

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

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1 state and as part of the cost of constructing or maintaining a highway  
2 may purchase in the open market, acquire, take over, or condemn under  
3 the right and power of eminent domain land in fee simple or easements  
4 which it considers necessary for present public use, either temporary  
5 or permanent, or which it considers necessary and reasonable for the  
6 public use. By the same means, the department may obtain material,  
7 including clay, gravel, sand, or rock, or the land necessary to obtain  
8 material, including access to it. The department may acquire the land  
9 or materials notwithstanding the fact that title to it is vested in  
10 the state or a department, agency, commission or institution of the  
11 state. Acquisition of materials by purchase in the open market under  
12 this section is governed by AS 36.30 (State Procurement Code).

13 \* Sec. 13. AS 19.10.160 is amended to read:

14 Sec. 19.10.160. STANDARD PLANS AND SPECIFICATIONS. The depart-  
15 ment shall prepare and adopt uniform standard plans and specifications  
16 for the establishment, construction and maintenance of highways in the  
17 state. The department may amend the plans and specifications as it  
18 considers advisable. The standards shall conform as closely as  
19 practicable to those adopted by the American Association of State  
20 Highway and Transportation Officials.

21 \* Sec. 14. AS 19.10.170(a) is amended to read:

22 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is  
23 [SHALL BE] the general policy of the state [DEPARTMENT] to require the  
24 construction of all highways under bid contract in accordance with  
25 AS 36.30 (State Procurement Code). However, subject to the provisions  
26 of (b) of this section, when the estimated cost of a construction  
27 project is less than \$100,000 or when it appears to be in the best  
28 interests of the state, the department may perform the work notwith-  
29 standing any other provisions of law.

1 \* Sec. 15. AS 19.10.180 is repealed and reenacted to read:

2       Sec. 19.10.180. REQUEST FOR PUBLIC BIDS. Requests for public  
3 bids are governed by AS 36.30 (State Procurement Code). The request  
4 for public bids may require the contractor to furnish equipment,  
5 labor, materials, and supplies for the project, or it may state that  
6 the department will furnish the materials and supplies. If the de-  
7 partment elects to provide materials and supplies for a project, it  
8 shall do so at the time it adopts the construction program. The  
9 department shall acquire these materials and supplies under AS 36.30  
10 by requesting bids for them according to the class, type, and nature  
11 of the materials and supplies. The contract for materials and sup-  
12 plies may be awarded either upon the basis of delivery to the con-  
13 struction project directly or to a central storehouse or storehouses  
14 maintained by the department. Those materials and supplies so pur-  
15 chased by the department may be delivered to the project site without  
16 expense to the contractor, or it may sell them to the contractor at  
17 cost and make the materials and supplies a part of the construction  
18 cost.

19 \* Sec. 16. AS 19.10.200 is repealed and reenacted to read:

20       Sec. 19.10.200. PROCEDURES FOR THE AWARD OF CONTRACTS. The  
21 award of a contract for highway construction work is governed by  
22 AS 36.30 (State Procurement Code), AS 19.05 - AS 19.25, and regula-  
23 tions adopted under those laws.

24 \* Sec. 17. AS 19.30.070 is amended to read:

25       Sec. 19.30.070. CONTRACTS FOR CONSTRUCTION OF ROADS. The  
26 director of the division of lands may contract with private persons  
27 for the construction of roads to and on state lands programmed for  
28 surface disposal which are not more than six miles from existing roads  
29 or highways. Contracts under this section are governed by AS 36.30

1        (State Procurement Code).

2        \* Sec. 18. AS 19.30.080 is amended to read:

3                Sec. 19.30.080.    CONSTRUCTION STANDARDS AND MAINTENANCE.    An  
4        access road constructed under AS 19.30.060 - 19.30.100 shall be of low  
5        standard, not necessarily suitable for all weather use. The state is  
6        not under obligation to maintain an access road constructed under AS  
7        19.30.060 - 19.30.100. If an access road is constructed outside a  
8        municipality that has zoning ordinances, the right-of-way width for  
9        the road shall be determined by the division of lands and the Depart-  
10       ment of Transportation and Public Facilities. If an access road is  
11       constructed within the boundaries of a municipality that has zoning  
12       ordinances, the right-of-way width shall conform to the subdivision  
13       control ordinances of the municipality. Contracts for the work on an  
14       access road are governed by AS 36.30 (State Procurement Code) [SHALL  
15       BE AWARDED TO THE LOWEST RESPONSIBLE BIDDER QUALIFIED TO CONTRACT WITH  
16       THE STATE]

17       \* Sec. 19. AS 19.60.010 is amended to read:

18                Sec. 19.60.010.    ACQUISITION AND MAINTENANCE OF FERRY TERMINAL  
19        FACILITIES. The department shall construct, purchase or lease ferry  
20        terminal facilities at locations it selects for the loading and un-  
21        loading of passengers and vehicles under their own power, on and off  
22        ferries. The department shall repair and maintain these facilities.  
23        Construction and purchasing under this section are governed by  
24        AS 36.30 (State Procurement Code).

25       \* Sec. 20. AS 23.15.611(a) is amended to read:

26                (a) The department may [IS AUTHORIZED TO] participate in pro-  
27        grams of manpower training if it finds they are necessary to meet the  
28        occupational needs of the state. This authorization includes authori-  
29        ty to execute on behalf of the state agreements or contracts which may

1 be necessary or desirable to enable the state to participate in a  
2 program, to receive and expend all appropriate funds made available  
3 for programs by the state or from other sources, to supervise the  
4 expenditure of the funds and conduct of the programs by other public  
5 and private agencies of the state, and to make the reports and certifi-  
6 cates which are called for, and in cooperative arrangements with  
7 Department of Education. Contracts with private entities under this  
8 subsection are governed by AS 36.30 (State Procurement Code).

9 \* Sec. 21. AS 23.20.075(a) is amended to read:

10 (a) The department may acquire in the name of the state by term  
11 purchase agreements based on competitive bids in accordance with  
12 AS 36.30 (State Procurement Code) land and buildings upon terms and  
13 conditions that [WHICH] are approved by the Bureau of Employment  
14 Security of the United States, or its successor, for the purpose of  
15 providing office space for the department at a place which the depart-  
16 ment finds necessary and suitable.

17 \* Sec. 22. AS 23.35.110 is amended to read:

18 Sec. 23.35.110. CONTRACTS FOR CARE. In carrying out this  
19 chapter, the department may enter into contracts or other arrangements  
20 with hospitals and doctors in the state for furnishing care on an  
21 annual basis to persons entitled to benefits. Contracting under this  
22 section is governed by AS 36.30 (State Procurement Code).

23 \* Sec. 23. AS 24.55.275 is amended to read:

24 Sec. 24.55.275. CONTRACT PROCEDURES. The ombudsman shall adopt  
25 by regulation procedures consistent with AS 36.30 [AS 24.23] to be  
26 followed by the office of the ombudsman in contracting for services.  
27 However, the procedure for requests for proposals does not apply to  
28 contracts for investigations under AS 24.55.100.

29 \* Sec. 24. AS 24.60.040(a) is amended to read:

1 (a) A person to whom this chapter applies may not be a party to  
2 or have an interest in a state contract or lease unless the contract  
3 or lease is let under the competitive bid procedure in AS 36.30 (State  
4 Procurement Code) [AS 37.05.230] or the total annual amount of the  
5 state contract or lease is \$1,000 or less, or is a standardized con-  
6 tract or lease which was developed under publicly established guide-  
7 lines and is generally available to the public at large, members of a  
8 profession, occupation or group. A person has an interest in a state  
9 contract or lease under this section if the person receives direct or  
10 indirect financial benefits.

11 \* Sec. 25. AS 26.05.230(a) is amended to read:

12 (a) Buildings and sites for armory purposes may be leased or  
13 constructed, based upon location and size of units to be organized,  
14 and shall be financed through state and federal appropriations or  
15 both. These facilities may be made available by local communities or  
16 by the cooperative arrangement between the state and the federal  
17 government and any local community. Leasing and construction under  
18 this subsection are governed by AS 36.30 (State Procurement Code).

19 \* Sec. 26. AS 26.05.280 is amended to read:

20 Sec. 26.05.280. TRANSPORTATION, SUBSISTENCE, AND SUPPLIES.  
21 There shall be provided by the state, transportation and subsistence  
22 for all officers and enlisted persons who are ordered into active  
23 service by the state for encampment, field duty, or other duty. Neces-  
24 sary transportation, stores and subsistence for troops when ordered on  
25 duty shall be contracted by the proper officers and paid for as other  
26 military bills. Contracting under this section is governed by AS 36.-  
27 30 (State Procurement Code).

28 \* Sec. 27. AS 27.21.030 is amended to read:

29 Sec. 27.21.030. GENERAL POWERS. To accomplish the purposes of

1 this chapter, the commissioner may

2 (1) in accordance with the Administrative Procedure Act  
3 (AS 44.62) adopt, amend, and enforce regulations pertaining to surface  
4 coal mining and reclamation operations;

5 (2) issue permits;

6 (3) conduct hearings and conferences;

7 (4) issue orders requiring an operator to take the actions  
8 necessary to comply with this chapter and the regulations adopted  
9 under this chapter;

10 (5) issue orders modifying previous orders;

11 (6) after opportunity for a due process hearing, issue a  
12 final order revoking the permit of an operator who has failed to  
13 comply with an order of the commissioner to take action required by  
14 this chapter or regulations adopted under this chapter;

15 (7) order the immediate cessation of all or part of a  
16 surface coal mining and reclamation operation if the commissioner  
17 finds that the operation or part of the operation creates an imminent  
18 danger to the health or safety of the public or is causing or can  
19 reasonably be expected to cause significant imminent harm to land,  
20 air, or water resources, and, to the extent reasonably necessary to  
21 eliminate or alleviate those conditions, take other action or make  
22 changes in a permit, as provided in this chapter;

23 (8) hire and authorize the hiring of employees and private  
24 contractors, subject to the conflict of interest provisions of this  
25 chapter and subject to AS 36.30 (State Procurement Code), to assist in  
26 carrying out the requirements of this chapter;

27 (9) enter and inspect a surface coal mining operation that  
28 is subject to the provisions of this chapter to assure that the opera-  
29 tion is in compliance with this chapter;

1           (10)    conduct, encourage, request, and participate in  
2 studies, surveys, investigations, research, experiments, training, and  
3 demonstrations;

4           (11)    prepare reports and require permittees to prepare  
5 reports;

6           (12)    accept, receive, and administer grants, gifts, or other  
7 money made available for the purposes of this chapter regardless of  
8 the source of the grants, gifts, or money;

9           (13)    take the steps necessary to allow the state to partici-  
10 pate to the fullest extent practicable in the abandoned mine land  
11 program provided in Title IV of the Surface Mining Control and Recla-  
12 mation Act of 1977, including engaged in any work and adopting, amend-  
13 ing and enforcing regulations;

14           (14)    take the actions necessary to establish and maintain  
15 exclusive jurisdiction over surface coal mining and reclamation opera-  
16 tions in the state under the provisions of the Surface Mining Control  
17 and Reclamation Act of 1977, including making recommendations for  
18 legislation to clarify or amend this chapter to conform with the terms  
19 of the Surface Mining Control and Reclamation Act of 1977;

20           (15)    contract with state agencies to obtain the professional  
21 and technical services necessary to carry out the provisions of this  
22 chapter;

23           (16)    coordinate the review of applications and issuance of  
24 permits for surface coal mining and reclamation operations with other  
25 federal or state permit processes applicable to those operations;

26           (17)    enter into cooperative agreements with the Secretary of  
27 the United States Department of the Interior for the regulation of  
28 surface coal mining operations on federal land in accordance with the  
29 Surface Mining Control and Reclamation Act of 1977; and

1 (18) perform other duties required by this chapter.

2 \* Sec. 28. AS 33.30.050 is amended to read:

3 Sec. 33.30.050. COMMISSIONER TO PROVIDE MEDICAL SERVICES. The  
4 commissioner shall detail physicians, nurses, and psychiatrists, or  
5 their aides, and laboratory technicians, employed by the department to  
6 any prison facility where state prisoners are detained or confined,  
7 for the purpose of furnishing necessary medical services, including  
8 examinations for communicable and infectious diseases. However, if  
9 medical services cannot be furnished by physicians, nurses, psychia-  
10 trists, or their aides, and laboratory technicians, regularly employed  
11 by the department, the commissioner may contract with private practi-  
12 tioners located in the area of a prison facility to furnish these  
13 services. The cost of contracted services shall be paid out of appro-  
14 priations made to the department. Contracting for services under this  
15 section is governed by AS 36.30 (State Procurement Code).

16 \* Sec. 29. AS 33.30.062(a) is amended to read:

17 (a) The commissioner may enter into an agreement with a private-  
18 ly operated correctional facility, but only if the facility is located  
19 in the state and if the purpose of the agreement is to involve prison-  
20 ers in a work or rehabilitation furlough program established under  
21 this chapter, to provide necessary facilities under AS 33.30.282 -  
22 33.30.288, or to confine prisoners convicted of a misdemeanor. An  
23 [NOTWITHSTANDING AS 37.05.230(1)(B), AN] agreement awarded under this  
24 subsection is governed by AS 36.30 (State Procurement Code) [SHALL BE  
25 BASED ON COMPETITIVE BIDS].

