. In competitive negotiation, proposals are requested from a number of sources and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under a grant, the following requirements shall apply:

(1) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.

(2) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.

(3) The grantee shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

(4) Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.

(5) Grantees may utilize competitive negotiation procedures for procurement of architectural/engineering professional services, whereby competitors' qualifications are evaluated and the most qualified competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

d. Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

(1) The item is available only from a single source;

(2) Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;

(3) The Federal grantor agency authorizes noncompetitive negotiation; or

(4) After solicitation of a number of sources, competition is determined inadequate.

e. Additional innovative procurement methods may be used by grantees with the approval of the grantor agency. A copy of such approval shall be sent to the OFPP.

## 12. Contract Pricing

The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used. Grantees shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts under grants shall be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

## 13. Grantee Procurement Records

Grantees shall maintain records sufficient to detail the significant history of a procurement. These records shall

include, but are not necessarily limited to information pertinent to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

#### 14. Contract Provision

In addition to provisions defining a sound and complete procurement contract, any recipient of Federal grant funds shall include the following contract provisions or conditions in all procurement contracts and subcontracts as required by the provision, Federal law or the grantor agency.

a. Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

b. All contracts in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

c. All contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

d. All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the grantor agency.

e. When required by the Federal grant program legislation, all construction contracts in excess of \$2,000 awarded by grantees and subgrantees shall include a provision for compliance

with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the grantor agency.

f. Where applicable, all contracts awarded by grantees and subgrantees in excess of \$2,000 for construction contracts and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of standard workday of 8 hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

g. The contract shall include notice of grantor agency requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed in the course of or under such contract, and of grantor agency requirements and regulations pertaining to copyrights and rights in data.

h. All negotiated contracts (except those awarded by small purchase procedures) awarded by grantees shall include a

provision to the effect that the grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

Grantees shall require contractors to maintain all required records for three years after grantees make final payments and all other pending matters are closed.

i. Contracts, subcontracts, and subgrants of amounts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the grantor agency and to the USEPA Assistant Administrator for Enforcement (EN-329).

j. Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

Grantor agencies are permitted to require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.

#### 15. Contract Administration

Grantees shall maintain a contract administration system ensuring that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.



Special Attention of: Public Housing  
Agencies/Indian Housing Authorities;  
Regional Administrators; Directors,  
Offices of Regional Housing; Field  
Office Managers; Housing Management  
Division Directors; Chiefs, Assisted  
Housing Management Branches; Directors,  
Offices of Indian Housing

**Transmittal** Handbook No.: 7485.1 REV-2

Issued: December 23, 1983

1. This Transmits

The Public Housing Comprehensive Improvement Assistance Program  
Handbook 7485.1 REV-2, dated 12/83.

2. Explanation of Material Transmitted:

This Handbook contains the policies and procedures for the Public Housing Comprehensive Improvement Assistance Program (CIAP), for use by HUD Regional and Field Offices, Public Housing Agencies (PHAs), including Indian Housing Authorities, and others involved in the modernization of public housing. These procedures may not be modified without the prior written approval of the Assistant Secretary for Public and Indian Housing. This Handbook incorporates policy clarifications and procedural revisions which the Department has found necessary after additional experience in administering the CIAP. The significant changes are:

- a. Provision of definition for term "simple payback period."
- b. Deletion of reference to inapplicability of OMB Circular No. A-95 and inclusion of reference to applicability of Executive Order 12372 on intergovernmental review of Federal programs.
- c. Provision of instructions on how to calculate prototype cost limitation.
- d. Consideration of ongoing maintenance and operating costs in approval of premature replacements.
- e. Clarification of requirement for energy audit before approval of homeownership modernization and eligibility of energy audits and energy conservation measures without charge to homebuyer families.
- f. Allowance of reimbursement of architectural/engineering fees incurred before program approval if such fees are reasonable and approvable and if PHA is subsequently funded.

Distribution: W-3-1, W-2(H), W-3(H), R-1, R-2, R-3, R-3-1(H), R-3-2,  
R-3-3, R-6, R-6-1, R-6-2, R-7, R-7-1, R-7-2, R-8, R-8-1, 138-2, 138-7

## CHAPTER 9. CONTRACT ADMINISTRATION

### Section 1. General

9-1. INTRODUCTION. This Chapter sets forth the requirements for modernization construction contracts and contracts for management improvements. To the maximum extent possible, the requirements of this Chapter shall apply to modernization programs approved before Federal Fiscal Year (FFY) 1982. A Sample Modernization Contract Status Control Log for Field Office use is attached as Appendix 19.

### Section 2. Construction and Bid Documents

9-2. PHA PREPARATION. The PHA shall prepare the construction and bid documents as follows:

- a. General. The PHA and its architect shall ensure that the construction and bid documents comply with State, tribal or local laws governing the public solicitation of bids. Any modifications required to comply with such laws should be discussed with Regional or Chief Counsel to ensure that such changes are not in conflict with Federal requirements.
- b. Competitive Bidding. For each construction or equipment contract over \$10,000, the PHA shall conduct formal advertising, except where equipment is to be purchased through the HUD Consolidated Supply Program. For each construction or equipment contract of \$10,000 or less, the PHA shall follow the solicitation requirements set forth in the Procurement Handbook 7460.8.
- c. Invitation for Bids. The invitation for bids shall be prepared in the form prescribed by the Field Office for public advertising and solicitation of bids. The bid holding period shall be specified.
- d. Instructions to Bidders. Form HUD-5369, Instructions to Bidders, shall be used to inform interested contractors of the general bidding requirements, the responsibilities of each party, and the factors to be considered in determining the successful bidder.
- e. Bid Guaranty. For all construction and equipment contracts over \$10,000, the bidder shall be required to submit with the bid a bid guaranty not less than 5 percent of the amount of the bid. The bid guaranty may be a certified check, bank draft,

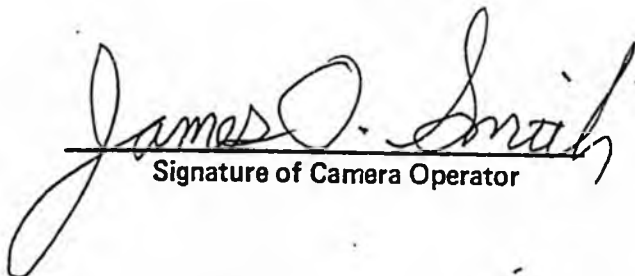
regarding publicizing invitations for bids to Minority Business Enterprises (MBEs). The PHA also shall extend an invitation to contractors who have previously expressed an interest to participate in modernization to the PHA or the Field Office.

