

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4093 SJUD SB 341 (FILE 2) 97

The Honorable Pat Rodey
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February 18, 1986

the most integrated setting for persons with developmental disabilities. President Reagan also charged the Department of Health and Human Services to direct a program to strengthen private sector job opportunities for the severely disabled. Under Commissioner Jean Elder, Ph.D., the "Employment Initiative" is changing the delivery of employment-related services away from places called sheltered workshops to providing these services at locations within the private sector. Agencies serving persons with severe disabilities definitely need work from the State to provide meaningful employment. However, this work will not necessarily be done at a place called a sheltered workshop but rather at a variety of locations where workers with disabilities can interact with non-disabled citizens. A good example is janitorial services. These cannot be performed at the sheltered workshop; rather, a crew of workers with disabilities organized by the non-profit agency must go to the State buildings to provide these services.

Respectfully,



Karen M. Ward
Executive Director

KMW:JEB:mjb



The Employment and Training Center of Alaska
A Rehabilitation Industry

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Anchorage, AK 99508-3495
(907) 279-6617

The Employment and Training Center of Alaska (ETCA) is in complete support of the Governor's Council for the Handicapped and Gifted's recommendations to the Fourteenth Alaska Legislature as specified in their 1986 Priority Services information pamphlet.

Of particular importance to The Employment and Training Center of Alaska is the Council's recommendation for FY87 which "supports inclusion of the designated grants in the base operating budget as well as increases for vocational, residential, and family support services, and a cost of living adjustment for the community service providers. (Emphasis added). These community service increases should be offset by cost-savings realized by reduction of a unit at Harborview in both the current and FY87 fiscal years." See "Cost Benefit" breakdown below:

Recommended FY87 increases impacting ETCA:

Vocational Services	281.6
Cost of Living Increase	<u>273.9</u>
FY87 Total	555.5

**COST/BENEFIT
COMMUNITY-BASED VOCATIONAL SERVICES**

COST OF CURRENT PROGRAM (Employing 106 workers with disabilities)	\$ 911,025
LESS FEDERAL TAXES, FICA (Paid back to the Government)	\$ (39,269)
LESS SUPPLEMENTAL SOCIAL SECURITY BENEFITS (Reduced to the worker as a result of employment)	<u>\$ (31,200)*</u>
TOTAL PUBLIC COST OF CURRENT PROGRAM	<u>\$ 840,556</u>
TOTAL COST OF ALTERNATIVE PROGRAM (Harborview, at \$100,000 per person)	\$10,600,000
LESS TOTAL PUBLIC COST OF CURRENT PROGRAM	<u>\$ (840,556)</u>
<u>TOTAL PUBLIC SAVINGS</u> (For employing 106 workers with disabilities)	<u>\$ 9,759,444</u>
FINANCIAL BENEFIT TO WORKER WITH DISABILITY (Discretionary income injected into local economy)	<u>\$ 246,330</u>

*Conservative figure, only reflects those workers no longer receiving benefits as result of employment. Data collection currently in progress to document reductions to workers still receiving some benefits.

Liberty Assoc.
State Processing

The definition of "Alaska bidder" continues to follow standards that are not effective if it is the intent to promote and foster resident hire and businesses of Alaska. A stronger definition, which in our opinion would pass scrutiny, might be:

- 1) holds a current Alaska business license;
- 2) submits a bid or a response to a request for proposals for goods, services, or construction under the name appearing on the person's or firm's current Alaska business license;
- 3) has maintained a place of business within the state staffed by the bidder or a direct employee of the bidder for a period of six months immediately preceding the date of the bid;
- 4) is incorporated as a domestic corporation of Alaska, or is a sole proprietorship or partnership whose principal(s) are bonafide residents of Alaska;
- 5) derives at least 50 percent of income within the state of Alaska;
- 6) if a joint venture, is composed entirely of ventures that qualify under (1)-(5) of this subsection.

Please note that these provisions should also apply to request for proposals which was omitted in the current draft of the bill.

The purpose of the proposed act might also contain a provision for Alaska bidders.

(6.1) foster and promote resident hire and Alaska businesses providing goods and services to the state;

Sec. 36.30.320. SMALL PROCUREMENTS

The limit of \$5,000 per aggregate dollar amount that defines a small procurement is low for many cases of professional services contracting. That amount has been in place for several years now. If for no other reason than inflation, it should be raised to \$6,000. However, for reasons of mere practicality and efficiency, an amount of \$10,000 would be more realistic.

Item (b) delineates that professional services contracts of up to \$25,000 may be awarded under regulations adopted by the commissioner and that not more than \$25,000 in contracts per person (firm) may be awarded by an agency within a 12 month period.

The 12 month period would be better stated as "state fiscal year" (July 1-June 30). More importantly, however, the dollar limit per agency, per year just doesn't fit many contractual situations where a firm, within a fiscal year, performs many bonafide separate and different services for a department or agency which exceed the limit in total.

We would recommend that item b(2) be removed in its entirety. Item (d) would appear to provide the protection the state is seeking, along with the fact that a departmental commissioner must also sign the contract.

The use of the RFP process in the selection of consultants for professional services contracts, such as data processing systems analysis and programming is, by and large, an expensive, time consuming exercise in presenting an appearance of propriety to the selection process. There are many reasons for this.

- a) The description of services desired is often so vague that it is difficult or impossible for a vendor to respond or for any reasonable evaluation criteria to be established by the state.
- b) Evaluation factors are usually so vague or generic that the evaluation process can be biased for almost any reason so long as a "reasonable basis" can be stated for that evaluation. A "reasonable basis" can always be found. In other words, evaluation criteria is rarely objective, it is almost always subjective.
- c) In some cases, a demonstrated and specific knowledge and experience level is not merely needed, it is imperative. When that occurs, a restricted RFP process can be used or a "sole source" award granted. However, in the many cases where generic experience, such as "systems analysis and programming on state data center compatible computer systems and software" is needed, the evaluation of the quality and depth of that experience becomes highly subjective.

That subjectivity is then entrusted to an evaluation team for assignment of points. However, in most cases the team members are hardly qualified to make such an evaluation and fall back on the "glossy" resumes' or other material included in a vendors proposal. Occasionally, a single team member who is qualified makes the evaluation for the team at large. Whoever took that team member to lunch last, or perhaps uses even potentially more dangerous forms of persuasion, may then prevail.

- d) The single specific objective evaluation criteria is cost. But it has been absolutely amazing the low weighting factor that is assigned to it and also the lack of any intelligent means by which a point assignment is given to cost. As an example: Cost has a 25% weighting factor. 10 points are assigned to cost. There are 4 proposals and three have responsive costs. One is eliminated because it is an obvious "low-ball" offering.

Vendor 'A' proposes \$85,000
Vendor 'B' proposes \$57,000
Vendor 'C' proposes \$72,000

A typical state evaluation might give vendor 'B'-10 points; 'C'-9 points; and, 'A'-8 points. A more fair evaluation would be to mathematically give vendor 'B'-10 points; 'C'-7.9 points; and, 'A'-6.7 points.

- e) As stated in item a, above, the description of services desired must be more specific in RFPs. If it is not, then several things result:
1. A vendor doesn't know what the state wants and the proposal becomes a costly guess.
 2. A vendor may easily have proposed at a significantly lower cost if the factors were known. This could make a sizable cost savings to the state and certainly be more fair to vendors in general.
 3. Evaluation of cost cannot be made objectively. It is forced to be made on a subjective and relative basis.

SB 341 could be stronger and more specific regarding Request for Proposal procurements. Suggested wording might be:

- a)must contain the date by which the proposal must be received, and must contain a specific description of the supplies, construction services, or professional services to be provided under contract,.....
- b) A request for proposals must contain that information necessary for an offeror to submit a proposal, and upon which an objective evaluation of proposals may be made.
- c) A request for proposals must contain references to any information or material that cannot be reasonably included with the request. No agency may withhold from review by a prospective offeror any information or material not of a proprietary or confidential nature, regardless of whether referenced in the request for proposal.
- d) A request for proposals must contain the factors and their relative importance by which proposals received will be evaluated. Such factors must be realistically objective and based on the specific description of supplies, construction services, or professional services included in the request for proposals. Price shall be not less than 40 percent of total evaluation criteria and be evaluated as follows:
 1. The price must be judged as realistic and not a deliberate attempt at undercutting.
 2. The responsible and responsive low price offeror shall receive the maximum price evaluation point assignment.
 3. All other responsible and responsive offerors shall receive a mathematically proportionate price evaluation point assignment by dividing the low price by the offerors price and multiplying the result by the maximum price evaluation point assignment.

PRESENTATION TO THE
SENATE JUDICIARY COMMITTEE
STATE OF ALASKA

FEBRUARY 11, 1986

ERROL D. CHAMPION
S.E. ALASKA OPERATIONS MANAGER
N C MACHINERY CO.

MR. CHAIRMAN

MEMBERS OF THE SENATE JUDICIARY COMMITTEE

LADIES AND GENTLEMEN:

THANK YOU FOR THE OPPORTUNITY TO SPEAK ON SB341 THIS AFTERNOON. I WILL KEEP MY REMARKS BRIEF AND SPEAK TO THE ISSUE OF MY CONCERN WHICH IS ASKING THAT THE LIFE CYCLE COSTING METHOD BECOME THE STANDARD PURCHASING PHILOSOPHY OF THE STATE OF ALASKA.

I AM ASSOCIATED WITH N C MACHINERY CO., THE CATERPILLAR DEALER IN ALASKA, AND WILL BE USING CONSTRUCTION EQUIPMENT AS EXAMPLES. BUT THE SAME OBSERVATIONS AND FACTS WOULD APPLY TO TYPEWRITERS, COMPUTERS, TRUCKS, BOATS -- JUST ABOUT EVERYTHING PURCHASED BY THE STATE.

LIFE CYCLE COSTING IS NOT A NEW TERM AND HAS BEEN USED FROM TIME TO TIME BY VARIOUS PUBLIC AGENCIES. THE PRIVATE SECTOR HAS USED LIFE CYCLE COSTING AS THEIR PREFERRED PURCHASING PHILOSOPHY FOR MANY YEARS. IN OUR HIGHLY COMPETITIVE SOCIETY, INITIAL PRICE IS ONLY THE FIRST OF SEVERAL FACTORS THAT SHOULD BE USED TO DETERMINE THE VALUES OF ANY ASSET. HOWEVER, LOOKING BEYOND INITIAL PRICE IS SOMETHING THE STATE OF ALASKA HAS NOT ATTEMPTED ON A CONSISTENT BASIS, OR AS A MATTER OF POLICY AND REGULATION. THE DESIRE OF ALL RESIDENTS IS TO EXTEND THE PURCHASING POWER OF EVERY TAX DOLLAR. LIFE CYCLE COSTING IS A PROVEN LOGICAL PROCEDURE THAT WILL ALLOW THAT TO OCCUR.

LET'S LOOK AT SOME OF THE COMPONENTS OF LIFE CYCLE COSTS. FIRST IS THE INITIAL PRICE OF A PRODUCT. THE INITIAL PRICE IS USUALLY REFERRED TO LOWEST RESPONSIVE BIDDER AND IS THE PRESENT METHOD USED BY THE STATE FOR MOST PURCHASES.

BUT WHAT ABOUT OPERATIONAL COSTS? MAINTENANCE COSTS? PRODUCTIVITY? AVAILABILITY? DEALER SUPPORT? DISPOSAL VALUE? USEFUL OR PRODUCTIVE LIFE?

MANUFACTURERS CAN DO MANY THINGS TO MEET LOW BID, BUT THERE ARE NO FREE LUNCHES -- IF THE INITIAL PRICE IS LOWER THAN EVERYONE ELSE'S, THEN WHERE IS THE SAVINGS COMING FROM? MAINTENANCE? USEFUL LIFE? DISPOSAL VALUE? CORNERS HAD TO BE CUT AND THE END RESULT IS THE SIMPLE FACT THAT LOW BID ON INITIAL PRICE IS A VERY POOR WAY TO PURCHASE GOODS. NO AMOUNT OF SPECIFICATION WRITING WILL GUARANTEE THE BUYER THAT THEY ARE PURCHASING THE BEST PRODUCT MADE. MANUFACTURERS CAN EASILY WORK AROUND SPECS IF NEEDED, AND IF SPECS BECOME TOO TIGHT, BIDDERS COULD BE REMOVED AND THE PRODUCT BECOME A SOLE SOURCE ITEM.

WITH THE SOPHISTICATION IN OUR SOCIETY'S ABILITY TO MONITOR AND RETAIN INFORMATION, ALL OWNERS SHOULD MAINTAIN DATA BASES THAT CONTAIN INFORMATION ON FUELS, LUBRICANTS, REPLACEMENTS PARTS, PRODUCT AVAILABILITY, SUPPORT SERVICES, AND DISPOSAL VALUE. THIS DATA BASE COULD EASILY REVEAL THE TRUE OWNERSHIP COSTS AND THUS PRODUCE LIFE CYCLE COSTING AS A METHOD OF PROCUREMENT.

TODAY I WILL LEAVE YOU WITH SOME BACKGROUND INFORMATION ON EQUIPMENT WHICH DEMONSTRATES MORE CLEARLY THE SUBJECT OF LIFE CYCLE COSTING

THE FIRST EXAMPLE IS A COMPARISON OF EQUIPMENT INVESTMENT ANALYSIS. THIS PROGRAM IS WIDELY ACCEPTED IN THE PRIVATE SECTOR AS A PROVEN METHOD OF DETERMINING OWNERSHIP COSTS AND POTENTIAL ASSET VALUE OVER THE LIFE OF A PRODUCT.