26 \* Sec. 30. AS 33.32.015(b) is amended to read:

27 (b) The commissioner of corrections may

28 (1) subject to AS 36.30 (State Procurement Code) [THE  
29 FISCAL PROCEDURES ACT (AS 37.05)], use, purchase, lease, equip, and

1 maintain buildings, machinery, and other equipment, and may purchase  
2 materials and enter into contracts, which may be necessary for the  
3 correctional industries program;

4 (2) provide for prisoners to be employed in rendering  
5 services and producing articles, materials, and supplies needed by a  
6 state agency, a political subdivision of the state, an agency of the  
7 federal government, other states or their political subdivisions, or  
8 for use by nonprofit organizations;

9 (3) if the Correctional Industries Commission established  
10 in AS 33.32.070 approves, employ prisoners to provide services or  
11 products as needed by private industry if the services or products  
12 have potential for contributing to the economy of the state and will  
13 have minimal negative impact on an existing private industry or labor  
14 force in the state.

15 \* Sec. 31. AS 35.05.010 is amended to read:

16 Sec. 35.05.010. PLANNING AND CONSTRUCTION. The department is  
17 responsible for the planning and construction of public works except  
18 as provided for court facilities in AS 22.05.025. Contracts for  
19 planning and construction of public works are governed by AS 36.30  
20 (State Procurement Code).

21 \* Sec. 32. AS 35.05.020 is amended to read:

22 Sec. 35.05.020. RULES AND REGULATIONS. The department shall  
23 adopt [RULES AND] regulations that [WHICH] it considers necessary to  
24 carry out the purpose of this title. The regulations may not conflict  
25 with AS 36.30 (State Procurement Code) or the regulations adopted by  
26 the Department of Administration under that chapter.

27 \* Sec. 33. AS 35 is amended by adding a new section to read:

28 Sec. 35.10.195. CONFORMANCE WITH AS 36.30. The contractual  
29 techniques for the procurement of labor, materials, and contractual

1 services under the policies developed under this chapter must conform  
2 to the requirements of AS 36.30 (State Procurement Code).

3 \* Sec. 34. AS 35.15.010(a) is amended to read:

4 (a) Except as provided in [AS 36.98 AND] AS 44.33.300, it is  
5 [SHALL BE] the general policy of the state [DEPARTMENT] to require the  
6 construction of all public works under bid contract in accordance with  
7 AS 36.30 (State Procurement Code). However, when the estimated cost  
8 of a construction project is less than \$100,000, or when it appears to  
9 be in the best interests of the state, the department may perform the  
10 work, notwithstanding any other provisions of law. A complete record  
11 shall be kept by the commissioner or the commissioner's designee of  
12 all transactions entered into under this section including names of  
13 employees involved in the transactions.

14 \* Sec. 35. AS 35.15.020 is repealed and reenacted to read:

15 Sec. 35.15.020. REQUEST FOR PUBLIC BIDS. The solicitation of  
16 bids for construction of public works is governed by AS 36.30 (State  
17 Procurement Code). The request for bids may require the contractor to  
18 furnish equipment, labor, materials, and supplies for the project, or  
19 it may state that the department will furnish the materials and sup-  
20 plies. If the department elects to provide materials and supplies for  
21 a project, it shall make the election at the time it adopts the con-  
22 struction program. The department shall acquire these materials and  
23 supplies under AS 36.30 by requesting bids for them according to the  
24 class, type, and nature of the materials and supplies. The contract  
25 may be awarded either upon the basis of delivery to the construction  
26 project directly or to a central storehouse or storehouses maintained  
27 by the department. Those materials and supplies so purchased by the  
28 department may be delivered to the project site without expense to the  
29 contractor, or it may sell them to the contractor at cost and make the

1 materials and supplies a part of the construction cost.

2 \* Sec. 36. AS 35.15.040 is repealed and reenacted to read:

3 Sec. 35.15.040. PROCEDURES FOR THE AWARD OF CONTRACTS. Award of  
4 a contract for the construction of a public work shall comply with  
5 this title, AS 36.30 (State Procurement Code), and the regulations  
6 adopted under those laws.

7 \* Sec. 37. AS 35.20.010 is amended to read:

8 Sec. 35.20.010. ACQUISITION OF LAND, RIGHTS-OF-WAY, AND MATE-  
9 RIALS BY PURCHASE OR EMINENT DOMAIN. The department, on behalf of the  
10 state and as part of the cost of constructing or maintaining a public  
11 work, may purchase in the open market, acquire, take over, or condemn  
12 under the right and power of eminent domain land in fee simple or  
13 easements which it considers necessary for present public use, either  
14 temporary or permanent, or which it considers necessary and reasonable  
15 for the public use. By the same means, the department may obtain  
16 material including clay, gravel, sand, or rock, or the land necessary  
17 to obtain the material, and the necessary land or easements to provide  
18 access to it. The department may acquire the land or material  
19 notwithstanding the fact that the title to it is in the state or a  
20 department, agency, commission or institution of the state.  
21 Acquisition of material in the open market under this section is  
22 governed by AS 36.30 (State Procurement Code).

23 \* Sec. 38. AS 37.05 is amended by adding a new section to read:

24 Sec. 37.05.232. PETTY CASH ACCOUNTS. The department shall  
25 determine the amount of the petty cash accounts needed by each state  
26 agency and inspect the petty cash accounts at least once each year to  
27 determine that the total plus amounts of receipts for unreplenished  
28 disbursements is equal to the fixed sum of cash set aside. Shortages  
29 in petty cash accounts are a personal liability of the responsible

1 head of the agency to whom the account is set aside. The department  
2 shall adopt necessary regulations governing use and replenishment of  
3 petty cash funds.

4 \* Sec. 39. AS 41.21.020(a) is amended to read:

5 (a) The Department of Natural Resources shall

6 (1) develop a continuing plan for the conservation and  
7 maximum use in the public interest of the scenic, historic, archaeo-  
8 logic, scientific, biological, and recreational resources of the  
9 state;

10 (2) plan for and develop a system of state parks and recre-  
11 ational facilities, to be established as the legislature authorizes  
12 and directs;

13 (3) acquire by gift, purchase, or transfer from state or  
14 federal agencies, or from individuals, corporations, partnerships or  
15 associations, land necessary, suitable and proper for roadside, pic-  
16 nic, recreational or park purposes;

17 (4) control, develop and maintain state parks and recrea-  
18 tional areas;

19 (5) provide for the acquisition, care, control, supervi-  
20 sion, improvement, development, extension and maintenance of public  
21 recreational land, and make necessary arrangements, contracts or  
22 commitments for the improvement and development of land acquired under  
23 AS 41.21.010 - 41.21.040; contracting for improvement and development  
24 under this paragraph is governed by AS 36.30 (State Procurement Code);

25 (6) adopt, in accordance with this section and the Adminis-  
26 trative Procedure Act (AS 44.62), regulations governing the use and  
27 designating incompatible uses within the boundaries of state park and  
28 recreational areas to protect the property and to preserve the peace;

29 (7) cooperate with the United States and its agencies and

1 local subdivisions of the state to secure the effective supervision,  
2 improvement, development, extension, and maintenance of state parks,  
3 state monuments, state historical areas, and state recreational areas,  
4 and secure agreements or contracts for the purpose of AS 41.21.010 -  
5 41.21.040;

6 (8) encourage the organization of state public park and  
7 recreational activities in the local political subdivisions of the  
8 state;

9 (9) provide for consulting service designed to develop  
10 local park and recreation facilities and programs;

11 (10) provide clearing-house services for other state agen-  
12 cies concerned with park and recreation matters; and

13 (11) perform other duties as are prescribed by executive  
14 order or by law;

15 (12) maintain memorials to Alaska veterans located in state  
16 parks;

17 (13) adopt, in accordance with the Administrative Procedure  
18 Act (AS 44.62), regulations governing the use of the Chena River State  
19 Recreation Area and designating incompatible uses within the bound-  
20 aries of the Chena River State Recreation Area in accordance with  
21 AS 41.21.490.

22 \* Sec. 40. AS 42.40.920(b) is amended to read:

23 (b) Unless specifically provided otherwise in this chapter, the  
24 following laws do not apply to the operations of the corporation:

25 (1) AS 19;

26 (2) AS 30.15;

27 (3) AS 35;

28 (4) AS 36.30, except as specifically provided in AS 36.30

29 (State Procurement Code);

- 1           (5) AS 37.05;  
2           (6) [(5)] AS 37.07;  
3           (7) [(6)] AS 37.10.010 - 37.10.060;  
4           (8) [(7)] AS 37.10.085;  
5           (9) [(8)] AS 37.20;  
6           (10) [(9)] AS 37.25;  
7           (11) [(10)] AS 38;  
8           (12) [(11)] AS 44.62.040 - 44.62.320.

9 \* Sec. 41. AS 44.21.310(a) is amended to read:

10           (a) The telecommunications divisions, as directed by the deputy  
11           commissioner, shall

12                   (1) advise the governor on matters of policy and comprehen-  
13           sive state planning for telecommunications services;

14                   (2) make an annual report to the governor and to the legis-  
15           lature on the activities of the telecommunications divisions;

16                   (3) coordinate, manage, and supervise state programs in  
17           telecommunications, including the management of those telecommunica-  
18           tion services for the state obtained from common carriers and from the  
19           communications industry;

20                   (4) when requested, provide technical and consulting assis-  
21           tance to the executive, judicial, and legislative branches of state  
22           government, to the University of Alaska, and to private noncommercial  
23           entities which request that assistance in facility procurement and  
24           leasing and in identifying long-range goals and objectives for the  
25           state and its political subdivisions in all aspects of telecommunica-  
26           tions, including public, educational, and instructional telecommunica-  
27           tions;

28                   (5) prepare and maintain a state comprehensive telecommu-  
29           nications development plan to further state telecommunications devel-

1        opment and to meet state telecommunications needs and prepare and  
2        maintain a comprehensive inventory of all state communications facil-  
3        ities;

4                (6) whenever feasible, procure services from private enter-  
5        prise or certified and franchised utilities and contract for the  
6        construction, management, operation and maintenance of telecommunica-  
7        tions systems, and develop a procurement policy consistent with  
8        AS 36.30 (State Procurement Code) [UNDER AS 37.05.010 - 37.05.410];  
9        the procurement policy must seek to achieve the maximum benefit to the  
10       public, and methods of procurement, including lease, purchase, rental,  
11       or combinations of lease, purchase, and rental, must be selected on  
12       the basis of factors such as the ratio of long-range costs versus  
13       benefits, life cycle costing, and the costs to the communications  
14       industry to the extent that these costs may affect local and long  
15       distance basic telephone rates; procurement, contracting, construc-  
16       tion, and maintenance under this paragraph is governed by AS 36.30;

17                (7) provide information and assistance to state agencies to  
18        promot governmental coordination and unity in the preparation of  
19        agency plans and programs involving the use of telecommunications;

20                (8) apply for and accept federal and private money, proper-  
21        ty, or assistance, that may be appropriated, granted, or otherwise  
22        made available to the telecommunications divisions and use and dis-  
23        burse money and property for purposes consistent with AS 44.21.300 -  
24        44.21.330 and AS 44.21.256 - 44.21.290, subject to reasonable limita-  
25        tions imposed by the grantor;

26                (9) participate with other governmental units in planning,  
27        and assist local governments and governmental conferences and councils  
28        in the state in planning and coordinating their activities relating to  
29        telecommunications;

1 (10) provide for the orderly transition to new telecommu-  
2 nications services and systems by state agencies;

3 (11) serve as a clearinghouse for information, data, and  
4 other materials which may be necessary or helpful to federal, state,  
5 or local governmental agencies in the development of telecommunication  
6 systems;

7 (12) coordinate their services and activities with those of  
8 other state departments and agencies to the fullest extent possible to  
9 avoid unnecessary duplication; and

10 (13) provide that all activities of the telecommunications  
11 divisions are responsive to state statutes and regulations, and to the  
12 regulations and rulings of the Federal Communications Commission.

13 \* Sec. 42. AS 44.19.144(b) is amended to read:

14 (b) The director may

15 (1) with the written concurrence of the governor, enter  
16 into contracts and subcontracts on behalf of the state to carry out  
17 the provisions of AS 44.19.141 - 44.19.152; contracting under this  
18 paragraph is governed by AS 36.30 (State Procurement Code);

19 (2) act for the state in the initiation, investigation,  
20 evaluation of or participation in any program relative to the stated  
21 purpose of AS 44.19.141 - 44.19.152 which may involve more than one  
22 government or governmental unit;

23 (3) on behalf of the state, accept and expend any gifts or  
24 grants made to the state with the approval of the governor where such  
25 gifts or grants were made for the purposes of furthering the objec-  
26 tives of the office.