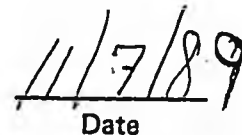
- c. Bid Period. The PHA shall establish a deadline date for acceptance of bids which allows sufficient time for bidders to evaluate the bid package, estimate costs, and submit their bids to the PHA. The bid period is no longer required to be for 30 calendar days, where appropriate, but shall not be for less than 10 calendar days. In any event, the bid period shall be for at least the number of days required by State or local law. Furthermore, for projects being modernized under a single construction contract, the bid period should be at least 30 calendar days from the date of publication of the initial invitation for bids. However, if an addendum is issued within 7 calendar days of the deadline date, the bid opening shall be postponed for at least 7 calendar days from the date of the addendum.
- d. Deposit. The PHA shall require a deposit in an amount that is based on local practice, but at least sufficient to offset the cost of reproducing a copy of the bid package. A deposit is not required for bid packages issued to a builder's exchange or similar building service organization. All deposit checks or drafts shall be made payable to the PHA.
- e. Alternate Bids. The PHA should not request alternate bids for major project components (e.g., two different structural systems), "deductive alternatives" or a "base bid with add-ons" (not including alternate materials and equipment to the extent provided in the construction specifications), unless the relative advantage and comparative costs of the alternatives are difficult to determine without going to the competitive bidding process.
- f. Addendum to Bid Package. The PHA shall issue changes to the standard bid package in the form of an addendum. The PHA shall not interpret the meaning of bid documents except by addendum. Each addendum shall be numbered sequentially and a copy provided to each bidder of record, to each place where bidding documents are on file and to the Field Office, only where the PHA is required to submit construction and bid documents before advertisement. The addendum also shall specify, if applicable, the revised deadline date for submission of bids.



# RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
Date

SB

341

(FILE 2)

PROPOSED SENATE JUDICIARY COMMITTEE SUBSTITUTE  
SENATE BILL 341  
SECTIONAL ANALYSIS

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

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

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

Article 1. Organization of State Procurement.

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

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

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

The Alaska Railroad Corporation must adopt procedures substantially equivalent to the procurement code and regulations adopted by the commissioner.

Sec. 36.30.020. The Legislature must adopt procedures substantially equivalent to the procurement code.

Sec. 36.30.030. The Court System must adopt procedures substantially equivalent to the procurement code.

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

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

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

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

Sec. 36.30.080. The department shall lease necessary space, and contract for the lease of space for the use of the state or an agency. A lease or contract for a lease may not be for a period of occupancy greater than 40 years. The department may enter into lease-financing agreements, which are subject to annual appropriation. If the department intends to enter into a lease or lease financing agreement with an annual rent anticipated to exceed \$1,000,000, notice must be provided the legislature for approval.

## Article 2. Competitive Sealed Bidding.

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

Sec. 36.30.110. When competitive sealed bidding is used, an invitation to bid is issued which must include the date

by which the bid must be received, purchase description, and all contractual terms and conditions. Subcontractors must be listed. Evidence of a valid Alaska business license for all bidders and subcontractors must be submitted when responding to the ITB. A bidder for construction contracts must also submit evidence of the bidder's registration under AS 08.18 and evidence of registration for each listed subcontractor.

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

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

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

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

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

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

Sec. 36.30.170. Awards to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the ITB shall be promptly made. The Alaska bidder preference is retained.

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

Article 3. Competitive Sealed Proposals.

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

Sec. 36.30.210. Request for proposals must contain the same information required for ITBs. The same notice provisions for ITBs apply for RFPs.

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

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

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

Sec. 36.30.250. A contract under competitive sealed proposals shall be awarded to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the state taking into consideration price and the evaluation factors set out in the RFP.

Sec. 36.30.260. A contract awarded under competitive sealed proposals must contain: the amount of the contract; the date for supplies to be delivered or the term for services to be performed; a description of the

services or supplies contracted for; and a certification that sufficient funds are available for the amount of the contract.

Sec. 36.30.270. Contracts are subject to review by the Department of Law.

Article 4. Other Procurement Methods.

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

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

Sec. 36.30.320. Small procurements which do not exceed an aggregate amount of \$5,000 shall be made with competition that is practicable under the circumstances. A contract for professional services that does not exceed \$25,000 may be made in accordance with regulations adopted by the commissioner.

Article 5. Contract Formation and Modification.

Sec. 36.30.350. Solicitations may be cancelled or any bids or proposals may be rejected, in whole or in part, or the date for opening bids or proposals may be delayed as may be specified in the solicitation, when it is in the best interest of the state.

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

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

Sec. 36.30.370. Any type of contract that will promote the best interests of the state may be used, except that

the use of a cost-plus-a-percentage-of cost contract is prohibited.

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

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

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

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

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

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

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

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

Sec. 36.30.470. If the certification of the fiscal officer or other responsible official discloses a resulting increase in the total project budget or the total contract budget, the procurement officer may not execute the contract modification, change order, or

adjustment in contract price unless sufficient funds are available, or the scope of the project or contract is adjusted to permit the degree of completion that is feasible within the total project budget or total contract budget as it existed before the contract modification, change order, or adjustment in contract price.