THIS E I A HAS BEEN PREPARED FOR YOUR COMMITTEE BY ELIMINATING ALL TAX AND INVESTMENT FINANCING INCENTIVES. IT IS A STRAIGHT-FORWARD EXAMPLE OF 5 PRODUCTS -- ALL WITH DIFFERENT SELLING PRICES ON THE FIRST PAGE. AFTER LOOKING AT SELLING PRICE, PLEASE NOTE THE EFFECTS OF DIFFERENT RESALE VALUES; THE RANGE IS FROM 55% TO 15%.

ON PAGE 6, THE E I A EXAMINES HOURLY OPERATING COSTS, AVAILABILITY, REPAIRS AND REPLACEMENT COSTS OF WEAR ITEMS. THIS TYPE OF INFORMATION IS AVAILABLE ON MANY PRODUCTS, AND THE DATA BASE COULD BE EXPANDED TO INCLUDE ALL PRODUCTS PURCHASED BY THE STATE.

PAGE 7 SUMMARIZES THE ANALYSIS AND PRESENTS A VERY CLEAR PICTURE OF WHAT ACTUALLY HAPPENS AT THE END OF THE 10 YEAR LIFE. IN THIS CASE, PRODUCT "C" HAS AN \$18,787 ADVANTAGE OVER PRODUCT "A", WHICH IN ITSELF HAS AN ADVANTAGE OVER PRODUCTS "B", "D", & "E". IF YOU WILL LOOK BACK TO THE INITIAL SELLING PRICE, NOTE THAT BOTH "A" AND "C" HAVE THE HIGHEST PRICE. WHICH MACHINE WOULD THE STATE HAVE PURCHASED UNDER OUR CURRENT LOWEST QUALIFIED BIDDER PROCEDURE?

IF SB341 CONTAINS THE REQUIREMENT FOR LIFE CYCLE COSTING, THE PURCHASING DECISION WOULD BE DIFFERENT, AND AT A FAR GREATER SAVINGS TO THE STATE OVER THE 10 YEAR PERIOD. THE GRAPH ON PAGE 8 WAS

PREPARED TO QUICKLY RECAP THE FACT THAT THE PRODUCT WITH THE HIGHEST ASSESSED VALUE IS THE BEST CHOICE FOR THE STATE, NOT THE LOW BID.

THE GRAPHS ON PAGES 9 THROUGH 12 REFLECT THE RESALE PRICES OF CONSTRUCTION EQUIPMENT BASED ON PUBLIC AUCTIONS ACROSS THE U.S. I HAVE INCLUDED THESE CHARTS TO GIVE EACH OF YOU AN IDEA, AS WELL AS SUPPORT FOR THE STATEMENT, THAT THERE IS A MAJOR DIFFERENCE IN PRODUCT VALUE AT THE TIME OF RESALE. THIS INFORMATION IS AVAILABLE ON AN ON-GOING, UPDATED BASIS, AND COULD EASILY BE INCLUDED IN THE PURCHASING DECISION.

IN SUMMARY, I HAVE NOT PREPARED SPECIFIC WORDING CHANGES TO SB 341 AS I KNOW STAFF IS WORKING ON THIS SUBJECT. MY PRESENTATION TO YOU TODAY IS TO PROVIDE YOU WITH CONCRETE DATA AND INFORMATION THAT CLEARLY DEMONSTRATES THE BENEFITS OF LIFE CYCLE COSTING.

GOVERNMENTS HAVE TRADITIONALLY USED LOWEST BID BECAUSE IT LOOKS GOOD TO THE TAXPAYERS AT THE BEGINNING. BUT WHEN THE FACTS ARE IN, LOWEST INITIAL BID IS USUALLY ON A PRODUCT THAT WINDS UP COSTING THE TAXPAYERS FAR TOO MUCH IN REPAIRS, LACK OF EFFICIENCY, PRODUCTION AND RESALE. I URGE YOUR COMMITTEE TO ENDORSE LIFE CYCLE COSTING AS THE STANDARD METHOD OF PURCHASING BY THE STATE OF ALASKA.

THANK YOU.

EQUIPMENT
INVESTMENT
ANALYSIS

PREPARED FOR.... State of Alaska

DATE..... February 11, 1986

BASIC INFORMATION	UNIT #1	UNIT #2	UNIT #3	UNIT #4	UNIT #5
MODEL	A	B	C	D	E
*SELLING PRICE	125000	112000	135000	98000	91000
*DOWN PAYMENT(Z)	0	0	0	0	0
*TRADE-IN	0	0	0	0	0
TOTAL.....	0	0	0	0	0
*BOOK VAL OF TRADE	0	0	0	0	0
UNPAID BALANCE	125000	112000	135000	98000	91000
*OWNERSHIP PERIOD	10	10	10	10	10
*RESALE VALUE %	55	32	30	20	15
EST MARKET VALUE	68750	35840	40500	19600	13650
*FINANCE PD(MOS.)	0	0	0	0	0
*SIMPLE INT RATE	0	0	0	0	0
*INS & LOCAL TAX %	0	0	0	0	0
*INV TAX CREDIT %	0	0	0	0	0
*CAP COST RECOV %	0	0	0	0	0
*OPT(1=YES,0=NO)	0	0	0	0	0
RESIDUAL (BK) VAL	100	100	100	100	100
*CD. TAX BRACKET %	0	0	0	0	0
TOTAL CASH PAIDOUT					
Down Pat/Trade	0	0	0	0	0
Unpaid Balance	125000	112000	135000	98000	91000
Interest	0	0	0	0	0
Ins & Local Tax	0	0	0	0	0
TOTAL.....	125000	112000	135000	98000	91000
TOTAL TAX SAVINGS					
INV TAX CREDIT					
Adjust Tax Basis	125000	112000	135000	98000	91000
Tax credit...	0	0	0	0	0
CAP COST RECOVERY					
Normal Tax Basis	125000	112000	135000	98000	91000
Optional Basis	0	0	0	0	0
Cost Recovery..	0	0	0	0	0
Interest	0	0	0	0	0
Ins & Local Tax	0	0	0	0	0
TOTAL.....	0	0	0	0	0
NET RESALE A/TAXES					
Est Market Value	68750	35840	40500	19600	13650
Book Value	125000	112000	135000	98000	91000
Added Income	-56250	-76160	-94500	-78400	-77350

Income Tax Due	0	0	0	0	0
RESALE PROFIT..	68750	35840	40500	19600	13650

TOTAL OWNING COST					
Total Cash Pat	125000	112000	135000	98000	91000
Total Tax Svgs	0	0	0	0	0
Resale Profit	68750	35840	40500	19600	13650
AFTER TAX OWNING COST	56250	76160	94500	78400	77350

ADVANTAGE/ (-DISADVANTAGE)		-19910	-38250	-22150	-21100
=====					
EXPENSE REVENUE PROFITABILITY ANALYSIS					

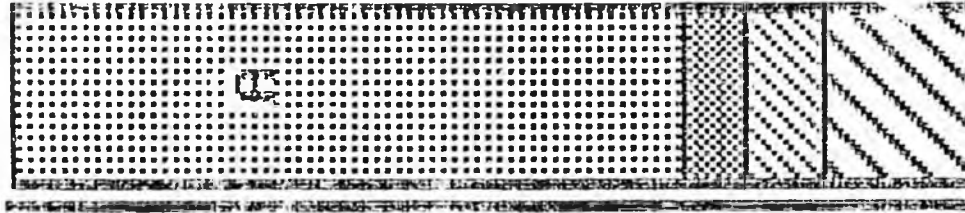
*ANNUAL SCHD HOURS	1000	1000	1000	1000	1000
*AVAILABILITY	95	90	90	85	80

HRLY OPERATE COST					
FUEL					
*Hourly Usage	8.00	7.80	8.25	8.40	8.80
*Price/Gallon	\$1.25	\$1.25	\$1.25	\$1.25	\$1.25
HRLY FUEL COST	\$10.00	\$9.75	\$10.31	\$10.50	\$11.00
*LUB.OIL,FIL,GRS	\$1.15	\$1.25	\$1.30	\$1.40	\$1.55
UNDERCARRIAGE					
*"I" Factor		0	0	0	0
*"A" Factor		0	0	0	0
*"Z" Factor		0	0	0	0
*Basic Factor					
HOURLY COST.....	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TIRES					
*Est Life (Hrs)	3000	3000	3000	3000	3000
*Replace Cost	9000	9000	9000	9000	9000
HOURLY COST.....	\$2.05	\$2.00	\$2.00	\$1.94	\$1.88
REPAIRS					
*Ext Life Mult.	0.00	0.00	0.00	0.00	0.00
*Basic Factor					
HOURLY COST.....	\$2.10	\$2.50	\$2.60	\$2.45	\$2.75
*SPEC ITEMS \$/HR	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00
*OPERATOR WAGES	\$35.00	\$35.00	\$35.00	\$35.00	\$35.00
TOTAL HOURLY OPERATING COST..	\$55.30	\$55.50	\$56.21	\$56.29	\$57.18

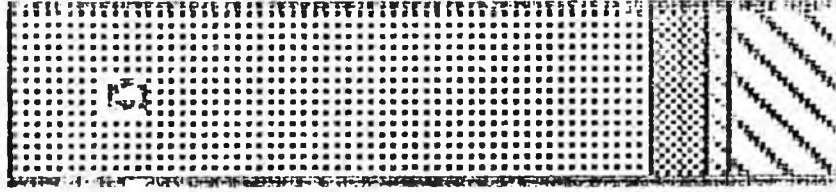
OPERATING EXPENSE SUMMARY					
ANNUAL SCHD HRS	1000	1000	1000	1000	1000
AVAILABILITY	95	90	90	85	80
ANNUAL OPER HRS	950	900	900	850	800
HRLY OPER COST	\$55.30	\$55.50	\$56.21	\$56.29	\$57.18
ANNUAL OP COST	\$52,537.50	\$49,950.00	\$50,591.25	\$47,847.50	\$45,740.00
OWNERSHIP PERIOD	10	10	10	10	10
TOTAL OPERATING					

EXPENSE.....	\$525,375.00	\$499,500.00	\$505,912.50	\$478,475.00	\$457,400.00
REVENUE POTENTIAL					
HRLY PRODUCTION					
ANNUAL OPER HRS	950	900	900	850	800
ANN PRODUCTION	0	0	0	0	0
UNIT PRICE/YD, TN		\$^0.00	\$0.00	\$0.00	\$0.00
ANNUAL REVENUE	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
OWNERSHIP PERIOD	10	10	10	10	10
TOTAL REVENUE POTENTIAL.....	0	0	0	0	0
PROFITABILITY SUMMARY					
REV POTENTIAL	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
OPER EXPENSE	\$525,375.00	\$499,500.00	\$505,912.50	\$478,475.00	\$457,400.00
TAXABLE INCOME	(\$525,375.00)	(\$499,500.00)	(\$505,912.50)	(\$478,475.00)	(\$457,400.00)
TAXES DUE ON INC	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
NET INCOME A/TAX	(\$525,375.00)	(\$499,500.00)	(\$505,912.50)	(\$478,475.00)	(\$457,400.00)
MACHINE OWN COST	\$54,250.00	\$76,160.00	\$94,500.00	\$78,400.00	\$77,350.00
NET PROFIT POTENTIAL.....	(\$581,625.00)	(\$575,660.00)	(\$600,412.50)	(\$556,875.00)	(\$534,750.00)
ADVANTAGE/ (-DISADVANTAGE)					
		\$5,965.00	(\$18,787.50)	\$24,750.00	\$46,875.00

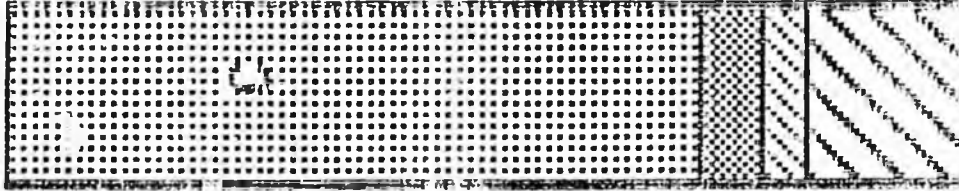
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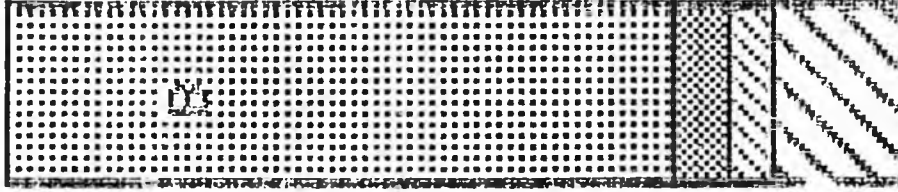
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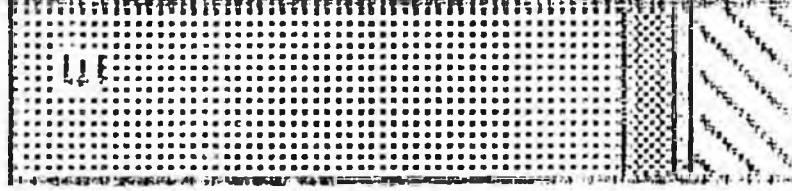
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205.6