27 \* Sec. 43. AS 44.33.300 is amended to read:

28 Sec. 44.33.300. WAIVER OF CERTAIN PROVISIONS. When the  
29 governor has by proclamation declared an area impacted by an economic

1 disaster, the following provisions regarding public contracts may be  
2 waived to the extent specified in the proclamation:

3 (1) the requirement of a contractor's bond as prescribed in  
4 AS 36.25.010 may be waived if the contract amount does not exceed  
5 \$100,000;

6 (2) the public bid requirements as contained in AS 19.10.-  
7 17C, AS [19.10.190,] 19.30.191(b), AS 35.15.010 - 35.15.020, and  
8 AS 36.30 (State Procurement Code) [AND AS 35.15.010 - 35.15.030] may  
9 be waived if the contract is to be performed by a contractor whose  
10 principal office is in the designated area and the contract amount  
11 does not exceed \$50,000;

12 (3) the general policy to require all construction to be  
13 under bid contract as contained in AS 19.10.170, AS 35.15.010, and  
14 AS 36.30 (State Procurement Code) may be waived if the contract is to  
15 be performed by the state, another governmental entity, or a nonprofit  
16 entity.

17 \* Sec. 44. AS 44.47.250 is amended by adding a new subsection to read:

18 (c) Contracts with persons or nongovernmental entities under  
19 this section are governed by AS 36.30.

20 \* Sec. 45. AS 44.47.490(a) is amended to read:

21 (a) The director may establish field offices under this chapter,  
22 may hire one or more lending officers, and, under AS 36.30 (State  
23 Procurement Code), may contract for the services of

24 (1) real property appraisers who are familiar with rural  
25 construction; and

26 (2) engineers who are familiar with engineering problems in  
27 arctic and subarctic regions.

28 \* Sec. 46. AS 44.71.010 is amended to read:

29 Sec. 44.71.010. DISPOSITION OF OBSOLETE OR SURPLUS STATE PROP-

1 ERTY. The Department of Administration shall take possession of  
2 obsolete or surplus property of the state for which there is no imme-  
3 diate or prospective use, except abandoned or obsolete school build-  
4 ings and other school property. It shall also take possession of  
5 property remaining in the control of a commission or board of the  
6 state government after the commission or board stops functioning. The  
7 Department of Administration shall sell, lease, license, or dispose of  
8 the property on the terms it considers for the best interests of the  
9 state in conformance with regulations adopted under AS 36.30 (State  
10 Procurement Code).

11 \* Sec. 47. AS 44.77.010(a) is amended to read:

12 (a) Except as provided in (d) of this section, every [EVERY]  
13 claim for reimbursement for money expended, or for compensation for  
14 labor, materials, or supplies furnished, or services given to or for  
15 the state, whether based on a contract or on a ratification, shall be  
16 promptly presented to the appropriate administrative or executive  
17 officer for approval and payment.

18 \* Sec. 48. AS 44.77.010 is amended by adding a new subsection to read:

19 (d) A claim that is governed by AS 36.30.560 - 36.30.699 is not  
20 governed by this chapter.

21 \* Sec. 49. AS 44.85.120 is amended to read:

22 Sec. 44.85.120. CARE AND CUSTODY OF BONDS. The bond bank  
23 authority, in accordance with AS 36.30 (State Procurement Code), may  
24 enter into agreements or contracts with a bank, trust company, banking  
25 or financial institution inside or outside the state as may be neces-  
26 sary, desirable or convenient, in the opinion of the bond bank author-  
27 ity, for rendering services in connection with the care, custody or  
28 safekeeping of municipal bonds or other investments held or owned by  
29 the bond bank authority, for rendering services in connection with the

1 payment or collection of amounts payable as to principal or interest,  
2 and for rendering services in connection with the delivery to the bond  
3 bank authority of municipal bonds or other investments purchased by it  
4 or sold by it, and to pay the cost of those services. The bond bank  
5 authority may also, in connection with any of the services to be  
6 rendered by a bank, trust company or banking or financial institution  
7 as to the custody and safekeeping of its municipal bonds or invest-  
8 ments, require security in the form of collateral bonds, surety agree-  
9 ments or security agreements in such form and amount as, in the opin-  
10 ion of the bond bank authority, is necessary or desirable.

11 \* Sec. 50. AS 44.99.001 is amended to read:

12 Sec. 44.99.001. ADMINISTRATION OF HIGHWAY SAFETY PROGRAM. The  
13 governor may contract and do all other things necessary on behalf of  
14 this state under 23 U.S.C. 401-404 (Highway Safety Act of 1966), and  
15 may cooperate with interested persons and agencies to effectuate the  
16 purposes of that Act. Contracting under this section is governed by  
17 AS 36.30 (State Procurement Code). The governor may designate a  
18 person to serve as the governor's highway safety representative;  
19 however, the governor is the official in this state having the ulti-  
20 mate responsibility for dealing with the federal government with  
21 respect to programs and activities under the Federal Highway Safety  
22 Act of 1966. The governor shall coordinate the activities relating to  
23 highway safety of state departments, agencies and subdivisions and of  
24 the Governor's Commission on Transportation Safety established in  
25 AS 44.19.190.

26 \* Sec. 51. AS 46.04.090(a) is amended to read:

27 (a) The department, when feasible, shall enter into contracts  
28 with persons or private organizations to provide the personnel,  
29 equipment, or other services or supplies which may be required to

1 carry out this chapter. Contracts under this section are governed by  
2 AS 36.30 (State Procurement Code). When private contracting is not  
3 feasible, the department may establish and maintain at ports, harbors,  
4 or other locations in the state, the cleanup personnel, equipment, and  
5 supplies which, in its judgment, are necessary to carry out this  
6 chapter.

7 \* Sec. 52. AS 46.07.040(a) is amended to read:

8 (a) The commissioner shall provide for the construction of  
9 facilities under this chapter, and is authorized to provide for the  
10 construction by contract or through grants to public agencies or  
11 private nonprofit organizations, or otherwise. A [NC] contribution  
12 toward the cost of the construction of a facility may not be required  
13 from its users. Construction under this section by contract is gov-  
14 erned by AS 36.30 (State Procurement Code).

15 \* Sec. 53. AS 46.15.020(a) is amended to read:

16 (a) The commissioner shall exercise all those powers and do all  
17 those acts necessary to carry out the provisions and objectives of  
18 this chapter. The commissioner may

19 (1) subject to AS 36.30 (State Procurement Code), enter  
20 into contractual agreements necessary to carry out the provisions of  
21 this chapter including agreements with federal, state and local agen-  
22 cies;

23 (2) apply for, accept, administer and expend grants, gifts,  
24 and loans from the federal government and any other public or private  
25 sources for the purposes of this chapter, and adopt procedures and do  
26 acts not otherwise restricted by law which are necessary to qualify  
27 the state to receive grants, gifts and loans;

28 (3) establish a division of water in the Department of  
29 Natural Resources and assign to that division the responsibility for

1 carrying out the provisions of this chapter.

2 \* Sec. 54. AS 47.05.015(c) is amended to read:

3 (c) A contract authorized under this section is exempt from the  
4 competitive bid requirements of AS 36.30 (State Procurement Code)  
5 [AS 37.05.230]. In awarding a contract under this section the depart-  
6 ment shall [PUBLISH A] request [FOR] proposals in accordance with  
7 regulations of the Department of Administration under AS 36.30 (State  
8 Procurement Code) [DEPARTMENT].

9 \* Sec. 55. AS 47.30.350(a) is amended to read:

10 (a) The department shall

11 (1) develop and submit to the Surgeon General of the United  
12 States Public Health Service a comprehensive program for the con-  
13 structing and equipping of hospitals and other facilities for the  
14 examination, observation, care, and treatment of the mentally ill;

15 (2) develop and submit to the Surgeon General plans and  
16 specifications for the constructing and equipping of the hospitals and  
17 other facilities;

18 (3) construct and equip the hospitals and other facilities  
19 in accordance with the program, plans, and specifications approved by  
20 the Surgeon General; construction and equipping under this paragraph  
21 is governed by AS 36.30 (State Procurement Code);

22 (4) cooperate, coordinate, and contract, wherever indicated  
23 and desirable, with other state boards, departments and agencies, and  
24 agencies of the United States in the construction program, and hire  
25 necessary personnel and enter into contracts with private individuals  
26 and companies, to the end that the hospitals and other facilities are  
27 constructed in the most economical and expeditious manner; ontracting  
28 and construction under this section are governed by AS 36.30 (State  
29 Procurement Code).

1 \* Sec. 56. AS 47.30.660 is amended to read:

2 Sec. 47.30.660. POWERS AND DUTIES OF DEPARTMENT. The depart-  
3 ment is the mental health authority of the state and shall

4 (1) administer a comprehensive program for the prevention  
5 of mental illness and the care and treatment of the mentally ill,  
6 including inpatient and outpatient care and treatment and the procure-  
7 ment of services of specialists or other persons on a contractual or  
8 other basis;

9 (2) take the actions and undertake the obligations which  
10 are necessary to participate in federal grants-in-aid programs and  
11 accept federal or other financial aid from whatever sources for the  
12 study, examination, care, and treatment of the mentally ill;

13 (3) administer AS 47.30.660 - 47.30.915;

14 (4) designate, operate, and maintain treatment facilities  
15 equipped and qualified to provide inpatient and outpatient care and  
16 treatment for the mentally ill;

17 (5) provide for the placement of mentally ill patients in  
18 designated treatment facilities;

19 (6) enter into arrangements with governmental agencies for  
20 the care or treatment of the mentally ill in facilities of the govern-  
21 mental agencies in the state or in another state;

22 (7) enter into contracts with treatment facilities for the  
23 custody and care or treatment of the mentally ill; contracts under  
24 this paragraph are governed by AS 36.30 (State Procurement Code);

25 (8) enter into contracts which incorporate safeguards  
26 consistent with AS 47.30.660 - 47.30.915 and the preservation of the  
27 civil rights of the patients with another state for the custody and  
28 care or treatment of patients previously committed from this state  
29 under 48 U.S.C., sec. 46 et seq., and P.L. 830, 84th Congress, 2nd

1 Session, 70 Stat. 709;

2 (9) prescribe the form of applications, records, reports,  
3 requests for release, and consents to medical or psychological treat-  
4 ment required by AS 47.30.660 - 47.30.915;

5 (10) require reports from the head of a treatment facility  
6 concerning the care of patients;

7 (11) visit each treatment facility at least annually to  
8 review methods of care or treatment for patients;

9 (12) investigate complaints made by a patient or an inter-  
10 ested party on behalf of a patient;

11 (13) delegate upon mutual agreement to another officer or  
12 agency of it, or a political subdivision of the state, or a treatment  
13 facility designated, any of the duties and powers imposed upon it by  
14 AS 47.30.660 - 47.30.915; and

15 (14) adopt regulations to implement the provisions of  
16 AS 47.30.660 - 47.30.915.

17 \* Sec. 57. AS 47.35.010(a) is amended to read:

18 (a) The department may

19 (1) license and supervise boarding homes, foster homes,  
20 group homes, nurseries, institutions caring for children and foster  
21 homes, group homes and institutions caring for dependent adults;

22 (2) investigate and supervise licensees;

23 (3) enforce the standards established by it;

24 (4) contract with private or municipal agencies to investi-  
25 gate and make recommendations to the department for the licensing and  
26 supervision of boarding homes, foster homes, group homes, nurseries,  
27 institutions caring for children and foster homes, group homes and  
28 institutions caring for dependent adults under procedures and  
29 standards of operation established by the department; contracts with

1 private agencies under this paragraph are governed by AS 36.30 (State  
2 Procurement Code).

3 \* Sec. 58. AS 47.37.030 is amended to read:

4 Sec. 47.37.030. POWERS OF OFFICE. The office may

5 (1) plan, establish, and maintain treatment programs as  
6 appropriate;

7 (2) make contracts and award grants necessary or incidental  
8 to the performance of its duties and the execution of its powers,  
9 including contracts with and grants to public and private agencies,  
10 organization', and individuals, to pay them for services rendered or  
11 furnished to alcoholics or intoxicated persons; to the maximum extent  
12 possible, contracts and grants shall be for a period of two years;  
13 contracts under this paragraph are governed by AS 36.30 (State Pro-  
14 urement Code);

15 (3) solicit and accept for use a gift of money or property  
16 or a grant of money, services, or property from the federal govern-  
17 ment, the state, or a political subdivision of it or a private source,  
18 and do all things necessary to cooperate with the federal government  
19 or any of its agencies in making an application for a grant;

20 (4) administer or supervise the administration of the  
21 provisions relating to alcoholics and intoxicated persons of any state  
22 plan submitted for federal funding under federal health, welfare, or  
23 treatment legislation;

24 (5) coordinate its activities and cooperate with alcoholism  
25 programs in this and other states, and make contracts and other joint  
26 or cooperative arrangements with state, local, or private agencies for  
27 the treatment of alcoholics and intoxicated persons and for the common  
28 advancement of alcoholism programs in this and other states;

29 (6) keep records and engage in research and the gathering

1 of relevant statistics;

2 (7) do other acts necessary to implement the authority  
3 expressly granted to it;

4 (8) acquire, hold, or dispose of real property or any  
5 interest in it, and construct, lease, or otherwise provide treatment  
6 facilities for alcoholics and intoxicated persons; however, the office  
7 shall encourage local initiative, involvement and financial participa-  
8 tion under grants-in-aid whenever possible in preference to the con-  
9 struction or operation of facilities directly by the office; contract-  
10 ing and construction under this paragraph are governed by AS 36.30.