Sec. 36.30.480. Cost principle regulations shall be adopted.

Article 6. Procurement Records and Reports.

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

Sec. 36.30.510. A contract file open for public inspection must be kept by the commissioner and the contracting agency for each contract awarded under competitive sealed proposals.

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

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

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

Article 7. Legal and Contractual Remedies.

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

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

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

Sec. 36.30.575. If a protest is filed before a contract is awarded, the award may be made unless the procurement

officer of the contracting agency determines in writing that: a reasonable probability exists that the protest will be sustained; or stay of the award is not contrary to the best interests of the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 36.30.650. A person suspended is entitled to a hearing if the person files a written request for a

hearing within 7 days after receipt of the notice of suspension.

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

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

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

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

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

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

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

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

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

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

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

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

#### Article 8. Intergovernmental Relations.

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

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

Sec. 36.30.720. Joint use of facilities is allowable.

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

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

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

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

Sec. 36.30.790. Definitions for this article are provided.

#### Article 9. General Provisions.

Sec. 36.30.850. This chapter applies to contracts solicited or entered into after January 1, 1987, unless the parties agree to its application to a contract

solicited or entered into before that date. This chapter applies to the disposal of state supplies and every expenditure of public funds irrespective of their sources, except as specified in AS 36.30.915.

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

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

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

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

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

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

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

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

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

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

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

Sec. 36.30.990. Definitions.

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

SECTION 3 through SECTION 61 amend other Alaska statutes to reflect the provisions of this chapter.

SECTION 62. The commissioner must report to the legislature by December 1, 1987, concerning procurements by state agencies during the first 6 months of 1987.

SECTION 63. The commissioner of administration shall adopt the regulations required under this chapter by January 1, 1987.

SECTION 64. This is the repealer section.

SECTION 65. Section 63 of this Act takes effect immediately.

SECTION 66. Except as provided in sec. 65, this Act takes effect January 1, 1987.

DAVID W. JEWELL  
2440 COTTONWOOD  
ANCHORAGE, ALASKA 99508

February 4, 1986

Mr. Patrick Rodey  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

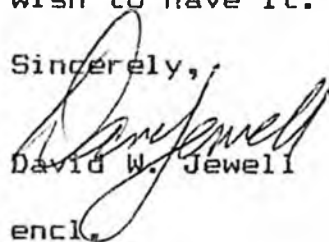
Dear Senator Rodey:

I am concerned about the state's procurement processes. I have had considerable experience over the past two years with preparing proposals for professional services contracts.

My most recent is the most absurd. I am sending you a copy of the letter I have written the state ombudsman after receiving his report and decision on a complaint I filed. It states, I believe, some of the reasons some of us have such little respect for the state processes.

I will happy to provide more information if you wish to have it.

Sincerely,

  
David W. Jewell

encl.

DAVID W. JEWELL  
2440 Cottonwood  
Anchorage, Alaska 99508

February 3, 1986

Mr. John B. Chenoweth, Ombudsman  
State of Alaska  
3201 C Street, Suite 606  
Anchorage, Alaska 99503

Dear Mr. Chenoweth:

I have received your letter of the 28th of January with your findings and Mr. Walton's report of his investigation regarding my complaint against the Department of Corrections ( Complaint # A85-0958).

I must confess that I read the material with a rapidly increasing incredulity. I guess the focus of my disbelief is best demonstrated in the comment made by Mr. Walton:

"Candor and Associates followed the format suggested in the rfp, but Assembly of God did not; I therefore found the Candor proposal clearer and more complete, since each of the subcategories was addressed. The committee agreed in one respect: Candor outscored Assembly of God 15 to 9 in the clarity category, but Assembly of God outscored Candor in completeness 14 to 9."

The judgment made by your office clearly makes the rfp the culprit and not the committee's objectivity or fairness in evaluation.

It does seem to me that if I was able to provide a complete and clear proposal following carefully the requirements of the rfp, obscurity of the rfp is hardly the problem here. Why could I understand it and Mr. Walton, apparently could understand it, but the DOC committee could not?

On this matter, I note that the rfp (item R, p. 3) states that evaluation of the proposal will be carried out by individuals "knowledgeable of the desired professional services requirements."

I also find it fascinating that the staff of DOC was obviously given an opportunity in face to face conversations to defend themselves. I am curious why I was not given a similar opportunity to respond to their defense.

I repeat my original complaint and charge. The DOC committee did not evaluate the proposals as presented in and of themselves but clearly used other information or did not consider all available to them in the written proposals to make their judgments. I find this supported by several items:

1) The question of my involvement in the religious community. My proposal contained my resume which indicated that I was an ordained clergyman of the United Church of Christ, and that I had been, among other things, Executive Director of a religious organization for seven years; not dissimilar to the chaplaincy since it had to do with campus ministry and working with a large group of chaplains, and also that I had taught some fifteen years in theological seminaries. See Mr. Walton's report, page 2.

And yet someone in DOC seemed to suggest that I was not a clergyman or had no involvement in religious activities or organizations.

This was obviously important since Mr. Walton spent an entire section of his report dealing with this issue regarding the rfp's lack of clarity on the clergy requirement when a look at my resume would suggest there was no issue here at all.

My question: did anyone read my proposal? or, if they did, did they understand what they were reading?

2) Back to experience: I find it again interesting that the winning proposal gave no specific information on the individual's experience beyond that in jails. Apparently a general statement with no details that a person has this and that experience is more significant than a detailed listing of actual jobs held and their responsibilities. It appears to me that the specific experience indicated in the winning proposal does not cover all of the relevant experience required by the rfp and that there is no detail of that other experience in the winning proposal. This lack certainly has nothing to do with the quality of the rfp but a lot with the question of the basis upon which the committee gave points. The same issue is operative on the matter of training.