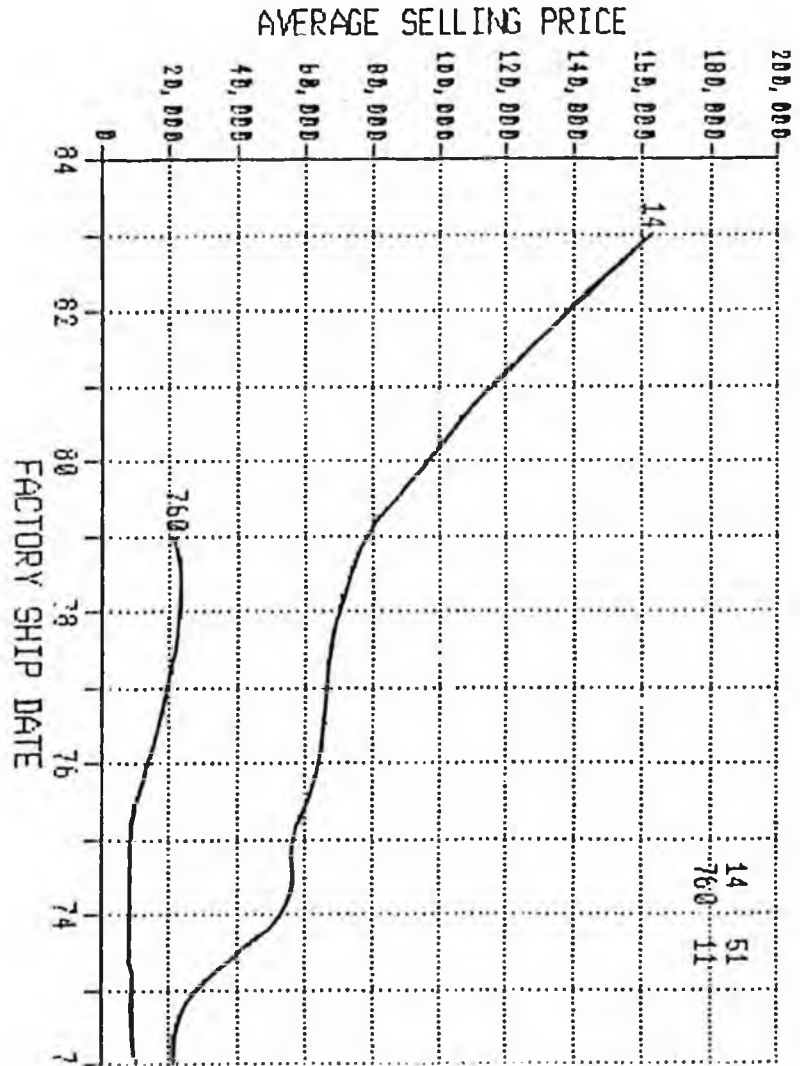
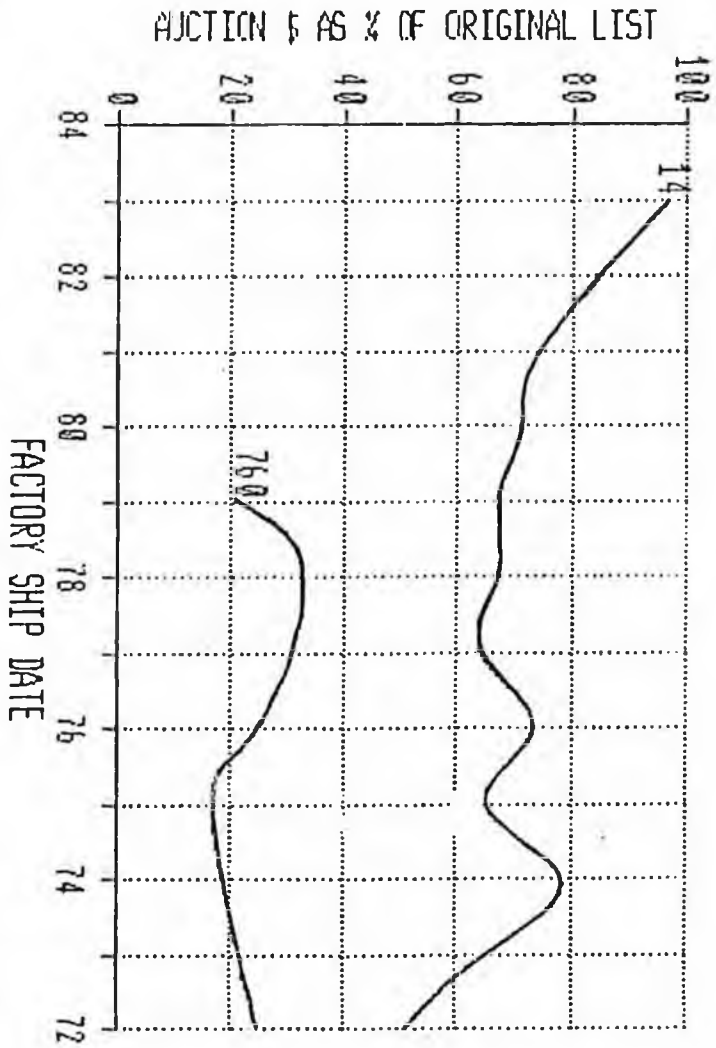
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ASSET VALUE TO OWNER/LESSEE

USED EQUIPMENT PRICES

BASED ON PRICES OF MACHINES SOLD AT 138 FORKE
 BROS., MILLER & MILLER, AND RITCHIE BROS.
 AUCTIONS IN 34 STATES AND 5 CANADIAN PROVINCES DURING 1984

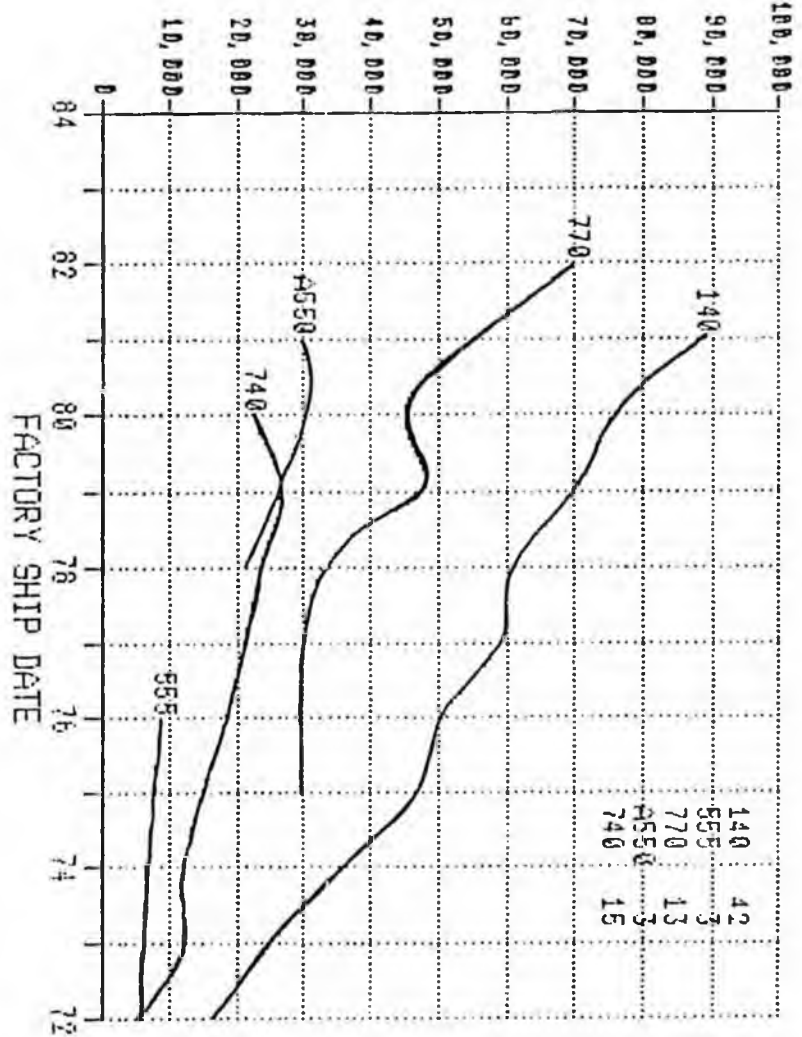


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USED EQUIPMENT PRICES

BASED ON PRICES OF MACHINES SOLD AT 138 FORKE
BROS., MILLER & MILLER, AND RITCHIE BROS.
AUCTIONS IN 34 STATES AND 5 CANADIAN PROVINCES DURING 1984