11 \* Sec. 59. AS 47.37.130(g) is amended to read:

12 (g) The office may contract for the use of any facility as an  
13 approved public treatment facility if the coordinator, subject to the  
14 regulations of the department, considers this an effective and econom-  
15 ical course to follow. Contracting under this subsection is governed  
16 by AS 36.30 (State Procurement Code).

17 \* Sec. 60. AS 47.90.010(a) is amended to read:

18 (a) The commissioner, in consultation with state and local  
19 government agencies, community groups, and groups concerned with  
20 displaced homemakers, may

21 (1) contract with eligible private profit and nonprofit  
22 corporations for multipurpose service centers for displaced home-  
23 makers; contracting under this paragraph is governed by AS 36.30  
24 (State Procurement Code); and

25 (2) coordinate existing state programs for displaced home-  
26 makers.

27 \* Sec. 61. AS 47.40.041(b) is amended to read:

28 (b) Notices published by the department concerning the opening  
29 of the application process for a grant award shall specify the geo-

1 graphical area in which services are needed, the type of services, the  
2 number of beds anticipated to be needed, the maximum number of days of  
3 care, and any other requirements established by the department.  
4 Grants authorized under this section are exempt from AS 36.30 (State  
5 Procurement Code) [THE COMPETITIVE BID REQUIREMENTS OF AS 37.05.230].

6 \* Sec. 62. REPORT. By December 1, 1987, the commissioner of adminis-  
7 tration and the commissioner of transportation and public facilities shall  
8 report to the legislature concerning procurements by state agencies during  
9 the first six months of 1987. The report must include

- 10 (1) the records prepared under AS 36.30.510(4);  
11 (2) recommendations for changes in AS 36.30 or other laws based  
12 on implementation of AS 36.30 in those six months; and  
13 (3) a description of any matters that involved litigation con-  
14 cerning AS 36.30 during those six months.

15 \* Sec. 63. REGULATIONS DEADLINE. The regulations required under  
16 AS 36.30 as added by sec. 2 of this Act, shall be adopted by January 1,  
17 1987 and shall be effective on that date. Regulations adopted under laws  
18 repealed in sec. 64 of this Act become ineffective January 1, 1987.

19 \* Sec. 64. REPEALER. The following laws are repealed: AS 14.40.340;  
20 AS 19.10.190, 19.10.210; AS 24.23; AS 35.15.030, 35.15.050; AS 36.98;  
21 AS 37.05.220, 37.05.230, 37.05.231, 37.05.240, 37.05.250, 37.05.260, 37.-  
22 05.270, 37.05.280, 37.05.290, 37.05.400(2) and (3); AS 44.65; AS 44.77.-  
23 010(c); and AS 47.90.010(c).

24 \* Sec. 65. Section 63 of this Act takes effect immediately in accor-  
25 dance with AS 01.10.070(c).

26 \* Sec. 66. Except as provided in sec. 65, this Act takes effect Janu-  
27 ary 1, 1987.

PROPOSED PROCUREMENT LEGISLATION  
SECTIONAL ANALYSIS  
DRAFT #3

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

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

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

Article 1. Organization of State Procurement.

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

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

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

11/14/11 NOT  
7/11/12 IN BILL

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

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

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

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

BIDLISTS

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

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

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

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

Article 2. Competitive Sealed Bidding.

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

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

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

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

Sec. 36.30.130. Public notice of the ITB must be provided 21 days before the date for the opening of the bid, unless otherwise determined in writing by the chief procurement officer, or the commissioner of transportation and public facilities for construction or state equipment bids. Notice must be mailed to all active prospective contractors on the bid list, and other forms of notice are allowable when practicable.

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

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

Sec. 36.30.160. Bids received after the bid due date indicated on the ITB may not be accepted unless the delay was due to an error of a state employee directly responsible for opening the bids.

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

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

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

Article 3. Competitive Sealed Proposals.

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

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

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

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

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

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

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

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

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

#### Article 4. Other Procurement Methods.

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

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

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

#### Article 5. Contract Formation and Modification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 36.30.480. Cost principle regulations shall be adopted.

Article 6. Procurement Records and Reports.

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

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

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

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

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

Article 7. Legal and Contractual Remedies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 36.30.625. An appeal from a decision of the procurement officer on a contract controversy may be filed by the contractor with the commissioner of administration or transportation and public facilities. The appeal shall be filed within 5 days after the decision is received by the contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Article 8. Intergovernmental Relations.

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

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

Sec. 36.30.720. Joint use of facilities is allowable.

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

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

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

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

Sec. 36.30.790. Definitions for this article are provided.

#### Article 9. General Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 36.30.990. Definitions.

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

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

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

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

SECTION 64. This is the repealer section.

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

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

ANALYSIS OF SENATE PROCUREMENT BILL NO. 341  
January 14, 1986

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CONTACT PERSON:   Dan Malick        PHONE:   465-3911  

This department is providing working draft comments to be used by executive branch and legislative staff. These comments are not to be construed as the department's position on the final bill.

SECTION:   36.30.015(a)        PAGE NUMBER:   3        LINES:   22  

REPLACEMENT LANGUAGE DESIRED: (stated below or attached)

After "may contract for" add "professional services,".

REASONING/JUSTIFICATION: (stated below or attached)

In the performance of its design and construction function DOT&PF elects to have a portion of this work performed by engineers from the private sector.

ANALYSIS OF SENATE PROCUREMENT BILL NO. 341

January 14, 1986

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CONTACT PERSON: Dan Malick PHONE: 465-3911

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SECTION: 36.30.015 PAGE NUMBER: 3 LINES: 23

REPLACEMENT LANGUAGE DESIRED: (stated below or attached)

Line 23. Remove the words "procurements for the state equipment fleet" and replace with the words "for the procurement of the state equipment fleet including its maintenance and operation".

REASONING/JUSTIFICATION: (stated below or attached)

To clarify the intent of the bill, that is, to permit the DOT&PF not only to procure the cars, trucks, graders, etc., for the state equipment fleet, but grant them the authority to operate and maintain them with the purchase of fuel and parts, etc.

ANALYSIS OF SENATE PROCUREMENT BILL NO. 341  
January 14, 1986

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CONTACT PERSON:- Dan Malick PHONE: 465-3911

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SECTION: 36.30.015 PAGE NUMBER: 3 LINES: 27

REPLACEMENT LANGUAGE DESIRED: (stated below or attached)

Line 27. Insert after "for construction" the words "and for the procurement of equipment to be added to the state equipment fleet".

REASONING/JUSTIFICATION: (stated below or attached)

To clarify the intent of the bill. Without the proposed amendment, the bill says that the Commissioner of DOT&PF may only delegate the authority to contract for construction and implies that none of the other authority vested in that position may be delegated.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CONTACT PERSON: Dan Malick PHONE: 465-3911

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SECTION: 36.30.040 PAGE NUMBER: 6 LINES: 22

REPLACEMENT LANGUAGE DESIRED: (stated below or attached)

After this chapter insert "The provisions of (a) (b) and (c) of this section do not apply to construction contracts for Transportation and Public Facilities."

REASONING/JUSTIFICATION: (stated below or attached)

The DOT&PF, in the past, has found this practice to be costly and ineffective in attracting bidders interested in our projects.

ANALYSIS OF SENATE PROCUREMENT BILL NO. 341  
January 14, 1986

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CONTACT PERSON: Dan Malick PHONE: 465-3911

This department is providing working draft comments to be used by executive branch and legislative staff. These comments are not to be construed as the department's position on the final bill.

SECTION: 36.30.110 PAGE NUMBER: 9 LINES: 15

REPLACEMENT LANGUAGE DESIRED: (stated below or attached)

Line 15.: After "include" delete "a" and insert "the time, place, and".

REASONING/JUSTIFICATION: (stated below or attached)

To clarify the intent of the bill, that is, to give bidders clear instructions and equal opportunity to participate in all state procurement.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CONTACT PERSON: Dan Malick PHONE: 465-3911

This department is providing working draft comments to be used by executive branch and legislative staff. These comments are not to be construed as the department's position on the final bill.

SECTION: 36.30.110 PAGE NUMBER: 9 LINES: 18

REPLACEMENT LANGUAGE DESIRED: (stated below or attached)

Following (b) insert the words "Within 7 days following the bid opening the". Delete "The".

REASONING/JUSTIFICATION: (stated below or attached)

Listing of subcontractor's is an item of responsibility and not one of responsiveness. Listing of subcontractors should be done, within a reasonable length of time, after the bid opening. Only items essential to determine a contractor's responsiveness should be required at the bid opening. Items which address responsibility can be determined after the actual bid opening and before the actual award of a contract. This should make bid openings less complicated and encourage more bidders with less bid protests. Requiring bidders to list subcontractors, with in a reasonable time frame, should discourage bid shopping.

ANALYSIS OF SENATE PROCUREMENT BILL NO. 341  
January 14, 1986

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CONTACT PERSON: Dan Malick PHONE: 465-3911

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SECTION: 36.30.120 PAGE NUMBER: 10 LINES: 7

REPLACEMENT LANGUAGE DESIRED: (stated below or attached)

Line 7. Delete "or the equivalent in cash".

REASONING/JUSTIFICATION: (stated below or attached)

The actual form and type of bid security is better addressed in the regulations. The requirements for returning and safe keeping must also be included in the regulations.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CONTACT PERSON:     Dan Malick     PHONE:     465-3911    

This department is providing working draft comments to be used by executive branch and legislative staff. These comments are not to be construed as the department's position on the final bill.

SECTION:     36.30.120(b)(2)     PAGE NUMBER:     10     LINES:     11    

REPLACEMENT LANGUAGE DESIRED: (stated below or attached)

After "\$100,000;" delete "or"

After "(2)" insert "and an additional"

After "amount of" delete "the" and insert "a"

After "bid" delete "if the bid exceeds \$100,000." and insert "exceeding \$100,000, up to a maximum bid security of \$200,000."

REASONING/JUSTIFICATION: (stated below or attached)

The bid security for a project of \$101,000 should be greater than one for \$99,000. It is unreasonable not to set an upper limit on a bid security. This section may be an example where the actual amounts may be better addressed in regulations.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CONTACT PERSON:     Dan Malick          PHONE:     465-3911    

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SECTION:     36.30.140(a)          PAGE NUMBER:     11          LINES:     18    

REPLACEMENT LANGUAGE DESIRED: (stated below or attached)

After "shall be" add the following "read aloud and"

REASONING/JUSTIFICATION: (stated below or attached)

Makes the statute conform with accepted practice.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CONTACT PERSON: Dan Malick PHONE: 465-3911

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SECTION: 36.30.160 PAGE NUMBER: 12 LINES: 9

REPLACEMENT LANGUAGE DESIRED: (stated below or attached)

Line 9. After the word "date" insert "and time".

REASONING/JUSTIFICATION: (stated below or attached)

To better define the circumstance under which a bid would not be accepted.

ANALYSIS OF SENATE PROCUREMENT BILL NO. 341  
January 14, 1986

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CONTACT PERSON: Dan Malick PHONE: 465-3911

This department is providing working draft comments to be used by executive branch and legislative staff. These comments are not to be construed as the department's position on the final bill.

SECTION: 36.30.170 PAGE NUMBER: 13 LINES: 15, 16, and 17

REPLACEMENT LANGUAGE DESIRED: (stated below or attached)

Delete "(c) The provisions of (b) of this section do not apply to construction contracts for highways and public works if the construction exceeds \$5,000.00."

REASONING/JUSTIFICATION: (stated below or attached)

The deletion would conform to the Governor's comment to Alaska Hire. Note: section 36.30.890 states if there is a conflict between these provisions and federal statutes or regulations then the federal shall prevail. So the section could not apply to federally assisted projects.

ANALYSIS OF SENATE PROCUREMENT BILL NO. 341  
January 14, 1986

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CONTACT PERSON: Dan Malick PHONE: 465-3911

This department is providing working draft comments to be used by executive branch and legislative staff. These comments are not to be construed as the department's position on the final bill.

SECTION: 36.30.620(d) PAGE NUMBER: 32 LINES: 26

REPLACEMENT LANGUAGE DESIRED: (stated below or attached)

Delete "five" and insert "21".

REASONING/JUSTIFICATION: (stated below or attached)

The procurement officer is given 90 days to make his decision yet we wish to allow the contractor only 5 days to appeal it. The time is so short as to be unreasonable and unenforceable.

ANALYSIS OF SENATE PROCUREMENT BILL NO. 341  
January 14, 1986

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

CONTACT PERSON:   Dan Malick        PHONE:   465-3911  

This department is providing working draft comments to be used by executive branch and legislative staff. These comments are not to be construed as the department's position on the final bill.

SECTION:   36.30.625        PAGE NUMBER:   33        LINES:   12  

REPLACEMENT LANGUAGE DESIRED: (stated below or attached)

Delete "five days" and insert "twenty-one days".