It is common practice in responding to an rfp to note the scoring point structure as a guide to what items in the rfp are most important and therefore should elicit the most care and completeness. In the winning rfp no such attention was given and yet that proposal won. Certainly detailed information gives a better basis for comparison than generalized statements. I am still unclear on what basis the committee gave its points given the disparity in the amount and precision of information available.

Why was this issue not addressed in your judgment? Presumably there is supposed to be a comparison made of information available in order to give point scores regardless of how confusing or vague an rfp is. Why does the proposal with the least information get the highest scores?

3) Incomplete proposal. In my contact with your office I mentioned that every professional contract rfp I have seen over the past two & one-half years has included the Standard Agreement Form for Professional Services Contract with two pages of Appendices spelling out a variety of requirements: among which are liability insurance of whatever forms are required to protect the state. There is no confusion here. Such a document was included in the rfp I received from DOC. As an aside it notes that no contract is operative until approved by the Department of Administration. My complaint included a concern that the winning proposal in this instance had no evidence of compliance with the insurance requirements--and neither DOA nor DOC seemed to be concerned about this hiatus. Note item O on page 3 of the rfp in regard to rfp clarity.

Why was this issue not addressed in your report or Mr. Walton's investigation?

Rfp's also have always included, as did my copy of the one in question, a one page document called, "ASSURANCES", which spells out in 12 items such matters as compliance with the Civil Rights Act of 1964, access of state officials to program records, maintenance of fiscal and other records, and so forth. This document was missing from the winning proposal. Obviously DOA and DOC did not believe that such assurances were necessary although my copy of the rfp clearly indicated they were. See item P on page 3 of the rfp.

Why was this lacunae not addressed by your report nor in the report of the investigation?

All of these items seem to me to be rather objective and easily verifiable in comparing proposals.

I do not feel that I have had a fair hearing by your office any more than I feel that I had a fair hearing from DOC. Nor do I believe that DOA has carried out its mandate to approve contracts according to certain established and public standards.

I find it incomprehensible that the issue of fairness and equal treatment can be determined to have been controverted but not enough to determine that the award could be challenged. You found "inconsistencies in the application of standards," that "one proposer had an opportunity for advance knowledge" [I think Mr. Walton's report and the budget submitted in the proposal demonstrates more than HAD OPPORTUNITY for advanced knowledge], "inconsistencies in applying the criteria did have a significantly negative impact on the scoring of the Candor proposal," and "that the evaluation process was not fair; in fact, I consider this contract evaluation process to be the weakest of the several I examined."

Exactly how do you measure degrees of unfairness and inequity and what do you consider a sufficient degree of one or both to go ahead with a challenge?

You may have closed the case and feel comfortable, I don't. My belief that the dice were loaded remains and your report does nothing to allay that belief, in fact it tends to confirm my perception of how the system works. I see nothing in your recommendations for changing the process that will in any way abrogate the freedom state agencies have to play games in awarding contracts.

Sincerely,

David W. Jewell

# MEMORANDUM

State of Alaska

TO: The Honorable Jim Robison  
Commissioner  
Department of Labor

DATE: June 9, 1983

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

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 analogous 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) <sup>1/</sup>, 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 indexes are

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<sup>1/</sup> 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/

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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

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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

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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.

SB 341

ALASKA STATE HOUSING AUTHORITY v. DIXON Alaska 649

Cite as, Alaska. 496 P.2d 619

ALASKA STATE HOUSING AUTHORITY,  
Appellant,  
v.

Edna DIXON, and other low-rent tenants  
similarly situated, Appellees.

No. 1529.

Supreme Court of Alaska.

May 5, 1972.

Declaratory judgment action by State Housing Authority seeking a ruling that the Administrative Procedure Act is not applicable to the Authority. On motions by both parties for summary judgment, the Superior Court, Third Judicial District, Edward V. Davis, J., granted summary judgment to defendants, and the Authority appealed. The Supreme Court, Boney, C. J., held that the State Housing Authority was bound to adhere to provisions of the Administrative Procedure Act, where conclusion was required that the Authority was an instrumentality of the State within the Department of Commerce, as evidenced by fact that, inter alia, the Authority was created as a "public corporate authority" within the Department of Commerce, the Authority was required to submit annual reports to the Department of Commerce, and where, as an instrumentality of the State within the Department of Commerce, the Authority came within the meaning of "state agency" as that term was used and defined in the Administrative Procedure Act, and the Authority's separate corporate nature does not detract from this conclusion.

Affirmed.

Boochever, J., not participating.

States ⇄ 84

State Housing Authority was bound to adhere to provisions of the Administrative Procedure Act, where conclusion was required that the Authority was an instrumentality of the State within the Department

of Commerce, as evidenced by fact that, inter alia, the Authority was created as a "public corporate authority" within the Department of Commerce, the Authority was required to submit annual reports to the Department of Commerce, and where, as an instrumentality of the State within the Department of Commerce, the Authority came within the meaning of "state agency" as that term was used and defined in the Administrative Procedure Act, and the Authority's separate corporate nature does not detract from this conclusion. AS 18.55.030, 18.55.270, 44.62.010-44.62.650, 44.62.640(a) (4).

Donna Page, Anchorage, for appellant.

John Reese, Alaska Legal Services Corp., Anchorage, for appellees.

Before BONEY, C. J., and RABINOWITZ, CONNOR and ERWIN, JJ.

BONEY, Chief Justice.

This case presents the single issue of whether or not the Alaska Administrative Procedure Act<sup>1</sup> (hereinafter, the APA) applies to the Alaska State Housing Authority (hereinafter, ASHA).

In July, 1970, the Board of Directors of ASHA resolved to amend its Statement of Policies to conform them to recent changes of law. Preliminary drafts were prepared and a public meeting was held on October 22, 1970, to solicit recommendations and comments.