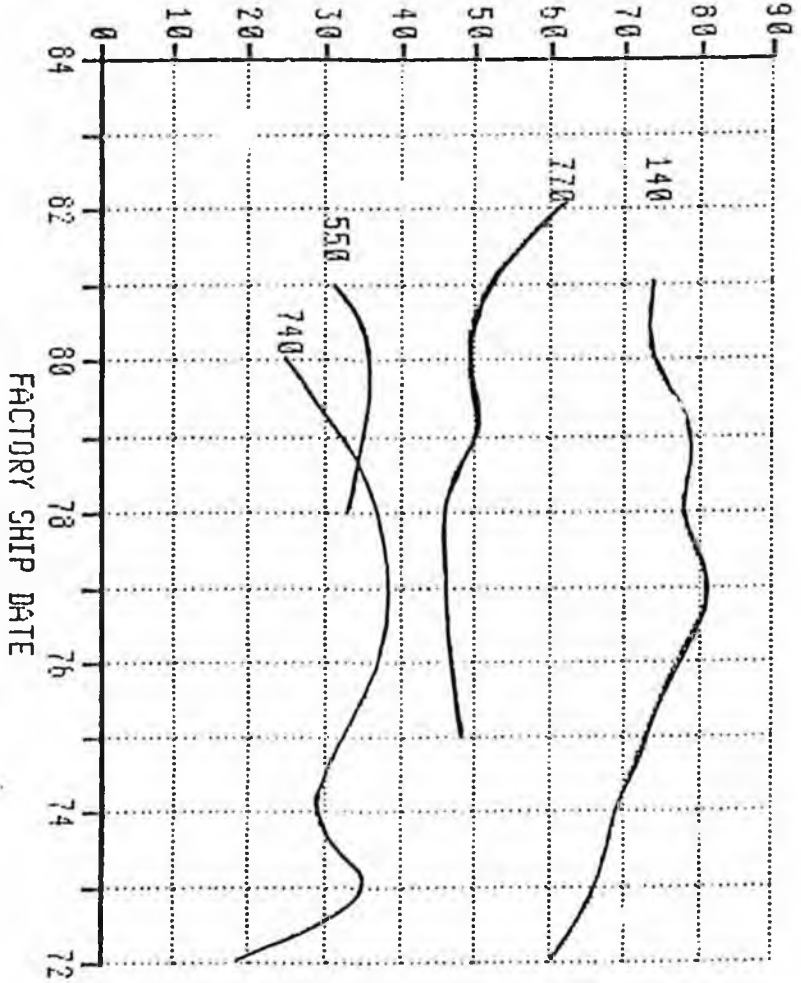
AVERAGE SELLING PRICE



140	42
555	3
770	13
4550	3
740	15

140

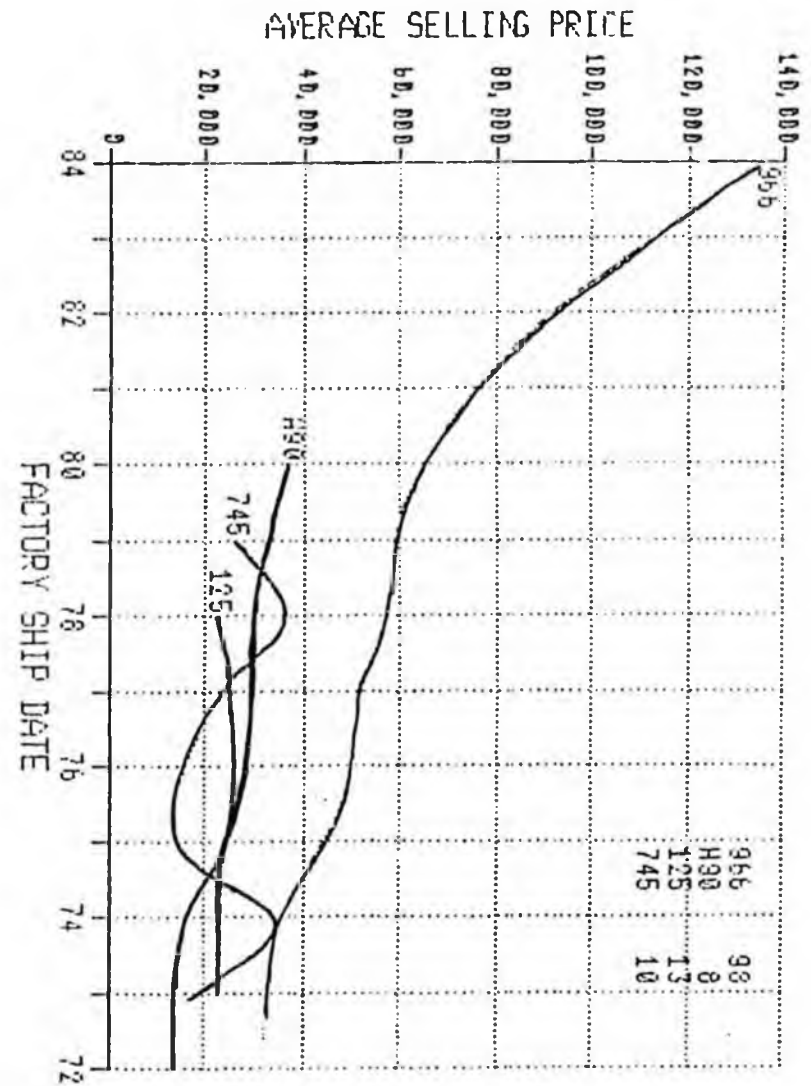
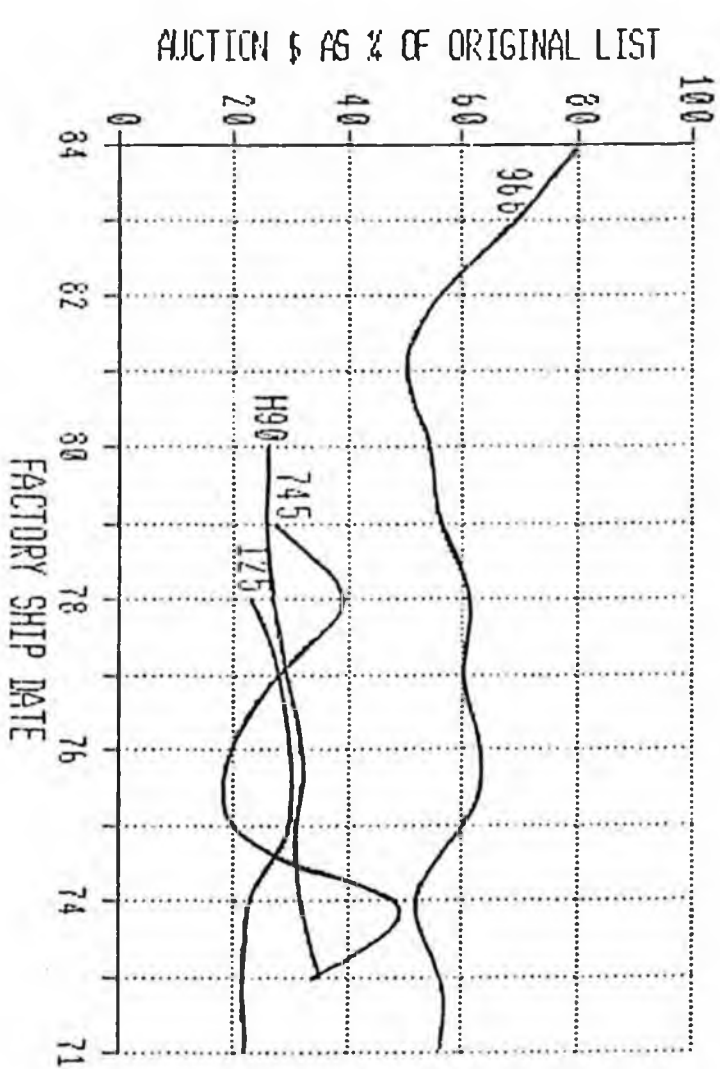
AUCTION % AS % OF ORIGINAL LIST



FACTORY SHIP DATE

USED EQUIPMENT PRICES

BASED ON PRICES OF MACHINES SOLD AT 138 FORKE
BROS., MILLER & MILLER, AND RITCHIE BROS.
AUCTIONS IN 34 STATES AND 5 CANADIAN PROVINCES DURING 1984

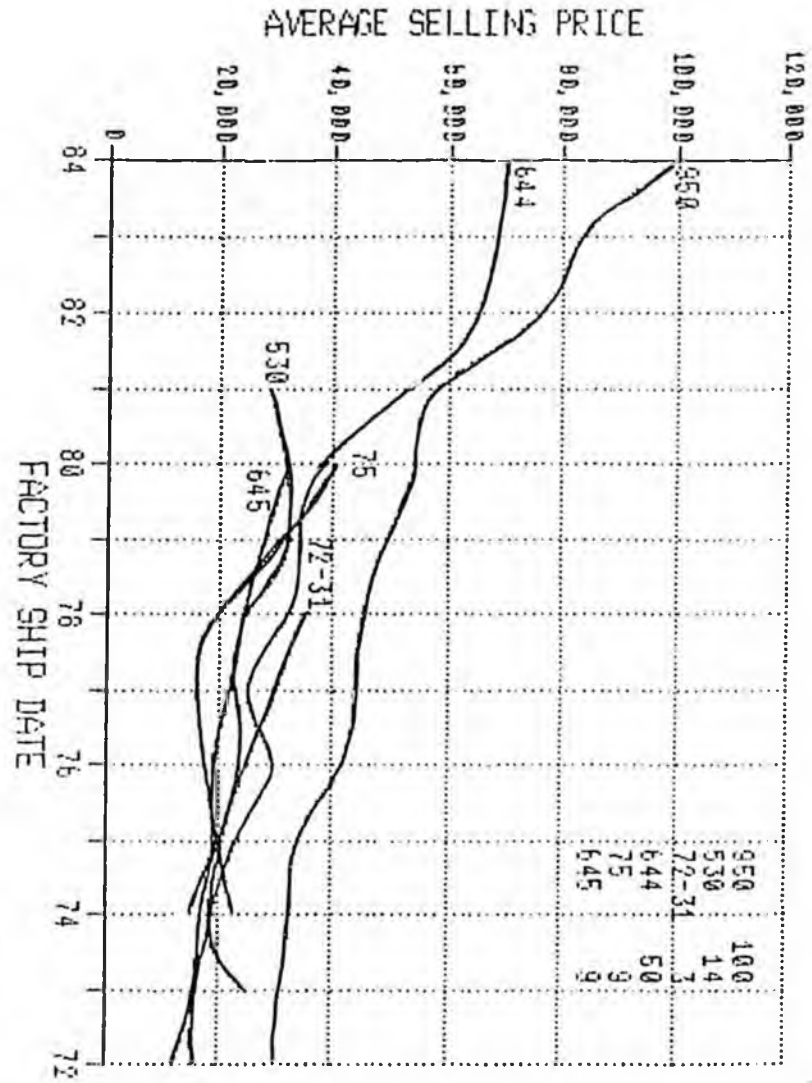
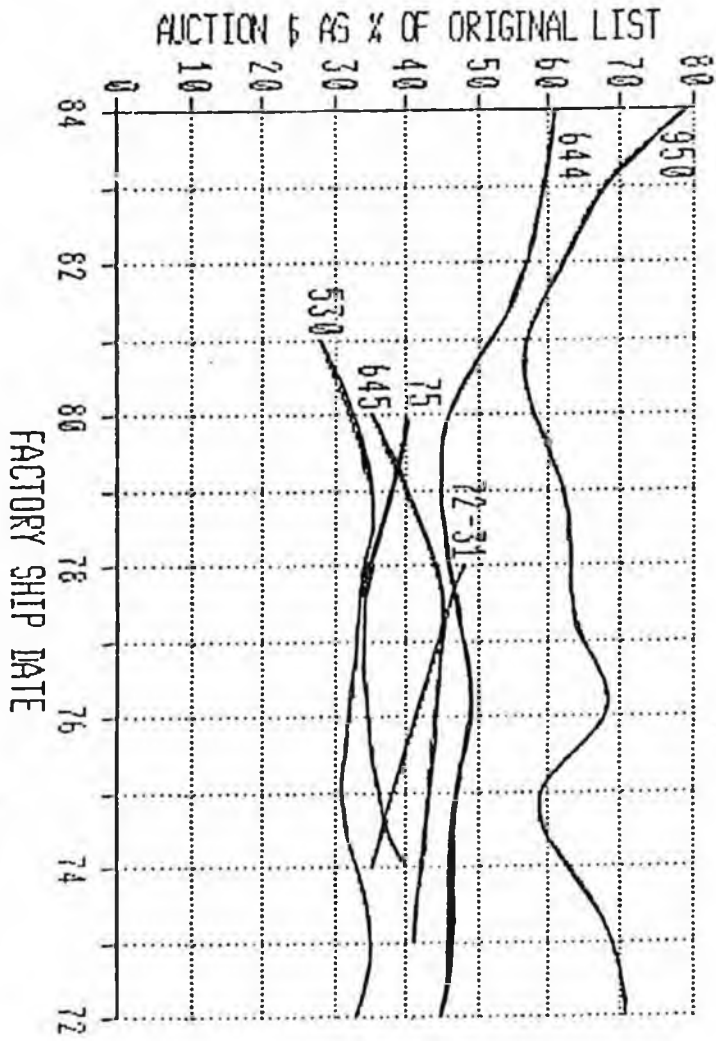


966	98
H90	8
125	13
745	10

966

USED EQUIPMENT PRICES

BASED ON PRICES OF MACHINES SOLD AT 138 FORKE
BROS., MILLER & MILLER, AND RITCHIE BROS.
AUCTIONS IN 34 STATES AND 5 CANADIAN PROVINCES DURING 1984



950	100
530	14
72-31	7
644	50
75	9
645	9

950

TESTIMONY OF

ALASKA CHAPTER

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

TO

THE SENATE SELECT INTERIM COMMITTEE

ON

PROCUREMENT PRACTICES AND PROCEDURES

December 5, 1985



COMMENTS ON "WORK DRAFT"
ON
PROCUREMENT PRACTICES AND PROCEDURES ACT

AGC-Alaska on behalf of our over 800 member firms appreciates the opportunity to comment on this draft bill. We also appreciate the time and effort of the chairman and staff in developing the draft bill. Following our general comments are some more specific comments relating to particular sections of the draft bill.

In general the committee should be applauded for using as a basis "The Model Procurement Code for State and Local Governments" published by the American Bar Association. The thousands of hours and different perspectives represented by that document cannot easily be duplicated. For the same reason deviations from the "Model Procurement Code" (MPC) should be scrutinized.

One major deviation from the MPC is the elimination of the State Procurement Policy Office. As stated in the MPC commentary at page 9:

A major conceptual basis of the Code, the separation of policymaking and operational functions, is best achieved through the establishment of an independent policy body such as the [State] Procurement Policy Office suggested above. This Section provides for placement of the Policy Office either as an independent entity within the executive branch of the government or within an existing department of government such as General Services, Finance, or Administration. Placement in the

executive branch as a separate entity is the preferred arrangement as it would further ensure the professional integrity of this important policymaking body, and appropriately elevate the entire procurement process in the public sector.

Under the MPC it is the Policy Office's responsibility to promulgate regulations. Under the draft bill the Commissioner of Administration, i.e. central Procurement Officer will promulgate regulations.

The principal of vesting the regulatory function in a policy office without line authority over individual procurement actions is fundamental to the MPC. Elimination of the Policy Office no longer separates the policy making from the day to day operation of the procurement process.

Perhaps the most important aspect of procurement requiring the separation of procurement policy from day to day procurement operation is the promulgation of regulations providing for adjustments in price, time of performance or other contract provisions. Utilization of a state policy office can insure the development of fair construction contract provisions. Fair construction documents avoid litigation and encourage reputable contractors to bid projects. Often times, tunnel vision by unenlightened public procurement officials bring about contract provisions which unfairly allocate risk and increase litigation between the parties.

In drafting the MPC the drafters obviously discussed this problem and arrived at the solution expressed in MPC § 2-101 and § 5-401. Requiring the

Procurement Policy Office to address contract provisions relating to changes, variations in estimated quantities and different site conditions provides for broad input on this important policy related contract provision. Accordingly, AGC-Alaska recommends the creation of a Procurement Policy Office comprised of three members who have demonstrated sufficient business and professional experience (see MPC § 2-101(1) & (2) [Alternative A]).

Our second comment relates to the overall structure of the draft bill. The MPC recognizes construction as unique to the procurement process and devotes a separate article (Article 5) to the procurement of construction and related services. The work draft does not devote a separate article to construction; instead the work draft normally prefaces some article as relating only to construction.

This is a mere difference of opinion in drafting techniques; however, the special attention devoted to construction procurement by the drafters of the MPC is lost in the work draft. Additionally, the work draft may cause confusion to procurers and procurees as presently written. For example, work draft Sections 36.30.430-460 are not limited to construction while the MPC limits those provisions to construction procurement.

Two other broad areas bear discussion at this time. One is the appropriateness of centralizing all procurement activity in the chief procurement office and then providing the discretionary ability to delegate that authority to Department of Transportation and Public Facilities (DOT/PF) for construction of highways and public works. A mandatory delegation of procurement authority with a required consistency with the Procurement

Practices Act and its Regulations may be more beneficial to all affected parties. Construction procurement is unique and DOT/PF has experience as a construction procurer.

The other area relates to the magnitude of procurement, especially construction procurement, made with state dollars by political subdivisions of the state and other "grant" recipients. AGC-Alaska strongly recommends that this committee propose legislation requiring any grant or appropriation recipient to utilize procurement practices consistent with this Procurement Practices and Procedure Act and its regulations.

Section by Section Comments and Recommendations

Section 1 (Similar to MPC § 1-101)

Recommendation: Eliminate Subsection (9). [p. 92 ln. 1-5]

Comments: AGC-Alaska fails to understand the rationale for the inclusion of affirmative action language in a procurement act. AGC-Alaska is opposed to any special preference procurement program based on race, size, sex, residency or any other factor irrelevant to the contractors ability to perform. The best way to ensure discriminatory free procurement is competitive sealed bidding. Any other method allows for possible discrimination.