REASONING/JUSTIFICATION: (stated below or attached)



## Dept. of Transportation & Public Facilities

# Position Paper

**BILL NO:** Senate Bill 341  
**TITLE:** Procurement Practices

**APPROVED:** *W. S. Spahr*  
R. J. Knapp  
for Commissioner  
**DATE:** January 30, 1986

The Department of Transportation and Public Facilities has worked closely with the Legislative interim committees in the drafting of Senate Bill 341. Many of the department's concerns of both a technical and policy nature have been addressed in the initial drafting of the bill.

However, while the department supports the Legislature and the administration's effort to revise and update procurement codes, there are a few areas within Senate Bill 341 that the department feels needs further consideration:

1. SB 341 requires the maintenance and use of bidders lists for the request for proposal and bid notification process. This is time consuming, expensive and has proven from department experience to be of limited value. We feel this requirement for DOT&PF construction should be removed from the bill.
2. SB 341 requires the listing of all sub-contractors at time of bid opening. This further complicates the bid opening process and might jeopardize bidder responsiveness ~~the~~ with potentially large cost consequences to the state. The department feels that a subcontractor list would be appropriate to require seven days after the bid opening to limit the extent of bid shopping.
3. SB 341 lacks definitive statements on Alaska preference. An Alaska preference clause for all construction even those over \$5,000 should be considered.
4. SB 341 has no provisions for expanding sole-source and small procurement eligibility. There are numerous purchasing needs of the department which fall outside of the strict definitions provided in the bill. Some sort of extension process is highly advisable.
5. SB 341 requires "teeth" for handling of false claims. False claims without penalty would jeopardize the efficiency and credibility of the claims process.

For further information call Susan Fleischhauer at 465-3900.

6. SB 341's small procurement procedures limit consultants to a total of \$25,000 in small contracts within a twelve (12) month period. The department feels this is an unreasonable restriction and would seriously jeopardize the ability of many firms to continue providing critical services to the department.
7. There are numerous areas within the SB 341, particularly in Articles 5 and 6, where the statute is overly specific and those items might be best addressed in regulations.

The Department of Transportation and Public Facilities supports the current effort underway to update procurement procedure along the lines of the model procurement code with modifications to minimize the adverse impact on the state and private sector contracting community. The department is presently assisting in the development of Regulation to implement the bill.

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : Senate Bill No. 341  
 Title : Procurement Practices and Procedures  
 \_\_\_\_\_  
 Sponsor : Rules Committee  
 Requestor : \_\_\_\_\_  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected : DOT&PF  
 BRU : \_\_\_\_\_  
 \_\_\_\_\_  
 Components : \_\_\_\_\_  
 \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		50.0	55.0	60.0	65.0	70.0
TRAVEL		10.0				
CONTRACTUAL		100.0	55.0	60.0	65.0	70.0
SUPPLIES		40.0	20.0	25.0	27.0	30.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>200.0</b>	<b>130.0</b>	<b>145.0</b>	<b>157.0</b>	<b>170.0</b>

CAPITAL		0	0	0	0	0
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REVENUE		0	0	0	0	0
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**FUNDING : (Thousands of Dollars)**

GENERAL FUND		200.0	130.0	145.0	157.0	170.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

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

**ANALYSIS :** Attach a separate page if necessary

Based on the following figures: 1) delegations to other agencies - \$30.0 for the start up year; 2) procedures updates - \$30.0 for start up year; 3) development of standards and forms - \$10.0 for start up year; 4) one officer plus expenses to administer hearings and claims - \$100.0; 5) list maintenance and mailing - \$10.0; and 6) subcontractor list checking and bid opening administration - \$10.0; 7) travel

Prepared by: Daniel F. Malick, Director Phone: 465-3911  
 Division: Management and Finance Date: 1-30-86

Approved by Commissioner: R. J. Knapp by Wm S. Spradley Date: 1-30-86  
 Agency: DOT&PF

**Distribution (by Agency preparing fiscal note):**

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

Fiscal Note  
Procurement Practices and Procedures  
Page 2

to the hearings for the Regulations.

DEC 8 1985



# Painters Local Union No. 1140

of the International Brotherhood Of Painters And Allied Trades AFL-CIO

TELEPHONE: (907) 279-3556

OFFICE: 1818 W. NORTHERN LIGHTS BLVD., ANCHORAGE, ALASKA 99503

December 5, 1985

Senator Jan Faiks  
1024 West Sixth Avenue  
Anchorage, AK 99501

Re: Subletting and Subcontracting, Chapter 30, Title 36

Dear Senator Faiks:

This organization supports the inclusion of subcontracting language similar to Calif. Statute 4100, because of the complete and total chaos that has enveloped the construction industry and publicly funded projects.

In the not to distant past a subcontractor who submitted a responsive low bid on a project knew that they would in fact be performing the work on that project, however, a low bid today means that the general contractor has a starting point for shopping a bid. Issuing agencies and general contractors do not comply with existing statutes because they are aware that the penalty sections of Title 36 are never enforced and that the odds rest in their favor of never being exposed for non-compliance. The Seward Prison being a case in point. The general contractor who is awarded a construction project has a margin of profit built into the bid, but by bid shopping the general contractor knows that the margin of profit can be increased by a substantial amount; with total disregard for the subcontractor and their employees.

There are many examples of the devastating effect that bid shopping has on subcontractors and their employees but in order to keep this letter short I shall only point out three which are quite representative of the current problem.

1) University of Alaska, Juneau; Student Housing

Morrison-Knudsen Company, Inc. is the general contractor for this project. The subcontractor for the hanging of sheetrock, taping and PAINTING was not selected until shortly prior to the start of that phase of the project. M/K shopped the bids for over six (6) months. The subcontractor subsequently went bankrupt, no taxes have been paid on any of the approximately

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Covering Alaska Below The 63° Parallel

PAINTERS, SIGN PAINTERS, VINYL HANGERS, DRYWALL TAPERS, GLAZIERS, FLOORCOVERERS

40 employees, and the issuing agency has had to withhold \$160,000 in payments from the general contractor. The former employees have had their unemployment affected, and they will have problems when they file their income tax in 1985. Because of the bid shopping, the issuing agency, the State Department of Labor and the Internal Revenue Service has become involved with this project. All of this involvement means more money and time will be expended on a problem that should have never have been, except for the greed of a general contractor who will not incur any of this added cost, and will most likely do the same thing on the next project.

2) Fire Lake Elementary School; Eagle River

The taping and painting subcontract was shopped for almost two months after the award of the contract. The recipient of the contract was a subcontractor with no experience in commercial work, had only been in Alaska for seven months and had no financial means by which to man the project or secure material. The end results being the general contractor having to take over the taping and painting, after some of the workers had worked 8 weeks without being paid. The general contractor had to issue back pay checks to the workers in excess of \$77,000.00, but he did not have to pay the broke sub any of the money.

3) Homer High School

The subcontractor bids for electrical, taping and painting were shopped for almost 9 weeks. The taping and painting subcontractor defaulted on the contract and another contractor is completing the project on a time and material basis. (This is one of the few times that a sub had a performance bond). The project is currently 5 months behind schedule for completion; one of the main reasons being that the subcontractors were unable to perform the work required at the price they signed the contract for.

This is only three examples of the current problems being caused by bid shopping, but there are many, many more examples that could be pointed out.

The sad part of this problem is that all parties involved are losers. The state is incurring added cost that can be easily eliminated, the sub-contractors are either in default or bankruptcy which in turn is driving up the cost of surety bonds and performance bonds (for those that have performance bonds).

The issuing agencies are experiencing long delays in the completion of projects, which in turn means that schools are having to double shift students; airlines who make schedule adjustments based on projected completion dates are having to move into facilities that are not completed; housing for students are not ready on time forcing them to seek shelter somewhere else at a higher cost, etc. Yet there are some people who will claim that this is only a temporary condition in the construction industry and that time will correct the problem. This is simply not the case, in the twenty years that I have been in Alaska I have watched this problem grow a little more each year.

Page 3  
Letter dated 12/5/85

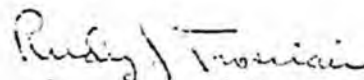
It is time that the problem of bid shopping was faced and corrective action taken. The State can no longer financially afford the added cost of bid shopping.

Thank you for your time and if we can be of any assistances on this or related matters please feel free to contact this office.

Sincerely,



Harvey B. Linenschmidt  
Field Representative



Rudy J. Trosclair  
Business Manager  
Financial Secretary

HBL/ka  
Faiks Letter



# ombudsman

John B. Chenoweth

October 21, 1985

Senator Jan Faiks, Chair  
Senate Select Committee on Procurement Practices  
1024 West Sixth Avenue  
Anchorage, Alaska 99501

Dear Senator Faiks:

This letter is by way of response to Senator Josephson's August 30 invitation to comment from experience to the Select Committee on the ombudsman's office's experience with procurement-related matters.

As my September 10 letter indicated, I undertook review of pertinent complaints. That review considered more than 400 complaints filed with the ombudsman's office and closed since 1980. The review grouped the procurement-related complaints received among six general categories:

- competitive bidding generally;
- leasing;
- sole source procurement;
- bid waivers;
- bid award and professional service contract award appeals; and
- professional services contracting.

Our impressions about the public's principal concerns for the state's procurement process and our general recommendations to the committee about public contracting concerns are set out below. An accompanying appendix provides supplementary information as to the statistical basis of the complaints received and examined and a summary of significant complaints which have been received.

Alaska's statutes make a basic distinction between "procurement" (AS 37.05.220 - 37.05.280) and "professional services contracting" (AS 36.98). The information based on examination of complaints received by this office is reported following that distinction. A third section collects and reports material common to both broad categories. I trust that this is a form useful to the committee's deliberations.

State of Alaska

Reply to:

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- Pouch W0  
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Fairbanks, Alaska 99707  
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D. The appeal mechanism relating to award of competitive bids does not permit a review of the merits;

E. The legislature should determine by law the contracting authority and procedures which may be exercised by the Legislative Affairs Agency (and associated agencies, including this office), the administration of the Alaska Court System, and the University of Alaska system. It should provide by law an outline of contracting systems intended to safeguard the interests of the agencies and the rights of bidders and aggrieved bidders, thereafter allowing the agencies opportunity to implement and make certain their respective contracting authorities.

## II

### Professional Services Contracting:

Though the number of complaints filed with respect to professional services contracts (AS 36.98) has fallen substantially since the legislature's comprehensive revision of state law covering professional services contracts in 1982, elements of professional services contracting still raises significant questions. In the intervening years, the public has raised objections or presented complaints generally as follows:

A. Exceptions which the agencies have been able to implement in their use of "professional services" contracting;

B. In framing and offering requests for proposals in contemplation of a professional services contract, agencies handle RFP's improperly;

C. In evaluating requests for proposals, agencies have erred;

D. The appeal process applicable to professional services contracting discourages or does not permit fair evaluation of grievances of unsuccessful responders on their merits; and

E. Exception of the Department of Transportation and Public Facilities from oversight by the Department of Administration essentially precludes uniformity of contracting within the executive branch; no professional services contracting process is specifically identified in law for the University of Alaska. Additionally, the committee may wish to consider whether to extend the provisions of

In the main, my concerns go to the contract issuance process and the clarity of that process to the public. The experience of this office suggests that, while the procurement-related statutes should be closely examined and the contracting process clarified, within some fairly well defined limits the revision should allow agencies to enjoy a measure of discretion in contract award and management. The public interest requires, however, that agencies which are provided that discretion shall explain their decisions.

This document does not treat contract-related subject matter in detail. No legislation you may consider will answer all questions or objections which the public will raise. I have tried to identify the key points which legislation which you have or will have under consideration should address. The points set out below are those which I believe the public has indicated to be as particularly deficient (based on an examination of the number of complaints filed and a review of investigations completed) or those which I believe should be addressed in order to provide a procedurally-complete contracting system.

I

Procurement (Competitive bidding and related techniques):

In this letter, I reserve the use of the term "procurement" to cover contract award process authorized by the state's Fiscal Procedures Act (and similar authority applicable to the legislative and judicial branches, and the University of Alaska) as distinguished from professional services contracting.

The common thread running through the overwhelming number of the procurement-related complaints filed with the ombudsman's offices is that key elements of the process are unfair. Broadly speaking, those allegations of unfairness seem to be most often directed to the following:

A. Procurement procedures are unclear or uncertain, resulting in an award of a contract which is allegedly improper;

B. Agencies improperly use, and the Department of Administration erroneously allows use of, "bid waiver," "brand name," "sole source," and "negotiated contract" procurement techniques in situations which, the public suggests, are properly subject to competitive bid;

C. The process by which the issuing agency evaluates and accepts or rejects bids and by which the issuing agency determines whether the low bid has been submitted by the lowest responsible bidder is uncertain;

AS 36.98 to regional educational attendance areas or, alternatively, to require the commissioner of education to assure that all school districts have in place a professional services contracting process.