A second public meeting, scheduled for November 9, 1970, was cancelled when ASHA was requested by Alaska Legal Services Corporation, representing a group of tenants, to hold public hearings in conformity with the APA. ASHA refused and filed a complaint seeking a declaratory judgment that the APA is not applicable to ASHA. Both parties moved for summary judgment. The superior court granted summary judgment to Dixon, holding that

1. AS 44.62.010-650.

ASHA is a state agency within the meaning of the APA and that the proposed Statement of Policies was a regulation subject to the APA.

From that judgment, ASHA has brought this appeal.

2. 376 P.2d 717 (Alaska 1962). The plaintiff there appealed from a denial of his request for a judgment declaring unconstitutional the act creating the Alaska State Development Corp. (hereinafter, ASDC).

Among the various constitutional provisions alleged by the plaintiff as having been violated by the act creating ASDC was article III, section 22, of the Alaska Constitution, which states:

All executive and administrative offices, departments, and agencies of the state government and their respective functions, powers, and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may be established by law and need not be allocated within a principal department.

The court held that ASDC was an instrumentality of the state within the Department of Commerce, emphasizing the following factors in reaching its decision: (1) the Commissioner of Commerce is on the board of directors of ASDC; (2) the other six members of that board are appointed by the governor and serve at his pleasure; (3) the board of directors submits an annual report to the governor and the legislature; (4) ASDC's financial records are audited annually by the legislative auditor; (5) the act creating ASDC specifically provides that the "corporation is an instrumentality of the state within the Department of Commerce, but has a legal existence independent of and separate from the state." The court noted that this separate existence is true for all corporations.

The court upheld the constitutionality of the act creating ASDC.

3. 416 P.2d 245 (Alaska 1966). A taxpayer there unsuccessfully attacked as unconstitutional the legislation providing for the creation of the Alaska State Mortgage Association (hereinafter, ASMA). Most of the taxpayer's attacks were the same as those made on ASDC in *DeArmond*.

The court rejected the taxpayer's argument that article III, section 22, of the Alaska Constitution, note 2 *supra*, had been violated. The court reaffirmed

Under the approach taken by this court in *DeArmond v. Alaska State Development Corp.*<sup>2</sup> and *Walker v. Alaska State Mortgage Ass'n.*<sup>3</sup> we conclude that ASHA is an instrumentality of the state within the Department of Commerce.<sup>4</sup> The fol-

its adherence to the principles stated in *DeArmond*, and emphasized the following factors: (1) the act creates ASMA as "a public corporation and government instrumentality within the Department of Commerce, but having a legal existence independent of and separate from the state . . . ." (2) ASMA is required to submit a comprehensive annual report to the governor and the legislature; (3) ASMA is subject to an annual audit by the legislative auditor; (4) the minutes of every meeting of ASMA are sent to the governor; (5) the Commissioner of Commerce serves on the board of directors of ASMA; (6) at the time that the litigation arose the other four members of the board were the executive director of ASHA and three of the board members of ASHA [now the other four are all members of the board of ASHA]; (7) the board members serve at the pleasure of the governor. The court again stated that the fact that the challenged body had an existence separate from the state was of no help to the party attacking the constitutionality of the creation of that body for such separateness is of the nature of the corporate structure.

The court upheld the constitutionality of the legislation creating ASMA.

4. ASHA refers us to *Bridges v. Alaska Housing Authority*, 349 P.2d 149 (Alaska 1959), as authority for the proposition that ASHA is not a state agency. There, the Alaska Housing Authority, the territorial predecessor to ASHA, used a declaration of taking in an eminent domain proceeding. The property owner appealed, arguing that the use of a declaration of taking was by statutory authorization only and that such authorization had not been granted to the Alaska Housing Authority. This court agreed with the property owner. The power to use a declaration of taking had been extended by the territorial legislature to the territory and to first class cities. The first state legislature also extended the power to school and public utility districts but refused to go any further. The court concluded that the legislation authorizing the Housing Authority to take by eminent domain did not include a grant of the power to use a declaration of taking and that the Housing Authority did

lewing factors parallel those stressed in those cases: (1) ASHA is created as a "public corporate authority"<sup>5</sup> "within the Department of Commerce;"<sup>6</sup> (2) the Commissioner of Commerce is a member of the board of directors of ASHA;<sup>7</sup> (3) the other four members of that board,<sup>8</sup> and of course the Commissioner of Commerce,<sup>9</sup> are appointed by the governor and serve at his pleasure; (4) ASHA is required to submit several annual reports to the Department of Commerce.<sup>10</sup> As an instrumentality of the state within the Department of Commerce, ASHA comes within the meaning of "state agency" as that term is used and defined in the APA:

"[S]tate agency" means a department, office, agency, or other organizational unit of the executive branch, except one expressly excluded by law, but does not include an agency in the judicial or legislative department of the state government.<sup>11</sup>

There being no express exclusion of ASHA from the APA, we conclude that ASHA is bound to adhere to the provisions of the APA. ASHA's separate corporate nature does not detract from this conclusion.<sup>12</sup> The legislature may have had a special reason for choosing the corporate vehicle; *e. g.*, to insulate the state from potential liabilities. Moreover, as Davis has pointed out:

An administrative agency may be called a commission, board, authority, bureau, office, officer, administrator, department, corporation, administration, divi-

not come within any legislation granting that power to enumerated bodies. The court specifically stated that the Housing Authority "is not the Territory or State of Alaska."

We conclude that the case merely stands for the proposition that ASHA is not identical with the state. Dixon does not contend that ASHA is anything but "a subordinate corporate authority created by the state." ASHA's reliance on *Bridges* is therefore misplaced.

5. AS 18.55.030.

6. AS 18.55.020.

sion, or agency. Nothing of substance hinges in the choice of name . . . .<sup>13</sup>

We therefore conclude that the APA should apply to ASHA.

The decision of the superior court is affirmed.

BOOCHEVER, J., not participating.