Section 36.30.005 (Similar to MPC § 2-301)

Recommendation: Modify by providing for a "Policy Office" as in the MPC

Comments: See previous general comments on "Policy Office"

Section 36.30.010 (Similar to MPC § 2-202)

Recommendation 1: In (b) [p. 93; ln. 15] provide a mandatory delegation to DOT/PF for the construction of highways and public works subject to this act and its regulations. The definition of "public works" should be expanded beyond "fixed works constructed or maintained by the DOT/PF" as currently defined in AS 35.25.020.

Comment: DOT/PF is in the business of construction procurement and has experience with construction procurement under similar provisions. See Title 35.

Recommendation 2: Delete references to commissioner adopting regulations

in (b)(c)(d) and refer to Policy Office.

Sections 36.30.020 and 36.30.020

Recommendation: Delete "construction." Add new section transferring authority to contract for construction of public works for legislature or court system to DOT/PF subject to this act and its regulations.

Comments: The court system and the legislature are not in the business of procuring construction.

Section 36.30.035 [New]

Recommendation: Add new section requiring any grant or appropriation recipient to adopt procedures to govern the procurement of supplies and services that are substantially equivalent to the procedures prescribed by this chapter. Require DOT/PF to contract for construction of any public work for any grant recipient.

Comment: Procurement problems are not limited to state government. If state dollars are spent by others then similar safeguards on procurement with those state dollars should be instituted.

Section 36.30.040

Recommendation 1: Replace (a) with language authorizing policy office to adopt regulations. (See MPC § 2-101 and 2-102).

Comment: See earlier comments.

Recommendation 2: Eliminate discrimination and affirmative action language in (b)(13).

Comment: See comments to Section 1.

Section 36.30.60 (Source MPC § 4-201 & § 4-202)

Recommendation: Provide that policy office has authority to promulgate regulations governing the preparation, maintenance, and content of specifications for supplies, services and construction.

Section 36.30.070 (Source MPC § 8-101; § 8-201)

Recommendation: Provide that Policy Office adopts regulations

Section 36.30.100 (Similar to MPC § 3-201)

Comment: AGC-Alaska supports competitive sealed bidding.

Section 36.30.110

Recommendation: Delete (b) in its entirety.

Comment: Requiring subcontractors to be named in the bid and requiring inclusion of evidence of each subcontractor's valid Alaska business license demonstrates a clear lack of understanding of the construction bid process. The inclusion of such a provision will lead to increased costs and increased litigation.

Prior to selection of a subcontractor a primary contractor must evaluate a bid and the scope of work quoted in the sub-bid. the prime must then check on insurance; bonding capability and qualification of the subcontractor; and finally the prime must insure that the labor policy is compatible with any labor agreements to which the prime contractor may be signatory. All this takes time. Bids are not recieved until shortly before bid time; and the activity level at a prime contractor's office while receiving this information (mostly by phone) is phenomenal.

Requiring the prime contractor to list subs prior to investigation and evaluation of the sub could create contractual obligations between a prime and a sub where later investigation or evaluation by the prime contractor would result in selection of a different subcontractor.

This proposed requirement is similar to requiring the purchasing officer to award a contract within two minutes of opening the bids.

The requirement for evidence of valid Alaska business licenses for subcontractors to be submitted with the bid is unreasonable. Some specialty subcontractors may not be available locally. In any event the requirement is hardly consistent with taking bids over a phone.

Section 36.30.120 (Similar to MPC § 301)

Recommendation: Amount of security and waiver of security should be set by the Policy Office not the commissioner. All regulations should come from the Policy Office. Since this is applicable to construction only, put this section in a separate article.

Comments: To avoid confusion and emphasize the unique nature of construction procurement a separate article should exist, as in the MPC, for construction. See MPC Article 5.

Section 25.30.130 (Source MPC § 3.202(3))

Recommendation: Require publication in a statewide newspaper of general circulation calculated to reach prospective bidders.

Section 36.30.150 (Source MPC § 3-202(6))

Comment & Recommendation: AGC-Alaska fails to understand the qualifying language "unless the delay was due to an error of a state employee directly responsible for opening the bids" contained in (a). This may lead to increased bid protests and accordingly we recommend deleting the language.

Section 36.30.170 (Source MPC § 3-202(7))

Recommendation 1: Delete lines 8 through 12 of page 13.

Comment: Conform to MPC.

Recommendation 2: Subsection (e) is unclear and the line between responsiveness and responsibility is blurred by the language. Delete (e) and define "responsive" and "responsible" in accordance with MPC § 3-101(6) & (7).

(6) Responsive Bidder or Offeror means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(7) Responsive Bidder means a person who has submitted a bid which conforms in all material aspects to the Invitation for Bids.

Section 36.30.190 & 36.30.200

Comment: AGC-Alaska agrees that multistep sealed bidding and competitive sealed proposals may not be used for construction.

Section 36.30.300

Recommendation: Add the following language "sole source procurements may not be used for construction."

Section 36.30.350 (Similar to MPC § 3-301).

Section 36.30.360 (Similar to MPC § 3-401).

Section 36.30.370 (Similar to MPC § 3-501).

Section 35.30.380 (Similar to MPC § 3-502).

Section 36.30.390 (Similar to MPC § 3-503).

Section 36.30.400 (Similar to MPC § 3-403)

Section 36.30.410 (Similar to MPC § 3-601)

Section 36.30.420 (Similar to MPC § 3-602)

Section 36.30.430 (Source MPC § 5-401 and § 6-101)

Comment and Recommendation 1: Many of the provisions of this section relate only to construction contracts. To avoid confusion the MPC separated construction contracts and supply and service contracts. See MPC § 5-401 and § 6-101. AGC-Alaska recommends following the separation utilized by the MPC.

Recommendation 2: Delete (5) pg. 25 ln. 1-3.

Comment: See comments to Section 36.30.110.

Section 36.30.440 (Source MPC § 5-401 and § 6-101)

Comment: Subsection (a)(5) contains an inappropriate designation of the commissioner and is inconsistent with legal remedies contained in Section 36.30.620, et seq. Under Section 440 the commissioner makes the unilateral determination if there is no mutual agreement and then makes the final decision on any appeal pursuant to Section 680. Due process appears to be lacking.

Section 36.30.470 (Similar to MPC § 5-402)

Comment and Recommendation: This provision relates only to construction contracts and should be in a separate article for construction procurement as in the MPC.

Section 36.30.460 (Similar to MPC § 7-101)

Section 36.30.560 (MPC § 9-101)

Section 36.30.565 (MPC § 9-101)

Comment: Subsection (a) may increase rather than decrease litigation of bid protests because determinations will have to be made concerning whether the impropriety was "apparent" before the bid opening. A similar increase in litigation may result from the insertion of subsection (c).

Section 36.30.580

Recommendation: Advise protestant of right to appeal.

Section 36.30.590

Recommendation 1: Utilize Procurement Appeals Board rather than the commissioner. See MPC § 9-501.

Recommendation 2: 5 days to file an appeal is too short; a minimum of 10 is recommended.

Section 36.30.620

Recommendation: 30 days to issue decision is sufficient time.

Section 36.30.625, 630, 632, 635, 645, 650, 660, and 670

Comment: Where in the work draft does the purchasing officer make the decision which is appealed in this section?

Recommendation: Authority needs to be given to someone to resolve contract controversies. See MPC § 9-103. Appeal can then be made from this decision. Appeal should be to Procurement Appeals Board. (See MPC § 9-103)

Section 36.30.630-650

Recommendation 1: Appeal should be to Procurement Appeals Board.

Recommendation 2: Add remedies, interest, and waiver of sovereign immunity sections contained in MPC § 9-202; § 9203, § 9-301, and § 9-401.

Section 35.30.900

Recommendation: Eliminate subsection (1).

Comment: See comments to Section 36.30.035.

Alaska



Chapter

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

HEADQUARTERS • 3201 Spenard Road • Anchorage, Alaska • P.O. Box 4-2500 • Anchorage, Alaska 99509
BRANCH OFFICES • Fairbanks • Juneau • Soldotna — William E. Schneider, Executive Director

TESTIMONY OF

ALASKA CHAPTER
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

TO

SENATE JUDICIARY COMMITTEE

ON

PROCUREMENT PRACTICES AND PROCEDURES
SB 341

FEBRUARY 15, 1986

AGC-Alaska on behalf of our over 800 member firms appreciates the opportunity to comment on SB 341. Following our general comments are some more specific comments relating to particular sections of the bill.

In general, we applaud the legislature and drafters for using "The Model Procurement Code for State and Local Governments" published by the American Bar Association as a basis. The thousands of hours and different perspectives represented by that document cannot easily be duplicated. For the same reason deviations from the "Model Procurement Code" (MPC) should be scrutinized.

One deviation from the MPC of great concern to the AGC is the required naming of subcontractors at bid submittal. The impact of this proposed requirement would be substantial. Accordingly, we have addressed our concerns on that issue separately.

Another major deviation from the MPC is the elimination of the State Procurement Policy Office. As stated in the MPC commentary at page 9:

A major conceptual basis of the Code, the separation of policymaking and operational functions, is best achieved through the establishment of an independent policy body such as the [State] Procurement Policy Office suggested above. This Section provides for placement of the Policy Office either as an independent entity within the executive branch of the government or within an existing department of government such as General Services, Finance, or Administration. Placement in the executive branch as a separate entity is the preferred arrangement as it would further ensure the professional integrity of this important

policymaking body, and appropriately elevate the entire procurement process in the public sector.

Under the MPC it is the Policy Office's responsibility to promulgate regulations. Under the bill the Commissioner of Administration, i.e. central Procurement Officer will promulgate regulations.

The principal of vesting the regulatory function in a policy office without line authority over individual procurement actions is fundamental to the MPC. Elimination of the Policy Office no longer separates the policy making from the day to day operation of the procurement process.

Perhaps the most important aspect of procurement requiring the separation of procurement policy from day to day procurement operation is the promulgation of regulations providing for adjustments in price, time of performance or other contract provisions. Utilization of a state policy office can insure the development of fair construction contract provisions. Fair construction documents avoid litigation and encourage reputable contractors to bid projects. Often times, tunnel vision by unenlightened public procurement officials bring about contract provisions which unfairly allocate risk and increase litigation between the parties.

In drafting the MPC the drafters obviously discussed this problem and arrived at the solution expressed in MPC § 2-101 and § 5-401. Requiring the Procurement Policy Office to address contract provisions relating to changes, variations in estimated quantities and different site conditions provides for broad input on this important policy related contract provision. Accordingly,

AGC-Alaska recommends the creation of a Procurement Policy Office comprised of three members who have demonstrated sufficient business and professional experience. (See MPC § 2-101(1) & (2) [Alternative A].

Our second comment relates to the overall structure of the bill. The MPC recognizes construction as unique to the procurement process and devotes a separate article (Article 5) to the procurement of construction and related services. The bill does not devote a separate article to construction; instead SB 341 normally prefaces an article as relating only to construction.

This is a mere difference of opinion in drafting techniques; however, the special attention devoted to construction procurement by the drafters of the MPC is lost in SB 341.

One other broad area bears discussion at this time. A significant portion of public construction in Alaska is procured with state dollars by political subdivisions of the state and other "grant" recipients. AGC-Alaska strongly recommends that this committee propose legislation requiring any grant or appropriation recipient to utilize procurement practices consistent with this Procurement Practices and Procedure Act and its regulations.

Section by Section Comments and Recommendations

Section 1 (Similar to MPC § 1-101)

Recommendation: Eliminate Subsection (9). [p. 2 ln. 1-5]

Comments: AGC-Alaska fails to understand the rationale for the inclusion of affirmative action language in a procurement act. AGC-Alaska is opposed to any special preference procurement program based on race, size, sex, residency or any other factor irrelevant to the contractors ability to perform. The best way to ensure discriminatory free procurement is competitive sealed bidding. Any other method allows for possible discrimination.

Section 36.30.005 (Similar to MPC § 2-301)

Recommendation: Modify by providing for a "Policy Office" as in the MPC additionally the bill should be modified to reflect this fundamental change.

Comments: See previous general comments on "Policy Office"

Section 36.30.015

Recommendation: Delete (e)

Comment: The Alaska Railroad Corporation should abide by the same procurement code and regulations as the rest of the state.

Sections 36.30.020 and 36.30.030

Recommendation: Delete "construction." Add new section transferring

authority to contract for construction of public works for legislature or court system to DOT/PF subject to this act and its regulations.

Comments: The court system and the legislature are not in the business of procuring construction and the function should be transferred to DOT/PF. This will avoid arguments over the "substantial similarity" of procedures adopted by legislative counsel or the Supreme Court.

Section 36.30.035 [New]

Recommendation: Add new section requiring any grant or appropriation recipient to adopt procedures to govern the procurement of supplies and services that are substantially equivalent to the procedures prescribed by this chapter. Require DOT/PF to contract for construction of any public work for any grant recipient.

Comment: Procurement problems are not limited to state government. If state dollars are spent by others then similar safeguards on procurement with those state dollars should be instituted.

Section 36.30.110

See separate comments.

Section 36.30.130 (Source MPC § 3.202(3))

Recommendation: Require publication in a statewide newspaper of general circulation calculated to reach prospective bidders.