### III

#### Considerations applicable to both categories:

The public's complaints and our own work on them suggest other facets of public contracting--both procurement and professional services related--which is deserving of the committee's attention:

- A. Contracts are awarded to firms who are not qualified to do business in Alaska at the time of contract award;
- B. The use of contract extensions or continuations is not well regulated;
- C. Nonprofit firms operated with public support and government agencies compete for public contract work at an advantage to firms in the private sector;
- D. State law covering public release of information contained in the documents submitted in response to invitations to bid or requests for proposals is unclear;
- E. State law is too uncertain as to certain ethical concerns involving state officials or employees responsible for contracts who are related by blood or marriage to, who have a financial or associational interest in, or who are former employees of a firm submitting a bid or responding to an RFP.

Each of these is deserving of brief explanation or example.

#### I

A. Competitive Bidding. Without doubt, a major factor contributing to public objection to the state's contracting practices is the public's (and prospective contractors') lack of familiarity with specifics of applicable contracting practices. A significant part of the work of the office in the area of public contracting has been to work with aggrieved bidders to explain--so far as we are able to obtain information about particulars--specific questions or concerns.

The public's difficulties arise, I suggest to you, from

(1) the incomplete and rather haphazard form of the state's general procurement statute;

(2) the dearth of meaningful regulations to implement, interpret and make specific the procurement system;

(3) the maintenance of contracting systems by the other departments tied back to the Department of Administration by only the loosest of bonds; and

(4) the separate procurement processes used by the legislature and judiciary, and the University.

For someone with no more than occasional exposure to it, Alaska's procurement system is not an easy process to understand. To the owner of a small business, the process is characterized by confusion. Contracting within the executive branch typically involves two departments--the issuing agency and the Department of Administration.

Despite a good effort by the Division of General Services and Supply to prepare a comprehensive volume explaining purchasing and procurement in an effort to develop some uniformity in the system, at the start of the term of the current administration, Commissioner Rudd reemphasized that the process of advertising and awarding contracts would be decentralized through a system of "delegations of purchasing authority" and individual "internal departmental policy and procedures manuals." While this approach to management of the state's procurement process in the executive branch is generally consistent with current AS 37.05.220, the absence of a generally uniform system of procedures to which the public may have easy access is, to my mind, the source of a significant portion of the misunderstanding, frustration, and complaint about the process.

So that, as a general matter, the public may better understand, use, and have confidence in the state's procurement system, and so that the legislature and its committee staffs may more readily evaluate individual procurement decisions, the committee can and should:

(1) revise the applicable provisions of the "Purchasing" article of the state's Fiscal Procedures Act--Administration refers to this as the "Uniform Purchasing Act"--to establish a uniform system, applicable to all agencies, with few (if any) exceptions;

(2) strictly and specifically limit exceptions to the competitive bid process;

-- where exceptions are authorized based on a proposed dollar amount for a contract, the exception should have a reasonable basis documented in the legislative history of the bill;

-- where exception is made for any other reason, they should be authorized and approved only if consistent with identified standards of evaluation;

(3) require one agency--probably the Department of Administration--to implement, interpret, or make specific the re-enacted provisions in a way that is uniformly applicable;

(4) recast the procurement system in a way that does not rely procedurally on "delegations of authority" and internal "procedure manuals;" because procurement affects the public, it should be made a public process: a description of the procurement process applicable to all agencies should be adopted into the Alaska Administrative Code in accordance with the Administrative Procedure Act.

Secondly, in any revision of the "Purchasing" article of the Fiscal Procedures Act, specific attention should be given to a number of key facets that have been the basis of significant complaints to this office that are not now carefully prescribed by law:

(1) the issuing agency should be required to identify and describe evaluation procedures and performance criteria before bids are solicited;

(2) bid specifications or criteria should be certain, not vague, and direct vendor involvement in the development of specifications should be prevented;

(3) sufficient time should be allowed for bid submissions; and

(4) agency decisions concerning the disposition of bids should be promptly communicated to all bidders;

B. Alternative procurement procedures. The committee should undertake a careful review of the statutes authorizing alternative procurement techniques. In this category I place the use of "negotiated contracts" (AS 37.05.230(2)), "bid waiver" (AS 37.05.220(2) and AS 37.05.230(1); AS 35.05.040(9)), "brand name", and "sole source" (AS 37.05.230(2); AS 35.05.040(9)) techniques.

Use of these techniques has given rise to one of the largest categories of complaints involving procurement practices. Typically, the complaints are submitted by prospective competitors who learn of the contract award only after the fact. Our experience has been that the agencies often fail to document, or incompletely explain, the reasons for using one or another of these techniques. Our experience has also

been that the Department of Administration's Contract Review Committee, which passes on these submissions with a recommendation to the commissioner or her designee, is little more than a rubber stamp--indeed, the committee typically operates with a rubber stamp--that does little to effectively check on the appropriateness of these exceptional situations.

Surely there is a legitimate place for exceptions within a government procurement system. But the legislature should act to assure that the use of these techniques is confined to uncommon situations.

I suggest to the committee that no method of internal review and recommendation can be as effective as public scrutiny; simply stated, the legislature should provide a system by which the public may have the opportunity to better understand and be able to evaluate these authorized exceptions and their use.

To that end, my recommendations to the committee are these:

(1) The committee should reconsider the "best interest of the state" standard. Agencies relying on that standard, or on any standard which the committee may substitute for it, should not be allowed to proceed merely by concluding that a use of the proposed exception is in the "best interest of the state." Rather, the agency should demonstrate and document, in advance of contract award, exactly how the state's interests are to be best served by the proposed decision.

(2) Unless an exception is clearly required by an emergency condition--and here I have in mind the qualifying definition of AS 44.62.270--the intention of an agency to enter into a contract based on a "sole source," "brand name," or "bid waiver" exception should be publicly advertised for not less than, say, 10 to 14 days preceding contract award; advertisement or publication of notice to award in the Alaska Administrative Journal (AS 44.62.175) may well be sufficient for purposes of public review without incurring to the state substantial additional costs of publication.

C. Low bidder versus lowest responsible bidder. A third common category of complaint to this office arises when an agency fails to award a contract to the low bidder. Under current law, the award of contract is made to the "lowest responsible bidder," and the determination of the identity of the "lowest responsible bidder" rests with the issuing agency. The applicable statute is AS 37.05.240(a). Typically, in the instances we have examined, the agency has reason to withhold the bid award, citing factors which it believes renders the low bidder "nonresponsible."

Investigation of several complaints suggests, however, that there are shortcomings in the process by which the issuing agency evaluates bids and determines that the "low bidder" and "lowest responsible bidder" are not synonymous. Where, for example, failure to award to the low bidder turns on a question of unit price, failure to meet qualifications specified in the bid invitation documents, failure to provide a bond, or other bid-related factor, these can be objectively reviewed, and we usually find no merit in the complainant's grievance. If, however, the agency's decision not to award to the low bidder is based on more subjective factors--the agency's evaluation of the bidder's past performance and reputation, estimated capabilities, or financial capacity--our review necessarily involves an examination of the veracity of these factors and whether the agency has appropriately applied them.

The committee's revision of the "Procurement" article should assure that, in circumstances in which the agency decides to find a low bidder or bidders "nonresponsive" and to award to another party, the issuing agency provides to the low bidder, to the lowest responsible bidder, and to anyone who may have an interest in the outcome, a complete statement of the basis for the agency's decision to find a bidder or bidders "nonresponsive." That notice should be given in advance of, or simultaneously with, bid award. The legislation should require strict adherence to the provision: if the agency fails to provide a complete statement at the time required, award of the bid should be disallowed.

D. Appeal procedures. It has been my experience that complainants approach the office of the ombudsman to protest bid awards because they do not know that 2 AAC 15.100 provides opportunity for administrative appeal or because they were unable to use 2 AAC 15.100 because of its requirement of prompt (i.e. five day) protest. Save only for the five day requirement (imposed by AS 37.05.240(a)), the appellate process available to disgruntled bidders is wholly a product of regulation, without specific statutory direction.

While I have no specific criticism of the agency's handling of complaints on appeal--and, indeed, the process, when it works, seems to provide sound and timely decisions--in this review, the committee should consider the sufficiency and effectiveness of the current appeal procedure. It should, to my mind, determine either to spell out, in statute, specific procedures for appeal or, alternatively, direct and require one agency (probably the Department of Administration) to fashion a comprehensive appeal mechanism containing such safeguards as the committee may find necessary.

In any event, the committee should reconsider the time limit in which the aggrieved bidder must submit the appeal and the content of what is to be submitted: five days is simply not sufficient time to aggrieved bidders to gather and submit information sufficient to allow the department to review these matters on their merits.

E. Procurement processes applicable to state government agencies outside the executive branch. Significant numbers of procurement-related complaints have been filed against the University of Alaska system. Investigation of them is almost always a significant exercise, largely because of the few references available to guide the investigator. The authority of the university system to contract substantially independently of the Department of Administration rests, in statute, on the thin thread of AS 14.40.340, a statute which directs only that the "competitive bid practices set forth in AS 37.05.230 apply to the University." University officials themselves are without direction as to whether any other procurement elements of the Purchasing article of the State Fiscal Procedures Act apply. Hence, the University's approach to contracting is independent of other executive branch units. Surely in a system that mandates adherence to competitive bidding, the legislature should act to assure that state statutes establishing the university system either impose or otherwise assure that the University of Alaska has developed a comprehensive, uniform, and procedurally sound purchasing procedure.

So far as I have been able to determine, the legislative branch acts without the benefit or constraints of any body of legislatively-enacted procurement law. There is a fine irony, then, that for the period under consideration few complaints have been lodged against contracting practices of the line agencies of the legislative branch, and even fewer against the Court System. The same suggestion applicable to the university system should be understood, however, to apply to these.

## II

### Professional services contracting:

Fewer significant problems seem to attend the issuance and performance of professional services contracts. The enactment of AS 36.98 and the department's subsequent adoption of pertinent regulations in 2 AAC 17 (17 AAC 7 for professional services contracts issued by the Department of Transportation and Public Facilities) has provided a sound general procedural basis. In the main, the complaints we have received have been directed at the substantive decisions made in conjunction with the process rather than against the process itself. The legislature's enactment of AS 36.98 and the departments' efforts directed at improving professional services contracting have been useful in reducing the number of complaints.

A. Exceptions which the agencies have developed to the proper use of "professional services" contracting. In the 1982 enactment covering contracts let for professional services, the term "professional services" is defined as

. . . professional, technical, or consultant's services that are predominantly intellectual in character and that

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

(B) result in the production of a report or the completion of a task.

Complaints reaching this office call into question the strict applicability of the professional service contract requirements to certain professions which cannot be readily evaluated through an RFP. The specific complaints relate to attorneys' services--principally contracts issued by the Department of Law and the University of Alaska--and raise a question as to whether there should be created an exception to the professional services contracting statute for services of professionals using a limited solicitation process where the interests of the state demonstrably so require.

B. The framing and offering of requests for proposals. A fair number of complaints received since mid-1982 have called into question agency compliance with the offering requirements of AS 36.98 and related regulations (2 AAC 17 and 17 AAC 7). Typical challenges have had to do with failure to circulate an RFP to a complainant, provision of insufficient time to respond to an RFP ("quick deadlines"), and the sufficiency of the information provided about the RFP on which an interested party could depend. Applicable statute (AS 36.98.030) and regulation (2 AAC 17) require that the manner of solicitation by an agency must be consistent with law but, beyond that, the issuing agency has latitude to solicit. Our evaluation has usually been on the basis of the reasonableness of the agency's actions, and we have generally upheld agency decisions.

C. The agencies' evaluation of requests for proposals. Since 1982, the process by which the agencies conduct the evaluation of RFPs has stimulated complaints to the ombudsman. Elements of these complaints have included requests that this office

- determine and report the identity of the evaluators;
- pass upon the qualifications of the evaluators;
- determine whether selection criteria were properly applied;
- consider and evaluate the quality of the successful proposal; and
- criticize agencies for their use of "outside" evaluators (i.e. contractors to or third parties not employed by the agency).

We have generally looked to the record of evaluation--to the extent we are able to find one--to determine whether there has been substantial compliance by the agency.

While I cannot ask the legislature to consider additional provisions that would rigidly bind the way in which agencies complete their evaluations, it would surely be useful--and I would encourage the committee to consider--amending AS 36.98 specifically to require that the records of the evaluators be put in useful form and be retained. Since review of proposals is typically conducted and discussed by an ad hoc committee, I believe the legislature should be clear in indicating whether the state's Open Meeting Law should apply to these deliberations.

One rather apparent shortcoming, though not yet the subject of an investigation, is the tendency of agencies to minimize or eliminate "cost" as a significant evaluation variable. The committee may want to consider amending the evaluation provisions of AS 36.98.040 in some way to specify that contract "cost" may not be ignored or omitted as a substantial variable in the preparation and evaluation of RFPs.

D. The appeal process requirements discourage fair evaluation of grievances on their merits. A recent series of complaints calls into question 2 AAC 17.050's provision that an appeal must be filed within five days. The regulation parallels a statutory provision in the procurement statute.

Consistent with my philosophy of operation of the ombudsman's office, an agency should act on appeal to evaluate the merits of its own performance. For the reasons indicated in the preceding provision covering procurement, the committee should extend the appeal provision and should set the limitation by statute.