Henry Allen THOMPSON, Appellant,

v.

STATE of Alaska, Appellee.

No. 1339.

Supreme Court of Alaska.

May 4, 1972.

Proceeding on second application for postconviction relief. After remand, the Superior Court, Third Judicial District, Anchorage, James M. Fitzgerald, J., denied relief, and applicant appealed. The Supreme Court, Boney, C. J., held that state Supreme Court case, decided subsequent to first postconviction application, in which majority of justices specifically rejected application of test in earlier case as to which punishments are cruel and unusual in violation of State and Federal Constitutions did not produce intervening change in law so as to constitute sufficient excuse

7. *Id.*

8. AS 39.05.060.

9. AS 39.05.020-030.

10. AS 18.55.270, 18.55.430, 18.55.640.

11. AS 44.62.640(n) (4).

12. *Cf.* Walker v. Alaska State Mortgage Ass'n, 416 P.2d 245, 250 (Alaska 1966); DeArmond v. Alaska State Development Corp., 376 P.2d 717, 724 (Alaska 1962).

13. 1 K. Davis, Administrative Law § 1.01, at 1 (1955).

TESTIMONY OF HENRY J. HICKEY

1/15/36  
5B-347

I believe I bring a unique perspective to the consideration of this Legislation. A review of my pertinent experience is appropos.

1948 - 1954 Sales Assistant, Westinghouse Electric Corporation, Tacoma, Washington charged with quotation and bid preparation responsibility for invitations issued by State of Washington Department of Administration Purchasing Division, U.S. Army, Ft. Lewis, McChord Air Force Base and eleven additional publicly owned utilities and municipal governments.

1954 - 1959 Sales Engineer, Westinghouse Electric Corporation, Tacoma, Washington. Direct sales responsibility for the above accounts plus equipment specification responsibility for the State of Washington, Dept. of Highways, Dept. of Architecture and Engineering as well as the same responsibility for the above Federal and local government accounts.

1959 - 1973 Manager of Sales and Operations, Northern Supply, Inc., Anchorage. Northern was a major statewide distributor of construction equipment, mine, mill supplies, tools, electrical equipment and supplies. In this position I had total sales and marketing responsibility for all product lines in all categories. In this role I was engaged in working with the State of Alaska Dept. of Highways of the development of equipment specifications and the preparation of competitive bids for a broad range of road and airport maintenance equipment. During these years we were a major supplier of construction equipment to the State and other political sub-divisions. We sold and serviced equipment from Hyder to Barrow and from Prudhoe Bay to several locations on the Aleutian Chain. Our equipment built the majority of the Spine Road System which now serves the Prudhoe Field. In short, I was intimately involved in specification preparation, bidding, evaluating, and servicing of a broad range of road construction and maintenance equipment.

1973 - 1978 Branch Manager, Supply Division Westinghouse Electric Corp. Supply Division, Anchorage.

1978 - To Date Deputy Purchasing Officer 1978 and 1979. December 1979 to date Purchasing Officer Municipality of Anchorage.

Prior to my original association with Westinghouse in 1948, I worked for and with my father who was associated with the heavy

truck and equipment business in western Washington. One of his major accounts was the State of Washington. One of the first jobs I performed was the servicing of equipment my father was delivering to the State of Washington, so I feel I literally grew up being directly associated with the equipment business.

In my later roll with Westinghouse as a Sales Engineer at Northern Supply I acquired a broad knowledge of construction specifications for both buildings and civil works. In the process, I became intimately familiar with the contracting procedures utilized by government as well as with the private sector customers. From this particular background and my continued association with construction contract bidding with the Municipality, I feel I have the broadest possible knowledge of this important facet of procurement as well.

With this total background then I have reviewed the proposed text of the Legislation.

At the outset of these observations I must advise you the following are my personal opinions. They are not in any way the official position of the Municipality of Anchorage.

I offer these opinions as a 26 year resident of Alaska, as a 26 year taxpayer in Alaska and one who abhors the average citizen's accelerating distrust of the integrity of government.

As a prerequisite to considering the establishment of the head of a procurement agency, the Legislative agency must realize that to be effective the procurement head must be to the greatest extent possible, independent from all influence which might affect their objective judgment.

The procurement head must and I repeat must be able to review in a dispassionate manner as possible their procurement decisions.

To focus on this point you would'nt permit judges to serve at the pleasure of the Attorney General, but the proposed Legislation expects the Procurement Officer to serve at the pleasure of the Commissioner who may not know the very rudiments of procurement practices.

Our strong Governor form of government obviously limits the other options available. At the very least:

1. The Procurement Officer must be appointed by the Governor and confirmed by the Legislature.
2. The Procurement Officer must report to and be responsible only to the Governor - not through any Commissioner.

3. Preferably the Procurement Officer could be removed only for cause with the concurrence of the Legislature.

Section 36.30.005 must, to be effective, be restructured to reflect the above minimum requirements.

Section 36.30.015 Executive Branch Agencies as drafted smacks of a deal.

It is absolutely purile for the law to delegate this authority to anyone. The authority to delegate should be granted to the Procurement Officer but any Procurement Officer worth their salt would never delegate complete purchasing authority to the agency preparing the specifications. The record of the D.O.T and its predecessor agencies is checkered with instances of imprudent specifications.

Personally, in my dealings with the Division of Equipment I was the victim of a concerted attempt to manipulate specifications to exclude me and my firm from a major equipment award.

The only thing that stopped this travesty was that the then President of the Senate saw the error and used his good offices to effect a fair decision.

I will be happy to provide a detailed account of the individuals involved in this scenario if you wish to confirm the validity of my statement.

I don't think I need to advise you that as written the delegation of authority is the core of a running joke in D.O.T. "Boy we really put one over on the committee."

Additionally, there is absolutely no question that the bill as written is a "fox in the hen house" approach to equipment procurement.