Section 36.30.160 (Source MPC § 3-202(6))

Comment & Recommendation: AGC-Alaska fails to understand the qualifying language "unless the delay was due to an error of a state employee

directly responsible for opening the bids" contained in (a). This may lead to increased bid protests and accordingly we recommend deleting the language.

Section 36.30.190 & 36.30.200

Comment: AGC-Alaska contests that multistep sealed bidding and competitive sealed proposals should not be used for construction. The prohibition should be stated in the document.

Section 36.30.300

Recommendation: Add the following language "sole source procurements may not be used for construction."

Comments: Fairness and public accountability requires competitive bidding.

Section 36.30.430 (Source MPC § 5-401 and § 6-101)

Comment and Recommendation 1: Many of the provisions of this section relate only to construction contracts. To avoid confusion the MPC separated construction contracts and supply and service contracts. See MPC § 5-401 and § 6-101. AGC-Alaska recommends following the separation utilized by the MPC.

Section 36.30.580

Recommendation: Advise protestant of right to appeal.

Section 36.30.590

Recommendation 1: Utilize Procurement Appeals Board rather than the

commissioner. See MPC § 9-501.

Recommendation 2: 5 days to file an appeal is too short; a minimum of 10 is recommended.

Section 36.30.620(b)

Recommendation: 30 days instead of 90 days to issue a decision.

Comment: 30 days to issue decision is sufficient time.

Section 36.30.625

Recommendation: Extend time to appeal to 10 days.

Comment: A reasonable time to file an appeal is 10 days.

Section 36.30.630-650

Recommendation 1: Appeal should be to Procurement Appeals Board.

Recommendation 2: Add remedies, interest, and waiver of sovereign immunity sections contained in MPC § 9-202; § 9203, § 9-301, and § 9-401.1

ProcureBill1.1d

LIFE CYCLE COSTING

"THE OTHER SIDE OF THE COIN"

Submitted to:

Senate Judiciary Committee
State of Alaska

MARTIN J. JINDRA
DRESSER INDUSTRIES, INC.

March 10, 1986

	<u>UNIT 1</u>	<u>UNIT 2</u>	<u>UNIT 3</u>	<u>UNIT 4</u>	<u>UNIT 5</u>
Price	125,000	112,000	135,000	98,000	91,000
Est. Market Value	<u>-68,750</u>	<u>-35,840</u>	<u>-40,500</u>	<u>-19,600</u>	<u>-13,650</u>
Owning Cost	56,250	76,160	94,500	78,400	77,350
Price	125,000	112,000	135,000	98,000	91,000
PV of Est. Mkt. Value*	<u>-42,206</u>	<u>-22,002</u>	<u>-24,863</u>	<u>-12,032</u>	<u>-8,380</u>
PV Owning Cost	82,794	89,998	110,137	85,968	82,620
Per Hour Op. Costs	55.30	55.50	56.21	56.29	57.18
Availability	900 Hrs/Yr	900 Hrs/Yr	900 Hrs/Yr	900 Hrs/Yr	900 Hrs/Yr
Per Year Cost	49,770	49,950	50,589	50,661	51,462
10 Year Cost	497,700	499,500	505,890	506,610	514,620
Total Own. & Op. Costs	580,494	589,498	616,027	592,578	597,240
<u>Opportunity Costs:</u>					
Excess Price Paid:	34,000	21,000	44,000	7,000	0
x 2.1589**	73,402	45,336	94,991	15,112	0
Excess + Interest	73,402	45,336	94,991	15,112	0
Less Excess	<u>-34,000</u>	<u>-21,000</u>	<u>-44,000</u>	<u>-7,000</u>	<u>-0</u>
Opportunity Costs	39,402	24,336	50,991	8,112	0
<u>Total Costs:***</u>					
Owning & Op. Costs	580,494	589,498	616,027	592,578	597,240
Opportunity Costs	<u>39,402</u>	<u>24,336</u>	<u>50,991</u>	<u>8,112</u>	<u>0</u>
	<u>619,896</u>	<u>613,834</u>	<u>667,018</u>	<u>600,690</u>	<u>597,240</u>
Disadvantage	(22,656)	(16,594)	(69,778)	(3,450)	(0)

NOTES:

- * Present value calculated by discounting future estimated market value by the factor of .6139. This assumes an inflation rate of 5% over the 10 year period.
- ** The factor of 2.1589 is derived by assuming an investment interest rate of 8%, compounded annually over the 10 year time period. The excess amount of money spent for the higher priced machine is multiplied by the compounding factor to determine the growth of the money. The excess amount of money spent (or principal) is subtracted out to determine the potential interest foregone.
- *** The total costs are the sum of (a) the purchase price less the present value of the estimated resale; and (b) the total operating costs over the 10 year time period. These sums represent the actual cash outlays to the public agency, not net profit potential. Clearly, the alternative which costs the most puts the public agency at the greatest disadvantage.



Alaska State Legislature

Representative Mike Davis

Pouch V
Juneau, Alaska 99811
(907) 465-4930/4941

Interim Office:
P.O. Box 81435
Fairbanks, Alaska 99708

TO: *Pat Rodey* Senator Pat Rodey, Chairman, Judiciary Committee
FROM: *Mike Davis* Rep. Mike Davis
DATE: March 6, 1986
RE: SB 341-An Act relating to state procurement practices and procedures; and providing for an effective date.

Attached please find a letter originally addressed to Senator Jan Faiks who at the time was working on the draft for what would become SB 341, the procurement bill. The letter is from a constituent of mine who also forwarded a copy to my office.

The issue that Mr. Miller brought up, that the lowest bidder may not be the best qualified to perform a very specialized and potentially dangerous service, is a valid one. I think it unfortunate that this was not addressed when the bill was initially drafted.

I hope that you will consider Mr. Miller's comments when the Senate Judiciary Committee takes up this bill. I would encourage you to consult with some of the knowledgeable professionals in the Alaska Department of Fish and Game. I am certain they will concur that there is a need for flexibility in the procurement of this type of service.

CARIBOU AIR SERVICE

DENNIS C. MILLER

P.O. Box 2648

Fairbanks, AK 99707 (907) 479-2189



Senator Jan Faiks
1024 W. 6th Ave Suite 305
Anchorage, AK 99501

December 16, 1985

Dear Senator Faiks,

On October 30, 1985, I spoke to Jens Zehbe about a serious reservation I have about the draft state procurement practices bill. I wanted to share these concerns with you, and to document them via memos written within the Alaska Department of Fish and Game.

I spoke to Jens about the critical need to provide an exception within the procurement bill for Alaska Department of Fish and Game technicians and biologists when they are procuring specialized aircraft charter services for fish and wildlife survey work. Being forced to fly with the lowest bidder is an untenable and potentially life endangering situation.

It is my understanding that ADF&G biologists have the highest fatality rate of any group of state employees. This is a result of aircraft accidents while performing sometimes hazardous survey work. The enclosed memos speak effectively to that point, and I urge that you personally take the time to read each of them carefully. We are not talking here about state offices buying office machines, or about a paving contract - human lives are literally at stake. In the draft procurement bill I can find no exception or allowance for this reality.

I am a professional pilot. Caribou Air Service was formed three years ago, with myself as the only pilot. More than 90% of my business is flying highly specialized fish and wildlife survey work for state and federal agencies. I have been fortunate enough to be one of the very few pilots (less than five) in the Interior with whom ADF&G biologists feel comfortable flying. As a pilot, I can certainly confirm that much of the wildlife survey flying I do is indeed potentially life endangering. I know if I were the passenger on many survey flights I would refuse to participate unless I could fly with one of those few pilots in the Interior I knew specialized in such work.

As some of the enclosed memos point out, in most instances forcing biologists to fly with the lowest bidder would in reality cost the state more money, to say nothing of the safety factors involved. An example: Last week I flew a moose survey where we located 30 radio collared moose. Because of my years of radio tracking experience I was able to fly directly to each animal.



The flight took 6.5 hours or \$806.00 at my current rate of \$124.00/hr. Lets assume the biologist was forced to fly with a low bidder at \$120.00/hr. I can guarantee you, and any biologist will confirm, that an inexperienced survey pilot would take at least 2 minutes longer per moose, resulting in a flight of 7.5 hours at \$120.00/hr, or \$900.00 total. The current draft procurement bill would have cost the state an additional \$94.00 and potentially put the biologist's life in jeopardy. On a spawning salmon survey, missing one bend in a stream would seriously compromise the data being collected, and would mean an additional 1-2 minutes to re-fly the bend, and there are hundreds of bends on one typical flight.

As for myself and Caribou Air Service, I am making a living(albeit a meager one) providing highly specialized wildlife survey work. I plan to continue to be available for this work for the foreseeable future. I cannot afford, however, to be forced into a "rate war" to make sure I am the lowest bidder to comply with a state procurement code that doesn't provide for the facts and emotions stated herein and in the enclosed memos.

Those very few of us who specialize in wildlife survey flying are in business for ourselves. When a biologist calls for a flight he knows who he will get for a pilot. There is no pilot turnover when you are in business for yourself, by yourself. As you may be aware, there is an extremely high rate of pilot turnover in the air taxi business in general, certainly a contributing factor to the high accident rate in Alaska. Forcing ADF&G biologists to expose themselves to inexperienced pilots because of a low bid restriction is ill advised at best, life threatening at worst.

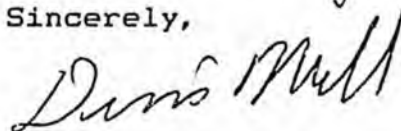
It is imperative that there be an exception for aerial survey work in the state procurement bill. As stated above and in the enclosed memos, it is easy to document and confirm that money is actually saved by flying with experienced survey pilots, even if their hourly rates may be a few dollars higher. We must be allowed to stay in business to provide critical, highly specialized wildlife survey flying. Furthermore, ADF&G biologists must be allowed to choose their own pilots, unrestricted by a procurement code that in reality can endanger their lives and at the same time cost the state more money.

This past year you spent a considerable amount of time on the impeachment proceedings. A man's career was at stake. Now you are dealing with an issue where human lives are potentially at stake. An exception must be made in the procurement bill allowing ADF&G biologists to choose their own pilots for critical survey work.

I am sure you are inundated with memos in the course of your work. I urge you to take whatever time is necessary to read the enclosed, however. You may contribute to saving a state employee's life.

If I can provide any more information, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Dennis Miller". The signature is written in dark ink and is positioned above the printed name.

Dennis Miller

cc: Representative Mike Davis
Don Collingsworth, Commissioner, ADF&G
Dick Bishop, Regional Supervisor, ADF&G



The Employment and Training Center of Alaska
A Rehabilitation Industry

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

March 3, 1986

Senator Rodey
Attn: Suzanne LaPierre
P. O. Box V
Juneau, AK 99811

Dear Suzanne:

Thank you for meeting with me to discuss Senate Bill 341 and its potential impact on "Sheltered Workshops" (which we hope will eventually be referred to as "qualified non-profit agencies for persons with disabilities").

Overall, the information exchange I had with you and others was most beneficial. You'll note that I've included a much more thorough batch of "follow-through" literature for your perusal.

Most specifically, I refer you to a new piece of information on the kind of procedures we would like to see used for administering the non-bidding clause for qualified non-profits.


After spending some time with a few administrative officials, it occurred to me that I needed to do some research on various other state laws and procedures for administering a "non-bid" process.

And so, the fruits of my labor are attached! Do hope you can have some influence with the Administrators who will be putting the procedures/regulations together. I suspect that I had very little influence in that area. Now I understand why you encouraged me to make very specific recommendations!

Again, thank you for your time. I am anxious to see the end results of this Bill. If it could put a few more disabled folks to work, we'd all be greatly appreciative.

In the meantime, if you could keep me posted on the status of the Bill as it passes through committees, goes to Public Hearing, etc., I would be most pleased. Feel free to give me a call.

Best,



Judith E. Berger
Marketing Director

JEB:bc



The Employment and Training Center of Alaska
A Rehabilitation Industry

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

REGARDING SENATE BILL 341

"An Act relating to State Procurement Practices," Section 36.30.100, General Policy, (B), (4); "Competitive Sealed bidding is not required for the purchase of products or services manufactured or provided by a sheltered workshop."

I respectfully submit that the following procedures/regulations be considered for inclusion into the text of Senate Bill 341.

(Idaho "State Use Law"
67-2319
Idaho Council for Purchases)

1. The Department of General Services and Supply shall designate a procurement Officer or Committee whose responsibility it will be to promote the purchase by state agencies of products and services produced by qualified non-profit agencies for persons with disabilities.

(Oregon Law .279.845, (2))

2. The Department of General Services and Supply shall establish and publish a list of sources or potential sources of products produced by any qualified non-profit agency for persons with disabilities and the services provided by any such agency which are suitable for procurement by public agencies pursuant to (Alaska Statute 37.05.230/or Senate Bill 341). This procurement list and revisions thereof shall be distributed to all public procurement officers.

(Washington Law (RCW-3923.005,
39.23.020, 43.19.520, 43.19.530)

3. The Fair Market Price of a service or product provided by a qualified non-profit agency for persons with disabilities will be determined by the Department of General Services and Supply. To determine the Fair Market Price of such products or services, General Services and Supply shall use the last comparable bid on the products and/or services or in the alternative, the last price paid for the products and/or services. The increased cost of labor, materials and other documented costs since the last comparable bid or the last price paid are additional cost factors which shall be considered in determining Fair Market Price. Upon establishment of the Fair Market Price as provided for in this section, General Services and Supply is hereby empowered to negotiate directly with

the qualified non-profit agency for persons with disabilities for the purchase of the products and services.