E. Exceptions and exclusions. I want to say again that the legislature's enactment of AS 36.98 has gone a long way to improve professional services contracting. Guided by the Department of Administration, the bulk of state agencies seem to have improved performance in this area.

The exception made in law for separate treatment by the Department of Transportation and Public Facilities should, in my judgment, based on that agency's handling of a vast number of professional services contracts, be reconsidered, and the department brought under the umbrella of the Department of Administration.

There has come to this office's attention one or two instances of alleged deficiencies in the award of professional services contracts by regional educational areas. The committee may want to act to have the commissioner of education assure that school districts generally have in place some rational means of assuring proper preparation, solicitation, evaluation, award, and appeal of these contracts.

## III

In this last category I discuss five general contract-related complaint subjects tangential to the principal categories. All appear to me to warrant legislative attention.

A. Prospective contractors not qualified to conduct business. An oft-repeated grievance by unsuccessful competitors is that the successful party was not qualified to do business in Alaska at the time the bid or proposal was submitted. Investigation can readily determine whether the successful party was qualified by virtue of having a business license and, as applicable, being incorporated or authorized to do business as a corporation.

State law does not require qualification until the time the contract is executed. As qualification is somewhat nominal, the committee may wish to require, by law, the determination that a bidder (or respondent to an RFP) is non-responsive if the individual or firm is not qualified to do business in the state at the time of submission of the bid or proposal. Thereafter, implementation would require all bidders or respondents to list their credential in their submissions.

B. Contract extensions or continuations. A growing number of complaints calls into question the constraints (or, more properly, the lack of constraints) on agencies which propose to extend or continue an existing contract. Renewal options are in derogation of competitive bidding or reissuance of an RFP. While their use is accepted as a matter of sound public contract administration, they are regulated not by statute or regulation, but usually arise out of option clauses in existing contracts (or require securing a "bid waiver" if no option exists). I am particularly struck by the number of contracts to which our attention is called in which the period for which an option may be renewed greatly exceeds the duration of the contract for the period for which originally executed.

The committee should consider whether specific provision by which an agency other than the contracting agency (or some other independent review process) examines and approves (or comments on) a proposed extension or continuation. Again, since the extension process is itself an exception to the norm, as with the recommendation I have made for all exceptions to competitive bids, extensions or continuations should be justified by the requesting agency and should be publicized in the Alaska Administrative Journal.

C. Nonprofit firms and government agencies competing with private sector business. This topic covers a mix of concerns which have been brought to our attention at one time or another. The complaints have a common source--private sector firms who believe, correctly or otherwise, that firms and individuals supported by the public sector--non-profit corporations or government entities themselves--enjoy a competitive advantage in the award of public contracts. The subject has arisen with

reference to both competitive bid and professional service contract awards.

Broadly speaking, there is some basis to suggest that these objections are credible, though little evidence to conclusively determine whether the state's interests are well served by the applicable statutory provisions on which they are based. I call it to your attention as a kind of complaint which probably deserves legislative attention though it may not now warrant any attempt at correction.

D. Disclosure of bid documents and bid submissions. A fair number of complaints to the office addresses the largely uncertain question of whether draft invitations to bid are public documents and whether bid submissions should, in whole or in part, be made public at the time of bid award.

The legislature should decide the matter, clearly indicating whether or not these are public documents and, if they are, at what point they should be made public. This may be no more than revising the penultimate sentence of AS 37.05.240(a) to apply generally to all competitive bid situations and making clear that, whatever is decided, the determination is generally applicable to all agency procurement efforts.

E. Ethics considerations. Because the award of professional services contracts depends on the agency's evaluation of solicitations, this office has received an unusual number of complaints alleging or suggesting existence of a conflict of interest (or apparent conflict of interest) between, on the one hand, persons preparing the requests or evaluating the materials submitted and, on the other, competitors of the complainant. Typical situations cited include instances of alleged collusion involving persons with relationship by blood or marriage, persons having common financial or associational interests, and individuals formerly employed by the agency now part of a firm responding to an RFP (or vice versa) in which intangible factors may weigh heavily. We can and do investigate to determine if the factual situation giving rise to the conflict or apparent conflict is as alleged and have critically examined evaluations and the evaluation process to determine whether there was an effect.

At this point, where the committee's attention is focussed on its two major subjects--public contracting and ethics--I respectfully urge addition of some body of law that essentially describes permitted or prohibited relationships that may have an effect on contract evaluation and award.

Senator Jan Faiks

- 14 -

October 21, 1985

Thank you for the opportunity to respond. If I may assist further in your deliberations, please contact me.

Sincerely,

John B. Chenoweth  
Ombudsman

JBC:pjc  
Enclosures

APPENDIX:

1. Methodology: Our review examined and considered 434 complaints filed with the ombudsman's office and closed between January, 1980, and September 30, 1985. The review grouped the procurement-related complaints received among the general categories outlined in the letter. The largest single category of these complaints--an estimated 60 - 65%--involved complaints generally relating to competitive bidding practices. In lesser numbers, the complaints filed with my office involved concerns relating to professional services contracting, exceptions to competitive bidding, appeals, and a variety of other grievances and concerns loosely identified under leasing and purchasing.

2. Trends and indicators: As you might expect, the bulk of the competitive bid-related complaints were filed against the executive branch agencies principally responsible for contract award--the Departments of Administration (78 complaints), Transportation & Public Facilities (68 complaints), and, surprisingly, Commerce & Economic Development (38 complaints). Apart from the executive branch agencies directly covered by AS 37.05.220 - 37.05.280, the University of Alaska accounted for an additional 28 complaints.

The professional services-related complaints were less numerous and more widely scattered (though the same four agencies listed immediately above topped the list). Most noteworthy, in my judgment, is the significant reduction of professional services related complaints since enactment of the 1982 provision (Ch. 144, SLA 1982, now AS 36.98). The tallies are:

1980	19 complaints closed
1981	13 complaints closed
1982	12 complaints closed
1983	15 complaints closed
1984	6 complaints closed
1985 to-date	<u>2</u> complaints closed

67 complaints closed

This downward trend in professional services contracting complaints filed with this office at least suggests that the adoption of comprehensive legislation on that subject has answered many of the original objections of the complainants and provided an effective means of internal review of these problems.

For both categories, Court System (6 complaints), legislative branch (4 complaints) and REAA-related (7 complaints) procurement grievances account for an insignificant portion of the total.

3. Some examples of specific complaints received:

I

Procurement (Competitive bidding and related techniques):

A. Competitive Bidding.

The so-called Uniform Purchasing Act was enacted in 1955. Apart from the 1982 effort to better describe authorized professional services contracting requirements (which, themselves, constituted an exception to the Uniform Purchasing Act), recent legislative amendments to the Act have not been significant. Through 30 years of use, the lead agency, the Department of Administration, has had ample opportunity to identify and develop procedures and definitions by which the Purchasing Act's provisions may be consistently applied. But the department's efforts to lay down a body of law that would apply to other agencies and which might provide explain to the public interested in contracting with the state has not been particularly helpful. Except for provisions covering bid rejection and appeals, the regulations relating to competitive bidding, 2 AAC 15, add little to the public's understanding of how the issuing agency and the Department of Administration may be expected to perform, and what standards may be applied to measure that performance.

Agency purchasing significantly depends upon a system of "delegations of purchasing authority" and agency "administrative manuals." See, in this regard, memo of January 10, 1983, of former Director of General Services and Supply George Elgee. This is consistent with AS 37.05.220 giving to the Department of Administration authority to prescribe purchasing and leasing arrangements and standards for use by themselves and by other agencies.

However, this system in essence requires that those who conduct the state's procurement business, those who have an interest in doing business with the state--and those who may have to check on how that business is entered into--try to gain an understanding of how more than a dozen agencies shall conduct their affairs. Moreover, it is far from certain to many how the University of Alaska system "fits" into Purchasing Act requirements, and there is, so far as we have been able to determine, nothing to cover contracting by the legislative and judicial branches.

The nadir of this system of interagency "authority delegations" is perhaps best illustrated by Ombudsman Complaint A81-0468, a complaint against the Division of Parks of the Department of Natural Resources.

The complainant called to seek an explanation as to how the division had avoided seeking a competitive bid in conjunction with gravelling operations. Investigation suggested that a delegation of authority (Administration to Transportation and Public Facilities) supporting a master contract for vehicle and equipment rental had been inappropriately applied to support the Natural Resource division's subsequent acquisition and use of a vehicle. One was left with the impression that Administration's delegations of authority to its sister agencies were fairly flexibly interpreted by those agencies to help themselves (and third agencies), and would be stretched so far as necessary or convenient to defeat the competitive elements of the procurement statute if that suited the purpose of the agency securing the delegation. Among the line agencies dependent upon the grace and favor of the Department of Administration to secure their procurement authorities, the Uniform Purchasing Act had become, if you please, state government's in-house version of the shell game.

Under such a loosely-organized and -operated system, I am truly surprised that we have not received more complaints.

The relatively small number of complaints is probably due, in the main, to the good efforts of the Division of General Services and Supply in trying to provide a measure of order to competitive procurement. The most useful commentary to current Alaska practices is that division's own Administrative Manual covering purchasing. I commend that volume to the committee's attention.

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Complaints to my office generally relating to competitive bidding have spanned the range of procurement practices, running from purchase requisition, through conduct of the process, making of exceptions, and handling of appeals, to claims of unethical practices and improper influence in the planning and evaluation process. My letter highlights topics in which I think the competitive process is particularly weak or to which the committee may wish to give attention for other reasons indicated.

1. The first involves the sufficiency of the issuing agency's planning and evaluation procedures. Some complainants have come to the office--typically, after their bids have been rejected as "non-responsive"--claiming that the process followed was significantly flawed, to their detriment. Investigation by this office suggests that, in virtually all such cases, the "Invitation to Bid" was the critical document, and that the problem of concern to the complainant lay in the issuing agency's failure to provide sound specifications as to what was required. While the statutes and regulations are silent, the Division of General Services and Supply's own guidelines on the point are useful:

Specifications [of goods to be bid] are one of the most important elements of the purchasing process. Specifications communicate what is required or desired, and are the primary basis on which bids are

awarded. Specifications should be clearly understandable, open, and unrestrictive.

. . .

[The division] must insure the specification that finally accompanies the bid is not restrictive and does not call for features or for a level of quality not needed for the item's intended use.

A fair reading and application of these principles might have avoided such complaints as F81-0811 and three others, a 1981 challenge to the now-defunct energy audit program, in which, among other assertions, the complainants presented valid allegations in which information pertinent to the bid process and criteria on which the bids were to be evaluated were not fully disclosed.

2. A second objection goes to a lack of time. Complainants have raised the question of the amount of time which a prospective bidder should have to evaluate a bid invitation, clarify questions, and prepare and submit a complete bid. In F80-0004, for example, the complainant alleged that, following a major alteration to a bid, the issuing agency did not extend the deadline for receipt of bids to provide sufficient time to revise the submission, and in F80-0904 and others, the complainants asserted they had been given insufficient time to prepare responses to requests for land clearing contracts. On the opposite side, in F79-0945, the complainant objected to an extension of time after competitors advised the issuing agency that they could not meet an existing submission deadline.

In the absence of any standard covering time allowed for bid preparation and submission extensions, with rare exceptions, complaints claiming lack of sufficient time are typically found "unsupported." The committee should consider language covering minimal offering periods or otherwise establish a "reasonable" time period for bidder's consideration of invitations to bid, and should consider the matter of extensions and notification of those extensions to interested parties.

3. The last topic covers, generally, communication of decisions made with respect to bids to the bidders.

Some number of complaints cover situations in which bidders are not advised as to the successful bid, thereby precluding possible appeal.

There is also the situation in which all competitive bids are rejected. Competitive bids may be rejected and the invitation to bid set aside. The statute (AS 37.05.240) is silent on notification of this decision--one that is typically made, or should be made, in the event that issuing agency contemplates negotiation of contract for which an invitation to bid was previously let. So, for example, complaints A81-0782, J81-0346, A82-0753, A83-1021, and J83-0340 all raised questions relating to improper cancellation of invitations to bid and, in some, questions of sufficiency of notice were raised.

Our complaints notwithstanding, those who have prepared and submitted bids only to have the issuing agency decline to award on the basis of competitive bid may have a claim against the state. AS 44.77.010(c). King v. ASHA, 633 P. 2d 256 (1981). Accordingly, the committee should give careful consideration of the state's obligation to inform competing contractors of the decision in these situations.

B. Exceptional procedures.

A number of complaints raised questions about an agency's use of "bid waiver," "brand name product," or "sole source contract." Complaints covering this topic are consistent, and the situations which have been directed to our attention suggest that this topic is one of significance.

1. Our experience strongly suggests, first, the need to build better checks against the writing of unnecessarily "tight" bid specs to cut off or reduce opportunity for competition. Some examples should serve to illustrate.