Similarly, Legislative delegation of authority for construction is equally imprudent. The designers, those who contract for design and those who administer and or oversee the administration of construction contracts cannot - and have not - been <sup>any</sup> partial in the bidding processes related to Public Works construction bidding. Sweetheart deals have been cut.

The intelligent way to avoid these improprieties is to assign by Legislation the construction bidding responsibility to the Procurement Officer.

The only other area I found to need correction is Section 36.30.100. An addition should be made to this section to add the specific authority to procure an item without competition for experimental purposes. At first blush it might appear that Section 36.30.300 - sole source procurements could be used for this purpose, strong arguments can however be made and sustained that such is not the case.

In summary, many, many hours of effort have gone into this Legislation. Everyone agrees the aim of this new Legislation is to avoid a repetition of the circus held last summer.

The Bill as written won't do it.

If it is not changed as outlined above I recommend it not be enacted. The present law is better.

I am sure you don't want to be back here five years from now to 'redo' this section of the code. You have an opportunity to do it correctly now!

You are the Legislators - throw out the deals!

If you don't do it now I predict you will be rewriting this Legislation within five years to correct 'imprudent' actions by procurement amateurs.



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

April 3, 1985

MEMORANDUM

TO: Representative John Sund

ATTN: Kitty Rodriguez

FROM: Mark Torgerson *MT*  
Legislative Analyst

RE: Set-Aside Laws for Sheltered Workshops  
Research Request 85-265

You asked for information on set-aside laws for sheltered workshops--specifically, whether Alaska and other states have such laws, and how these laws are enacted.

State set-aside laws (or state use laws) for sheltered workshops establish preferential bidding or noncompetitive purchase of commodities and services by state government from sheltered workshops. These workshops, which are usually operated by nonprofit organizations, provide job training for disabled persons with varying degrees of handicaps. This training includes establishing interviewing skills, improving work habits, and increasing job productivity. In addition, some workshops produce commodities for sale to the public or private sector.

Forty-three states have set-aside laws, and these laws vary in scope. Some encourage state agencies and municipalities to purchase the sheltered workshops' products or services. Washington has such a law. Others, such as Florida, require state purchase of available products or services from the workshops.

Alaska does not have a set-aside statute for sheltered workshops. Alaska Statute 37.05.230(8) simply provides that the State's competitive bidding process does not "apply to the purchase of products or services manufactured or provided by a sheltered workshop." According to Dr. Robert Gregovich, Program Coordinator for Developmental Disabilities with the Department of Health and Social Services, the statute is ineffective because it does not provide State agencies with clear guidelines on utilization of products or services from the workshops. Mark O'Brien, a representative from the Division of General Services, stated that the statute is vague, and it neither encourages or mandates State use of workshop products.

Representative Sund  
April 3, 1985  
Page Two

### Enacting a Set-Aside Law in Alaska

If the legislature enacts a set-aside law, the content of the law could range from a brief one-sentence statement encouraging State agency use of workshop products, to a comprehensive law requiring State and local use of available products. Two states--Washington and Florida--provide examples of permissive and mandatory laws.

Washington's laws, enacted in 1974 and 1975, encourage state agencies and municipalities "to purchase products and/or services manufactured or provided by sheltered workshops and programs of the department of social and health services which operate facilities serving the handicapped and disadvantaged" (RCW 43.19.520 and RCW 39.23.005). These purchases "shall be at the fair market price of such products and services as determined by the division of purchasing of the department of general administration" (RCW 43.19.530 and RCW 39.23.010). Procurement contracts for workshop items are usually negotiated through the Washington Association of Rehabilitation Facilities (WARF), a nonprofit organization. Washington Association of Rehabilitation Facilities provides technical assistance to individual workshops and markets products and services to the state.

Florida's set-aside law, passed by the legislature in 1974, requires state agencies to purchase qualified workshop products and services. Workshops submit their products and services to an eight-member commission within the Department of General Services. The commission establishes a procurement list containing workshop items approved for purchase by public agencies. The commission determines which products and services are suitable for procurement after it reviews feasibility studies conducted by a central nonprofit agency. In making this determination, the commission must consider the impact of a proposed item on private enterprise, and whether the proposed product can be manufactured at a reasonable level of quality for a reasonable price to the state. Those products and services approved by the council are placed on the procurement list which is distributed to all purchasing agencies in the state. As products are needed, the purchasing agencies place orders through a central nonprofit agency which facilitates the allocation of all orders.

Representatives of Washington and Florida stated that their programs have been successful in marketing disabled persons' products and services to the state. Charles Harles, a director with the National Association of Rehabilitation Facilities (NARF), said that NARF considers both programs a success. In addition, Mr. Harles stated that the successful set-aside laws usually provide for a central, nonprofit organization to coordinate the marketing of products between the state and the individual workshops. Moreover, Mr. Harles asserted that the most successful set-aside laws are those which mandate state use of workshop products and services.

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Page Three

Attached to this memorandum are copies of set-aside laws in Florida, Washington, Idaho, and Oregon. A copy of AS 37.05.230 is also attached.

I hope that this information is valuable to you. Please call me if you need additional information.

MT

Attachments



ETCA

The Employment and Training Center of Alaska  
A Rehabilitation Industry

2330 Nichols Street  
Anchorage, AK 99508-3495  
(907) 279-6617

Judith E. Berger  
Employment and Training  
Center of Alaska  
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SB 341 PUBLIC HEARING  
February 15, 1986, Anchorage, Alaska  
Public Testimony

My name is Judy Berger and I am with the Employment and Training Center of Alaska, a sheltered workshop.

First of all, I would like to state that I am completely in support of the entire text of Senate Bill 341. It is refreshing to read a proposed law which is both concise in its language and clear in its intent.

Of particular interest to me is the section under Article No. 2, Competitive Sealed Bidding, General Policy, Sec. 36.30.100, B, Item 4, (Page 8 of the Document), where it is stated that competitive sealed bidding is not required "for the purchase of products or services manufactured or produced by a sheltered workshop."