(National Industries for the Severely Handicapped/Fair Market Pricing Policies, Sept., 1985)

A. Establishing Fair Market Prices on Products.

1. The initial price for a product which has been recently procured by General Service and Supply shall be the median of those bids for that product which are not more than 35% above the award price, or the award price increased by 5%, whichever is greater. When the qualified nonprofit agency for persons with disabilities is a current or most recent contractor for the product, the initial price shall be the average of (1) the median of the bids which are not more than 35% above the award price and (2) the award price, or the award price increased by 5%, whichever is greater.
2. The initial price proposed by the qualified non-profit agency for persons with disabilities for a product which has not been recently procured by the General Service and Supply, but which is comparable to a product that the General Service and Supply has recently procured or to one sold commercially, shall be evaluated using the bids for the comparable General Service and Supply product or the prices for the comparable commercial product, adjusted to reflect the differences between the products being compared. Commercial prices will be used for evaluation only when there are no recently comparable products procured by the General Service and Supply.
3. The initial price for a product which is significantly different from products procured by the General Service and Supply or those sold commercially will be based on the qualified non-profit agency for persons with disabilities' costs to produce the product.

B. Establishing Fair Market Prices on Services.

1. The initial price for a service, when the service is currently being procured competitively, shall be the median of those bids on the most recent solicitation for the service which are not more than 35% above the award price, or the award price increased by 5%, whichever is greater. When the qualified nonprofit agency for persons with disabilities is a current contractor for the service, the initial price shall be the average

of (1) the median of the bids which are not more than 35% above the award price and (2) the award price, or the award price increased by 5%, whichever is greater.

2. The price determined in 1. above shall be adjusted to reflect any differences in wage rates, any changes in scope of conditions, and any limitations prescribed by regulations.
3. The price for a service, when there is no current procurement of the service by General Service and Supply, shall be based on the cost to provide the service.

(Oregon Law 279.845.(2))

4. In furthering the purposes of (Alaska Statute 37.05.230/Senate Bill 341), it is the intent of the Legislative Assembly that there be close cooperation between the department, public contracting agencies and qualified non-profit agencies for persons with disabilities. The department, on behalf of public contracting agencies and qualified non-profit agencies for persons with disabilities is authorized to enter into such contractual agreements, cooperative working relationships or other arrangements as may be determined to be necessary for effective coordination and efficient realization of the objectives of (Alaska Statute/Senate Bill 341) and any other law requiring procurement of products or services.

- A. Legal and Contractual remedies for non-competitive bidders will be in accordance with the laws governing competitive bidders and no rights are waived by qualified non-profit agencies for persons with disabilities with regards to grievance procedures, protests, appeals, hearings, or controversies; et al.

Rationale for including these procedures/regulations are based on the various laws sited at the beginning of each regulation,

The laws of Oregon, Idaho and Washington all direct that qualified non-profit agencies for persons with disabilities be given "preference" for bidding on state procurement activities; some require a "set aside" of a certain portion of the work; and Florida requires all work go to Sheltered Workshops first.

Senate Bill 341
Page 4

The breadth of regulations range from a special government council being set up to oversee and administer all state procurement activities to indicating full participation by every procurement officer in their state.

To our knowledge, the recommendations here would accomplish the intent of our present law (Alaska Statute 37.05.230) and would greatly enhance the effectiveness of the pending Senate Bill 341.

Thank you for your consideration.

Judith E. Berger
Marketing Director

JEB:bc



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REGARDING SENATE BILL 341

"An Act relating to State Procurement Practices", Article 2,
Competitive Sealed Bidding, Section 36.30.100, General Policy,
(B) Item (4) and (C) (Page 9, Lines 2 - 3, and Lines 8 - 12).

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 ob-
jective 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

the most integrated setting for persons with developmental disabilities. President Reagan also charged the Department of Health and Human Services to direct a program to strengthen private sector job opportunities for the severely disabled. Under Commissioner Jean Elder, Ph.D., the "Employment Initiative" is changing the delivery of employment-related services away from places called sheltered workshops to providing these services at locations within the private sector. Agencies serving persons with severe disabilities definitely need work from the State to provide meaningful employment. However, this work will not necessarily be done at a place called a sheltered workshop but rather at a variety of locations where workers with disabilities can interact with non-disabled citizens. A good example is janitorial services. These cannot be performed at the sheltered workshop; rather, a crew of workers with disabilities organized by the non-profit agency must go to the State buildings to provide these services.

ETCA

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Judith E. Berger
Employment and Training
Center of Alaska
2330 Nichols Street
Anchorage, Alaska 99508
(907) 279-6617

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, F, 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.

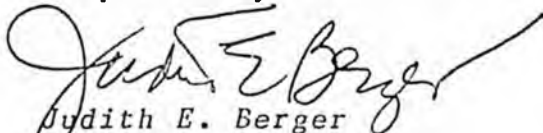
The problem is, who is going to see to it that the intent of the law is realized? As lawmakers, it is incumbent upon you to not only make the law, but at least to some degree, interpret it for the benefit of our administrators.

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: (See attached).

Respectfully submitted,


Judith E. Berger
Marketing Director

JEB:bc

ETCA

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A Rehabilitation Industry

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Anchorage, AK 99508-3495
(907) 279-6617

The Employment and Training Center of Alaska (ETCA) is in complete support of the Governor's Council for the Handicapped and Gifted's recommendations to the Fourteenth Alaska Legislature as specified in their 1986 Priority Services information pamphlet.

Of particular importance to The Employment and Training Center of Alaska is the Council's recommendation for FY87 which "supports inclusion of the designated grants in the base operating budget as well as increases for vocational, residential, and family support services, and a cost of living adjustment for the community service providers. (Emphasis added). These community service increases should be offset by cost-savings realized by reduction of a unit at Harborview in both the current and FY87 fiscal years." See "Cost Benefit" breakdown below:

Recommended FY87 increases impacting ETCA:

Vocational Services	281.6
Cost of Living Increase	<u>273.9</u>
FY87 Total	555.5

COST/BENEFIT COMMUNITY-BASED VOCATIONAL SERVICES

COST OF CURRENT PROGRAM	\$ 911,025
(Employing 106 workers with disabilities)	
LESS FEDERAL TAXES, FICA	\$ (39,269)
(Paid back to the Government)	
LESS SUPPLEMENTAL SOCIAL SECURITY BENEFITS	\$ (31,200)*
(Reduced to the worker as a result of employment)	
TOTAL PUBLIC COST OF CURRENT PROGRAM	<u>\$ 840,556</u>
TOTAL COST OF ALTERNATIVE PROGRAM	\$10,600,000
(Harborview, at \$100,000 per person)	
LESS TOTAL PUBLIC COST OF CURRENT PROGRAM	<u>\$ (840,556)</u>
TOTAL PUBLIC SAVINGS	<u>\$ 9,759,444</u>
(For employing 106 workers with disabilities)	
FINANCIAL BENEFIT TO WORKER WITH DISABILITY	<u>\$ 246,330</u>
(Discretionary income injected into local economy)	

*Conservative figure, only reflects those workers no longer receiving benefits as result of employment. Data collection currently in progress to document reductions to workers still receiving some benefits.



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Recommended FY87 increases impacting ETCA:

Vocational Services	281.6
Cost of Living Increase	<u>273.9</u>
 FY87 Total	 555.5

COST/BENEFIT
COMMUNITY-BASED VOCATIONAL SERVICES

COST OF CURRENT PROGRAM (Employing 106 workers with disabilities)	\$ 911,025
LESS FEDERAL TAXES, FICA (Paid back to the Government)	\$ (39,269)
LESS SUPPLEMENTAL SOCIAL SECURITY BENEFITS (Reduced to the worker as a result of employment)	<u>\$ (31,200)*</u>
TOTAL PUBLIC COST OF CURRENT PROGRAM	<u>\$ 840,556</u>
 TOTAL COST OF ALTERNATIVE PROGRAM (Harborview, at \$100,000 per person)	 \$10,600,000
LESS TOTAL PUBLIC COST OF CURRENT PROGRAM	<u>\$ (840,556)</u>
TOTAL PUBLIC SAVINGS (For employing 106 workers with disabilities)	<u>\$ 9,759,444</u>
 FINANCIAL BENEFIT TO WORKER WITH DISABILITY (Discretionary income injected into local economy)	 <u>\$ 246,330</u>

*Conservative figure, only reflects those workers no longer receiving benefits as result of employment. Data collection currently in progress to document reductions to workers still receiving some benefits.

Patrick M. Rodey
Senator

Alaska State Legislature



Senate

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

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

March 6, 1986

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

Re: Status of ASHA under Alaska SB 341

Dear Ms. Trump:

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

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

Very truly yours,

Suzanne S. La Pierre
Senate Judiciary Counsel

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CS for SB 341
 Title : State Procurement Code

Sponsor : Senate Judiciary Committee
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Env. Conservation
 BRU : Administration

Components : Administrative Services

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		37.9	39.4	41.0	42.6	44.4
TRAVEL		5.0	5.2	5.4	5.6	5.9
CONTRACTUAL		5.0	5.2	5.4	5.6	5.9
SUPPLIES						
EQUIPMENT		1.5	--	--	--	--
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		49.5	49.8	51.8	53.8	56.2

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

REVENUE		--	--	--	--	--
----------------	--	----	----	----	----	----

FUNDING : (Thousands of Dollars)

GENERAL FUND		49.5	49.8	51.8	53.8	56.2
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		1	1	1	1	1
PART-TIME		--				
TEMPORARY		--				

ANALYSIS : Attach a separate page if necessary

This bill codifies many procedures and practices presently addressed in the Administrative Manual, a variety of memos and procedures and ad hoc decisions. Practices, particularly for professional services contracts,

Prepared by : W.A. Publicover Phone : 465-2676
 Division : Administrative Services Date : 1-30-86

Approved by Commissioner : Bill Ross Date : 3-27-86
 Agency : Environmental Conservation

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Position Title Administrative Assistant II			No. of Positions 1	Range/Step 14	Barg. Unit GGU	Gov.	Approv.	Disapp.
Time Status Full	Staff Months 12	RP Number	Location Juneau		Election District 4	Leg.		
Type of Expenditure			Justification					
Amount			The new State Procurement Code will place tighter controls on contracts for professional services. The Department typically has over 40 active contracts valued at over \$2 million. While our professional staff defines the project scope and technical details, the procedural aspects of contracting are dispersed among the divisions. This allows inconsistencies, dilutes accountability, and hampers effective communications with the Department of Administration.					
1	2	3	The Administrative Assistant will be the Department's expert on competitive sealed proposals. The position would be the focus for procedural aspects of RFPs, selection, and contract administration. The position will develop and standardize wording, provide a single point link to Department of Administration, advise on alternate procurement methods, maintain a contract tracking system, process payments, chair the contract closing committee, conduct training sessions or arrange for training, monitor the contract approval process, assist in handling protests, arrange official files and record retention schedules and maintain departmental contract procedures. The costs for this position are:					
Salary	28.4		100 salary & benefits 37.9					
Benefits	9.5		300 postage for 5.0					
Premium Pay	--		200 travel to regional 5.0					
Other	--		offices to train 400 Calculator, 1.5					
Total Personal Services		37.9	field staff workstation					
Travel		5.0						
Contractual		5.0						
Commodities								
Equipment		1.5						
Other								
Total Cost		49.4						
Receipt Code	Funding Source							
	Federal Receipts	1002						
	G. F. Match	1003						
	General Funds	1004	49.4					
	I-A Receipts	1005						
	Program Receipts	1028						
	CIP Receipts	1061						
	Other							
For B&M Use Only Key Number								

**Request For
New Position**

Agency Environmental Conservation
 BRU Administration
 Component Administrative Services

Page 3 of 3
 Revised Date

FY 87

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No.

CS for SB 341

vary from department to department. This bill and implementing regulations will increase fairness and accountability through uniform requirements for all areas of procurement.

Environmental Conservation regularly has over 40 open contracts worth over \$2 million. Presently, we have an Accounting Technician II who works part time on these contracts. He provides technical advice on contract preparation, tracks the contracts through the approval process, processes payments and chairs the contract closing committee. In the past we have had problems with inadequate RFPs, public notices and similar technical flaws. The bill will establish much tighter standards for the technical quality of competitive sealed proposals and will greatly increase the Department's accountability. In particular, the new law will require:

- evidence of Alaska Business Licenses from offerors and subcontractors
- public notice 21 days before opening proposals
- that all contractors on the bidders list must be notified by mail
- that register of offerors must be kept
- determination of responsibility
- notice of intent to award 10 days before the award
- retention of records including each proposal
- that agency procurement officers decide on protested awards and contract controversy

These new responsibilities will increase our workload beyond the present half-time position. New requirements mandate a single source to assist in drafting RFPs and contracts and to act as agency expert in the procedural aspects of professional services contracts.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 03-26-86

REQUEST

FISCAL DETAIL

Bill/Resolution No.: CS for SB 341 (GD)
 Title: An act relating to the State procurement practices and procedures; and providing for an effective date.
 Sponsor: Senate Rules
 Requestor: Senate Finance
 Date of Request: _____

Agency Affected: Administration
 BRU: General Services & Supply
 Components: Purchasing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES		222.7	445.5	460.5	475.5	490.9
TRAVEL		10.0				
CONTRACTUAL		189.0	38.0	43.0	38.0	43.0
SUPPLIES						
EQUIPMENT		72.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		493.7	483.5	503.5	513.5	533.9
FEDERAL FUNDS						
OTHER						
TOTAL		493.7	483.5	503.5	513.5	533.9

POSITIONS:

FULL-TIME		9	9	9	9	9
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Attached

Prepared By: Robert J. Link *Robert J. Link* Phone: 465-2250
 Division: General Services & Supply Date: 03-26-86
 Approved by Commissioner: Eleanor Andrews *Eleanor Andrews* Date: 03-26-86
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Senate Bill No. 341

FISCAL NOTE ANALYSIS:

A. REGULATIONS-PROCEDURES DEVELOPMENT AND TRAINING = \$135,000

The bill will create the need for a complete revision of the chapter 15 of the Administrative Code. This revision will be accomplished through a professional legal services contract. to write the regulations and conduct the required public hearings and is estimated to cost \$55,000 (see detail below).