Companion complaints J80-0312 and J82-0289 examined the decision of the Department of Fish and Game to use specific brands of incubators purchased outside the competitive bidding process. Investigation of the first confirmed use of the sole source purchasing technique--requiring a specific brand (for which the agency had no data on which to base a justification and no evidence of evaluation) of hatchery incubator be installed by the contractor; the agency sought to avoid evaluation of the exception by running the request through as part of construction of the facility, that is, as an adjunct of a capital improvement. Just when we thought the agency understood its obligations under the purchasing provisions of the Fiscal Procedures Act, it tried again. At that point, our only "weapon"--one hardly adequate, in my view, to assure that the matter would not be encountered a third time--was to review and refine the purchasing authority delegations to the Department of Fish and Game of the two lead departments.

The issue in a pair of unrelated complaints, A80-0189 and F84-0490, involved the use of bid specifications that, in the case of the former, designated by brand name and, in the latter, unreasonably restricted competition (essentially allowing only one product to qualify) without being based on a valid technical reason. As to both, the agencies accepted and agreed to implement, at the level of their individual policies and procedures, standards to address specifications that would not wrongly limit or eliminate competition by relying on designated brand names or by imposing unreasonable restriction or specifications in a competitive bid.

In A83-01059, I challenged the University of Alaska's reliance on brand names (rather than performance criteria) for acquisition of a library security system. University officials defended, contending that use of or reliance on brand names is a well-established means of procurement.

2. Our experience suggests, too, the significance of a well documented bid file during an independent review of a purchasing decision. Unrelated investigations A84-0605, A80-0528 and A80-0189 well illustrate the contrast.

In the first, filed against the Division of Mental Health and Developmental Disabilities, investigation was able to show that, for guard services at API, the division had demonstrated that a sole source exception would well serve the interests of the state, had secured necessary approvals in advance, and had otherwise proceeded in a procedurally correct manner. We found the complaint "unsupported."

I also found "unsupported" the objections made to the Department of Transportation and Public Facilities' award of a street light service contract in A80-0528. The lights in question were situated in downtown Anchorage and interspersed with street lights on roads for which the Municipality had responsibility. The matter had been thoroughly researched and reviewed by attorneys, who had found a reasonable basis for the state's decision.

A80-0189, by contrast, involving purchases by the Department of Transportation and Public Facilities restricted to a particular brand of heavy-duty tractor, was based on an outdated preference for that particular brand that had not been independently reviewed or verified; past preference, in other words, governed the direction of then-current purchasing practice, until the purchase of one kind of vehicle became an ingrained habit. We criticized the agency and secured from them a commitment to draft a written policy covering limitations on bid specifications.

3. By law (AS 37.05.230(2)) an agency may negotiate a contract if it finds that it is in the best interests of the state. An "authority to negotiate" is a prerequisite.

ATNs and negotiated contracts have contributed their share of problems, notably those which are authorized after a public competitive bid advertisements in which all bids are rejected. We can usually examine and explain that.

What we can't explain, and what the committee should give attention to, is the absence of any statutory or regulatory framework suggesting when an ATN is proper and when it has been properly issued, and the scope and duration of the authority granted under the ATN. So, for example, there is the complaint occasionally presented raising a question as to whether an approved ATN retains a long-term validity and whether an agency was improperly depending on an approved ATN to meet one set of circumstances when those circumstances have demonstrably changed.

There is, I suggest, no more critical examination which the committee can give--no more essential steps that it can direct to improvement of state contracting procedures--than this matter of administratively-authorized exceptions to competitive bidding. This week, for example, I expect to conclude an investigation (A85-0941)

contesting the decision of a department to award a sole source contract, in which the Division Director Bob Link and Professional Services Contract Specialist Vincent Isturis are reported to have advised the investigator that the department cannot check requests for alternative procurement methods submitted by state agencies and must take each department's word that it has "demonstrated" that a sole source is appropriate.

In the absence of any effort to make an independent determination that "alternative procurement" is in order, how can the public be expected to have any confidence in the current procurement system? The committee should develop both clear standards and a public review process in this area.

C. Low bidder versus lowest responsible bidder.

This is not a complaint that we often receive. One example may well be the land clearing contract example (F80-0904 and others) mentioned above also raised questions concerning the eventual award of contracts to parties not submitting the low bids. In another, A83-0881, the Department of Administration's own Division of Telecommunication Services awarded a contract to other than the low bidder and neglected to advise bidders of their right to appeal, thereby cutting off challenges to the contract award. Our recommendations urged, among others, adoption of an appeal process and the development of related policies which would contribute to improved handling of bids.

Despite a relatively low volume of complaints, this is an area with potential abuse. Statute (AS 37.05.240(a)) and regulation (2 AAC 15.040 and 2 AAC 15.060) authorize award of a bid to a responsible bidder and withholding of a bid from one who is deemed non-responsible. One regulation, 2 AAC 15.040, authorizes the division to exercise discretion in the matter, but our experience, in the limited number of complaints that have raised a claim of unjustifiable rejection, suggests that the reasons justifying the exercise of discretion are not documented.

In my judgment, the committee should

-- set down the standards against which a bidder may be found non-responsible; if determination of standards is delegated to an agency, standards should be set out in regulation; and

-- require determinations of non-responsibility to be fully documented; documentation should include a brief, albeit comprehensive, explanation of how the bidder or the bidder's submission does not comply with one or more of the identified standards.

D. Appeals.

An appeal process for competitive bids and for alternative procurement is authorized by statute (AS 37.05.240(a)) and implemented by regulation (2 AAC 15.100). Unlike professional services contracting, described in II below, the five day limit for taking appeals in procurement-related matters is a creature of the statute.

The system in place effectively precludes, in my judgment, a review of an appeal on its merits. See discussion in II(D) below.

E. Procurement processes applicable to state government agencies outside the executive branch.

This topic is intended to speak briefly to University, legislative and judicial branch procurement. As to the latter two, I have no suggestions but, by analogy to the professional services contract enactment (Ch. 144, SLA 1982), the legislature should consider--or may want the Legislative Council to consider and recommend--some range of procurement enactments covering the legislature's own acquisitions.

No single investigation prompts inclusion of this recommendation. The recommendation is empirically based: through the 5+ year period considered, the University of Alaska was the source of a significant number (28) of complaints.

Despite the University's preparation and recent presentation to the committee of tidy summary books (implying that the procurement and decision review processes of the University are well established and well recognized), a review of the complaints received by this office suggests that there is a fair degree of confusion among administrators as to what rules do apply.

All of the objections noted hereinabove to contracts awarded under the Uniform Purchasing Act have probably, at one time or another, been filed against the University. So, for example:

-- In A80-0850, a complainant charged that University officials had failed to award a bid to the lowest bidder and had altered applicable bid specs on which the award was eventually made.

-- In F81-0630, the University awarded a telephone system contract to one vendor when use of a multi-step competitive bidding procedure, sometimes used by other executive branch agencies, would have accommodated a competitive procurement.

-- In F81-1049, the complainant charged the University with, among other things, unfair denial of a subcontract award in which contract specifications were narrowly drawn without opportunity for complainant's company to provide

evidence of "equal or better" equipment that might be substituted. Finding the complaint "unsupported," the office nevertheless asked University officials to commit themselves to an examination and development of a substitute system of procurement, emphasizing development and use of broader specifications uniformly applicable to all contracts which it proposed to let. University officials rejected the recommendation, indicating that Facilities and Planning staff were simply too busy to make major changes in a system which they believed was adequate.

-- In A82-0938, investigation supported complainant's assertion that University employees had circumvented competitive bid practices through use of subjectively evaluated bid specs.

-- The complainant in A84-0292 withdrew a complaint that the University was improperly relying on a "prehearing" to determine whether a formal hearing would be granted on complainant's appeal of denial of bid award, notwithstanding that absence of such a procedure in University procedures.

-- In the complaint identified as F84-0686, the complainant, who apparently did not understand the distinction between competitive bidding and professional services contracting, asked the office to review University contracting processes applicable to materials testing.

-- In F85-0545, a complaint which the complainant was advised to file as an appeal, the complainant challenged the University's award of a supply contract to an out-of-state firm notwithstanding the statutory bidder preference provision.

The confusion in University contractual processes is compounded for all of us--except, perhaps, the handful of University officials who work with the system on a daily basis--by the absence of any reference to procurement through competitive contracting except by the inclusion of the Uniform Purchasing Act by reference appearing in AS 14.40.340.

There is a need, in my judgment, for the legislature to give its attention to University contracting so that University officials and those who deal or want to deal with the University system as vendors may better understand both the legal basis for and the procedures applicable to the University's procurement system.

## II

Professional services contracting:A. Applicability of "professional services" contracting.

On the whole, the distinction between professional services contracts and the procurement provisions applicable to goods and supplies is distinct. There have been very few complaints since 1982 in which the complaint suggests that the issuing agency has confused its choice of method.

Several open complaints raise the question as to whether agencies have improperly made or used exceptions to the professional services contracting process to secure certain professionals' services. In testimony at your recent Fairbanks hearing, University officials suggested the need for an exception for attorneys, physicians and dentists. The Department of Law has adopted and follows its own procedures for acquiring the services of "outside counsel" to secure special legal services. (See memo of January 2, 1985, from Administrative Services Division Director Richard Pegues to the Contract Review Committee). These exceptions appear to depend upon the agencies' interpretation of the "sole source" exception of AS 36.98.030(d)(1) and, as exceptions, are themselves subject to criticism for abuse. The committee would be well advised to consider the problems presented by University officials and the Department of Law--there may be others--but any exception drawn to meet their expressions of concern following the "sole source" exception of AS 36.98.030(d)(1) should require that the issuing agency document the basis of its decision.

As I have suggested with respect to issuance of contracts under the "alternative procedures" provisions in the procurement section (I B above), the legislature may want to require that contracts issued under any exception created for special classes of professionals be publicly reported by the issuing agency. Public reporting would serve the useful purpose of determining whether the agency is following a pattern of awarding contracts to a limited number of professionals.

A comparable situation exists as to use of architects, engineers, and construction managers' services for which the Department of Transportation and Public Facilities regularly issues contracts. Before proceeding in this area, the committee would be well advised to ascertain how that department has proceeded to engage the services of these professionals, the past record of securing these services under contract, and the amounts of these contracts. The record of activity by that department should be instructive on this issue.

B. The framing and offering of requests for proposals.

The discussion in the letter reflects our experience based on various complaints filed with the office. The following are typical:

A81-0839 and J82-0471: Unrelated complaints filed against different agencies in which the

complainants asserted that submission of responses to request for proposals within 10 days of their publication was unreasonable.

J82-0511: The complainant contended that an agency's decision to require a response to an RFP within one week was unreasonable.

F83-1105: In a complaint against the Department of Corrections, the complainant--a competitor for a halfway house contract--contended that the financial report of and other information about a contract facility's halfway house operations essential for his preparation for a response to an RFP was not available for review.

F83-1500: The complainants asserted an improper professional services contract award predicated in part on his assertion that the needs of the agency were not specifically described in the RFP.

J83-0683: In this complaint, filed against the Department of Transportation and Public Facilities arising out of award of a professional services contract in conjunction with the Governor's Mansion renovation, the complainant charged, among other things, that the department misused its authority to award a contract of \$25,000 or less directly.

A84-0920: The complainant asserted that the agency was inefficient in providing information relating to award of a contract based on an RFP.

C. The agencies' evaluations of requests for proposals.

The discussion in the letter under this section also reflects our experience with complainants' concerns. Some examples include:

A82-0158 and A82-0165: In this pair of related complaints, the complainants charged that the successful bid was not responsive to the published request for proposals and that the contract award was influenced by a person not employed by state government who had a conflict of interest with one of the persons submitting the proposal.

A82-1223: The complainant charged, among other things, that the selection review process was improper because the evaluators were not qualified to review the proposals received and because information critical to a proper appeal (release of information about the evaluators and their rating sheets) was not timely provided.

F82-1293: This complaint was predicated upon complainant's learning that one evaluator of a five member team misjudged all submissions because he had used an evaluation form different than the one used by the four others.

F83-0928: The complainants charged, among other things, that an RFP was inadequate and that the selection committee lacked the technical expertise adequate to the task of conducting an evaluation of proposals received. (The issuing agency subsequently declined to accept a response or award a contract.)

F85-0994: Among other concerns, the complainants charged error in the ranking and selection of proposals. (The complaint was discontinued when an appeal was filed.)

D. The appeal process requirements discourage fair evaluation of grievances on their merits.

A "review process" for professional services contracts is required by law. AS 36.98.070.

The handling of three recent complaints, Ombudsman Complaints A85-0910, A85-0951, and A85-0957 illustrate one element of the problem which typically arises with respect to professional services contracting but which may have applicability to procurement as well.

Briefly summarized, the three complaints giving rise to this petition are these:

A85-0951:

The contract award was made July 1. The complainant claims the notice of award was received by the aggrieved respondent on July 8. The notice of award made available to the investigator is dated July 1, and contains the subject of the request, date, ATN number, contracting officer, a short notice, the successful bidder, and the names and addresses of all other respondents.

There was no information about the basis for the award. The notice states:

. . . This abstract of responses is final notice of award of contract(s) if no amendment is subsequently issued by the State and if no appeal of the award(s) stated hereon is received from an aggrieved respondent during the five days following the date of this abstract,