I heartily support the intention of this exception to normal bidding procedures. It is obvious that our Legislators, and, more specifically, the authors and supporters of this bill, are well informed about both the employment needs of adults with disabilities, and the cost benefits to the State of Alaska when these needs are met through gainful employment as opposed to direct financial aid programs. Clearly, the employment of a disabled individual is preferential to the all encompassing, life-long financial support of a disabled person.

However, I would like to bring to your attention a very specific problem with regard to this pending legislation. If this law is passed, as it is written, the Section on Sheltered Workshops will probably never be utilized. Not because it is a bad law but because the administration will not have clearly defined procedures for administering it.

Let me clarify. As you know, the present Law, Alaska Statute 37.05.230, Section 8, also states that competitive bidding is not required of a sheltered workshop. It is a law that has been on the books now for many years and it is a law that is totally ineffective! Why? Because the administrators, the people from the various departments of government who are in a position to request bids for products and services do not know how to interpret it!

As lawmakers you may take pride in these administrators. They are cautious. They are careful. What does it mean that a Sheltered Workshop does not have to bid on a project? Can an administrator give all the work of their department to a sheltered workshop? Or, are they allowed to give only a certain percentage of their work to a sheltered workshop? Is there a dollar amount attached to the work they give to a workshop. . . say \$5,000.00 per year or \$25,000.00. . . or \$100,000.00 per year? Will administrators be accused of giving too much to a workshop?

Certainly, administrators will not be chastised for giving too little, which has been the case over the years. But, who can blame them for being cautious? If they give a workshop a tiny piece of the pie, who will notice? If they give a workshop a substantial piece of the pie, who will scream?

In all fairness, there have been administrators who have utilized the present statute and sent work to sheltered workshops without competitive bids. But, in almost every instance, that work was sent to the workshop under the following circumstances. The price of the product was low and the turn-around time was immediate. Even under those conditions, the administrator generally felt a little nervous. After all, they realized that they were interpreting the law without the benefit of having procedures by which they could operate. This is clearly risky business! At any time, someone could ask them exactly why they did not use normal bidding procedures, and, without procedures to justify their actions, they could find themselves in very hot water!

Consequently, almost all of our work at The Employment and Training Center of Alaska is acquired through competitive bidding. Fortunately, we have survived the competitive bidding process because we take pride in cost consciousness, and, because we are a non-profit organization, we do not seek the normal profit margins.

However, with the State's economy tightening due to declining oil revenues, we recognize that the market for products and services will grow increasingly more competitive; and, like any other small business in Alaska, we may very well suffer the consequences. The difference is, although we are very much like a small business, we are so with a pertinent social obligation.

We employ people with disabilities. We employ the disadvantaged - the very people who, without our support, are likely to return to institutions at a cost to the people of Alaska which is approximately ten (10) times that of our vocational/employment services at The Employment and Training Center of Alaska; or, more precisely, at a cost of almost \$100,000 per year, per individual, at an institution in Alaska as opposed to \$10,000 per year, per individual, at The Employment and Training Center of Alaska.

Clearly, it benefits the State to allow workers with disabilities to earn a portion of their incomes through non-competitive bidding procedures. Besides eliminating the costs for institutionalizing these individuals on a State level, revenues are realized on a Federal level. Employment means taxes paid to the Federal government and diminished Social Security payments to people with disabilities.

The problem is, who is going to see to it that the intent of the law is realized? As lawmakers, it is incumbent upon you to not only make the law, but at least to some degree, interpret it for the benefit of our administrators.

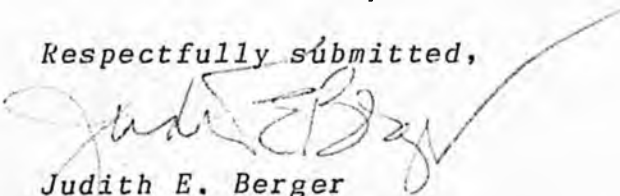
Therefore, I request that either you add more specific guidelines to the section of Senate Bill 341 regarding Sheltered Workshops, or that procedures for utilizing the law be made clear to the administrators who will eventually interpret and decide the circumstances under which a Sheltered Workshop may actually receive work from the State of Alaska without going through formal bidding procedures.

Thank you.

**Specific Recommendations:**

- A. That procedures be written which clearly state how an administrator may utilize the services and/or products of a "sheltered workshop" (qualified non-profit organization) without using formal bidding procedures; and,
- B. That those procedures further state that a "sheltered workshop" (qualified non-profit organization), may receive up to 35 percent of the work normally put out for bid by any individual State Department or entity thereof.

Respectfully submitted,

  
Judith E. Berger  
Marketing Director

JEB:mjb  
(02-18-86)



The Employment and Training Center of Alaska  
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February 18, 1986

The Honorable Pat Rodey  
Alaska State Senate  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Dear Senator Rodey:

I respectfully submit that the following changes be made on the pending legislation, Senate Bill 341:

1. Page Nine (9), Line Three (3):

DELETE: "Sheltered Workshop"  
ADD: "Qualified Non-Profit Organization".

2. Page Nine (9), Lines Eight (8) through Twelve (12),

DELETE: Entire definition of sheltered workshop.  
ADD: (C) A qualified non-profit organization means a program serving persons with physical or mental disabilities that constitute substantial handicaps to employment with the specific objective increasing employment opportunities for these people.

Rationale for making these changes are as follows:

Exclusive focus toward sheltered workshops, defined as a "place", is discrepant with federal law and current employment initiatives for persons with substantial handicaps. The current federal initiative is toward integrated employment outside the sheltered workshop setting.

Public Law 98-527;, the Developmental Disabilities Act of 1984, identifies employment-related activities as a priority area through 1987, and includes a specific right to employment in