The bill will create the need for a complete revision of the Policy and Procedures Manual for the contracting section of the Division of General Services and Supply. This revision will be accomplished through a professional services contract with an associate attorney. The cost of this contract plus the necessary printing is estimated to be \$25,000 (see detail below) .

Since the bill will completely revise the statute, and subsequently the administrative code and the policy and procedures manual of the division, we estimate that it will be necessary to train approximately 310 state employees in the newly required procedures. This will be accomplished through a professional services contract with an instructor plus printing and travel for an amount estimated to be (see detail below) \$55,000.

Legal services contract for regulations: \$100.00/hr x 83hr/month x 6 months = \$50,000.

Para-legal Contract for Policy and Procedures Manual: \$40.00/hr x 83hr/month x 6 months = \$20,000.

Instructors Contract: Develop training modules at \$60/hr x 525hrs = \$31,500 + train 310 people x \$50/person = \$15,500 for a total of \$47,000

Printing of the Policy and Procedures Manual: 200 manuals x \$25 = \$5000

Printing of the Training Materials: 400 training guides x \$7.50 = \$3000

Travel for public hearings in four locations: 2 people x \$385/airfare + \$240/perdiem x 4 locations = \$5000

Travel for training in four locations: 2 people x

\$385/airfare + \$240/perdiem x 4 locations = \$5000
Total \$135,000

The Department of Transportation has also budgeted for training and procedures development. The amounts which they have budget are to provide for procedures and training in the procurement of construction and its related activities. The amounts budget by General Services are for procurements not related to construction.

B. BIDDERS LIST = \$45,000

Lists of contractors to provide goods and services must be developed and maintained. These lists must be used and made available for use by all branches of state government. Department of Administration, Division of General Services and Supply is responsible for developing, maintaining, and making the lists available for use by all branches of state government. This will be accomplished through a professional services data processing contract. The cost of this contract is estimated to be a \$40,000 one-time contractual expense.

A person who wishes to be on the contractors list must have a valid Alaska business license and pay a biennial fee. The fees will be received and processed by the administrative support staff. We estimate that the cost of receiving and processing the fees will be \$5,000. This is equal to 312 hours of an administrative support technicians time at \$16.01 per hour. This is a biennial contractual expense since the administrative support staff is budgeted for by purchasing, but once the funds are received they are transferred to the Division of Administrative Services. The Division of General Services and Supply then contracts with the Division of Administrative Services for administrative support. This is a biennial contractual expense of \$5,000.

C. Workload Impact = \$313,700

The Division of General Services currently has 13 purchasing agents. It is anticipated that the increased work load (see detail description on the New Position Request Form) will require the addition of 9 new purchasing agents.

9 positions x \$49,503 salary and benefits,
purchasing agent III, range 18A = \$445,527
(because the bill goes into effect in
January) = \$222,763 personal services

increase in FY87. \$445,527 personal services increase in FY88. We estimate that this cost will increase each succeeding fiscal year due to merit increases.

Each of the 9 new purchasing agent positions will be required by the bill will need approximately \$8,000 in equipment (systems furniture and micro-computers). $\$8,000 \times 9 = \$72,000$. This is a one-time equipment expense.

The cost of printing and advertising bids will increase from \$46,100 to \$81,120. An annual increase of \$35,020.

$$\begin{aligned} \$46,100 : 704 &= \$65 \times 1248 = \$81,120 \\ - \$46,100 &= \$35,020 \end{aligned}$$

The cost of mailing bids will increase from \$3,800 to \$6,739. An annual increase of \$2,939.

$$\begin{aligned} \$3,800 : 704 &= \$5.40 \times 1248 = \$6,739 \\ - \$3,800 &= \$2,939 \end{aligned}$$

D. SUMMARY

1. Personal Services \$222,763

9 positions x \$49,503 salary and benefits, purchasing agent III, range 19A = \$445,527 (because the bill goes into effect in January) = \$222,763 personal services increase in FY87.

2. Travel \$10,000

Travel for public hearings in four locations: 2 people x \$385/airfare + \$240/perdiem x 4 locations = \$5000

Travel for training in four locations: 2 people x \$385/airfare + \$240/perdiem x 4 locations = \$5000

3. Contractual Services \$189,000

Legal services contract for regulations: \$100.00/hr x 83hr/month x 6 months = \$50,000.

Para-legal Contract for Policy and Procedures Manual: \$40.00/hr x 83hr/month x 6 months = \$20,000.

Instructors Contract: Develop training modules at \$60/hr x 525hrs = \$31,500 + train 310 people x \$50/person = \$15,500 for a total of \$47,000

Printing of the Policy and Procedures Manual: 200 manuals x \$25 = \$5000

Printing of the Training Materials: 400 training guides x \$7.50 = \$3000

Data processing contract for bidders List = \$40,000

Maintenance secretarial support of bidders list = \$5,000.

The cost of printing and advertising bids will increase from \$46,100 to \$81,120. An annual increase of \$35,020. for an FY 87 (6 months) of \$15,510.

The cost of mailing bids will increase from \$3,800 to \$6,739. An annual increase of \$2,939 for an FY 87 (6 months) amount of \$1470.

4. Equipment \$72,000

Equipment for the 9 new purchasing agent positions will be \$8,000 x 9 = \$72,000

Position Title Purchasing Agent III			No. of Positions 9	Range/Step 18A	Base Unit GGU	Gov.	Approv.	Discpp.
Time Status Full-time	Staff Months 6	RP Number	Location Juneau/Anch		Election District	Leg.		
Justification								
Type of Expenditure			Sec. 36.30.300					
			Under the new bill goods and services may be procured without competitive sealed bids only after a written determination has been made by the commissioner that there is only one source for the required goods or services. Current law permits the commissioner to limit bid solicitation or to waive bidding requirements when a finding is made that it is in the best interest of the State to do so.					
			We estimate an average of 680 acquisitions per year are being purchased under the bid waiver provision of the current law. Purchases made under a bid waiver require 20 percent of the work of a purchase made under a competitive sealed bid.					
			For planning purposes, we consider one average competitive sealed bid to be equal to one Work Unit and five bid waivers to be one Work Unit. During the past fiscal year the Division of General Services & Supply processed 704 competitive sealed bids (704 Work Units) and 680 bid waiver requests (680 ÷ 5) = 136 Work Units. The sum of these activities equals 840 Work Units for the division or 60 Work Units per year for each of 14 purchasing agents. [704 + 136 (680 ÷ 5) = 840 ÷ 60 = 14] Since this data base was compiled the staff has been reduced by one (1) position to a total of 13 purchasing agents.					
			Of the bid waivers sampled, only 20 percent meet the sole source or emergency requirement of the new bill. This means that we will have to accomplish the additional 80 percent work necessary to make these purchases as competitive sealed bids. This will create an additional 544 Work Units (680 x .8 = 544). This amount and the remaining 27.2 Work Units (bid waivers, 136 ÷ 5 = 27.2) will be added to the 704 competitive sealed bids we are currently doing. The sum of this equals 1,275 Work Units for the division. At a production rate of 60 Work Units per year for					
Amount								
1			2					
3								
Salary			168,106					
Benefits			54,657					
Premium Pay								
Other								
Total Personal Services			222,763					
Travel								
Contractual								
Commodities								
Equipment			72,000					
Other								
Total Cost			294,763					
Receipt Code			Funding Source					
			Federal Receipts 1002					
			G. F. Match 1003					
			General Funds 1004					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
For D&M Use Only								
Key Number								

1/1D1/0210-03/1

**Request For
New Position**

Agency Department of Administration
 BRU General Services & Supply
 Component Purchasing

Page 6 of 7
 Revised Date

FY 87

each purchasing agent it will require 21.25 purchasing agents to accomplish The 1,275 Work Units.

However, the pre-bid opening and post-bid opening protest/appeal procedures described in Sec. 36.30.560 through 36.30.605 are not required under existing law. For the period December 1, 1984, through December 1, 1985, 61 protests were received under the current law. We estimate that we will receive approximately 130 protests and appeals per year under the new bill. We estimate that the time required to respond to each of these protest/appeals will be equivalent to three (3) Work Units per year. Thus, each purchasing agent's annual Work Unit production will be reduced from 60 Work Units to 57 Work Units because of the time diverted to responding to protests/appeals. This means that it will require 22.36 purchasing agents to accomplish the 1,275 Work Units.

$$[704 + 544 (680 \times .8) + 27.2 (136 + 5) = 1,275 + 57 = 22.36]$$

22.36 purchasing agents required under the new bill
13 current purchasing agents
9.36 additional purchasing agent positions required

Nine (9) positions x \$49,503 salary and benefits, Purchasing Agent III, range 18A = \$445,527 + 2 (because the bill goes into effect in January) = \$222,763 personal services increases in FY 87. \$445,527 personal services increase in FY 88.

Five (5) of these positions will be located in Juneau and four (4) in Anchorage.

1/1102/0210-03/3



ADDITIONAL
EXPLANATION
FORM

AGENCY Department of Administration
BRU General Services & Supply
COMPONENT Purchasing

FY 87

Page 7 of 7

Revised Date _____



Official Business

Alaska State Legislature

Senate

SB 341

Pouch V
State Capitol
Juneau, Alaska 99811

SENATE SELECT INTERIM COMMITTEE ON PROCUREMENT PRACTICES AND PROCEDURES

January 13, 1986

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

Dear Mr. President:

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

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

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

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

PROCUREMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ETHICS

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

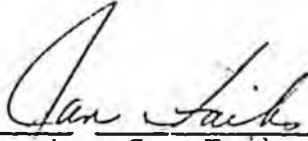
The Committee held two meetings in which it reviewed current statutes pertaining to conflict of interest and ethical behavior for state employees. The Committee also reviewed legislation introduced in the 13th Legislature that would have established an ethics code for the executive branch. Of particular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

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

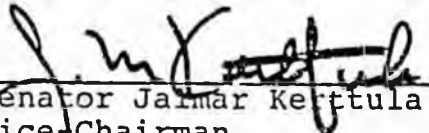
The Committee would like to thank the Administration for all its invaluable assistance in working on an ethics code for

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

Respectfully submitted,



Senator Jan Faiks,
Chairman



Senator Jalmar Kettula
Vice-Chairman



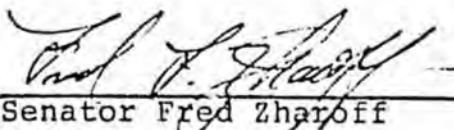
Senator Edna DeVries



Senator Rick Halford



Senator Joe Josephson



Senator Fred Zharoff



March 3, 1986

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

Re: SB 341

Dear Senator Rodey:

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

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

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



The Honorable Pat Rodey

Page 2

March 3, 1986

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

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

Sincerely,

ALASKA STATE HOUSING AUTHORITY

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

Barbara Morse-Quinn
Executive Director

BMQ/smr

Enclosure

cc: Senate Judiciary Committee Members
ASHA Board Members

STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811-3300

RECEIVED
ASHA

February 25, 1986

FEB 28 1986

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

Route	2X 00
Route	118X 00
Route	212X 00
File	118

Dear Mr. Tucker:

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

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

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

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

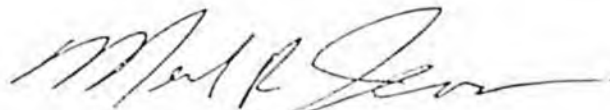
Mr. Wayne Tucker

-2-

February 25, 1986

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

Sincerely,



Merle R. Jonson
Deputy Legislative Auditor
Division of Legislative Audit

cc: Paul Harris, ASHA

SB 341

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: *J.R.* 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 analagous statutory exemption is established under AS 35.15.040.) By the statute's own terms, the focus of the exemption is "to secure [federal] financial aid for housing projects." If the receipt of federal assistance is not substantially impaired by the application of state law, there would seem to be no basis for the exemption. In many instances, state or local law can apply concurrently with federal law. The restricted interpretation of AS 18.55.110 is therefore consistent with the general rule that federal law need be exclusive only where the application of other law would thwart the objectives of federal law. See U.S. Const. art. IV.

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

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

II

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

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

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

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

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

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

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

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

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

Hon. Jim Robison, Commissioner
366-625-83

June 9, 1983
Page 5

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

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

JBR/jb

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

Kevin Bruce
Special Assistant
Office of the Governor

Julia Tucker
General Counsel, ASHA

Susan Olsen
Area Counsel, HUD

Bob Landau
Assistant Attorney General
Anchorage

3/ (continued)

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