

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7725 SENATE TRANSPORTATION

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Current regulation

The nine state-licensed port pilots are private contractors regulated by the director of the DCCA. Chapter 462A, HRS, allows them to organize into nonprofit associations to provide pilotage services. Six of the nine pilots belong to the Hawaii Pilots Association and three to the Port Pilots of Hawaii. Shipping agents and companies that need port pilots contact the associations, which then assign pilots to vessels according to each association's own rules.

Applicants are licensed first as deputy port pilots and then as port pilots. Applicants for deputy port pilots must be at least 18 years of age. They must have a current U.S. Coast Guard license as master of steam and motor vessels of any gross tonnage and also possess a U.S. Coast Guard endorsement as a first-class pilot for all deep draft harbors where pilot services are provided in the state. In addition, applicants are required to have specified years of experience on vessels of a minimum tonnage. Applicants must submit a certificate of physical examination and pass a written examination.

Applicants for port pilots must meet all the above requirements and serve a minimum of 18 months as a deputy port pilot directing vessels of a certain size. They must provide a summary of all pilotage work and evaluation forms completed by ship captains and licensed port pilots who have accompanied the deputy pilots. Applicants must hold a current Hawaii license for deputy port pilots and must submit a certificate of physical examination. The director of the DCCA may waive all or part of the 18 months service requirements if applicants present proof that they have met all of the experience requirements.

New rules

The department recently adopted new rules, effective August 20, 1990, to enable the director to carry out responsibilities more effectively. The new rules make some significant changes. The two private pilot associations will no longer make pilotage assignments. Instead, a new central scheduling office, to be created by the director, will handle the requests for services and make the necessary assignments. The director will also establish a program to train deputy port pilots. A fee on vessel movements will offset the cost of the program. All pilots will be required to accept training assignments.

Objectives of the Evaluation

This evaluation sought to determine whether the regulation of pilotage complies with policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate pilotage to protect the health, safety, and welfare of the public;
2. Determine whether current regulatory requirements are appropriate for protecting the public;
3. Establish whether the regulatory program is being implemented effectively and efficiently; and
4. Make recommendations relating to the above.

Scope and Methodology

To accomplish these objectives, we reviewed the literature on pilotage and its regulation. We examined current developments in federal regulation and regulation in other states, and we also examined statutes and rules on pilotage in Hawaii and the changes that have taken place in these since 1985.

To determine the appropriateness of current regulatory provisions and the effectiveness of regulatory operations, we interviewed state-licensed port pilots, shipping agents, and personnel of the U.S. Coast Guard, the Department of Commerce and Consumer Affairs, and the Department of Transportation. At the Department of Commerce and Consumer Affairs, we reviewed correspondence and other files relating to the regulation of pilotage.

Fieldwork on the project, including research, interviews, and the review of files, was performed between February 1990 and July 1990.

Chapter 2

Findings and Recommendations

The Department of Commerce and Consumer Affairs (DCCA) has improved the regulation of the pilotage program after assuming regulatory responsibility in 1985. A few improvements are still needed in certain areas.

Findings

1. Chapter 462A should be reenacted to continue the regulation of pilotage.
 2. The examination program for deputy port pilots, including test development, test administration, and scoring, does not yet conform with national standards for occupational and licensing examinations.
 3. The regulations do not specify physical standards for port pilots. As a result, the biennial physical exams do not ensure that all pilots are physically able to carry out their duties.
 4. The regulation on the reporting of pilotage incidents and accidents in the harbors of the state should be clarified and include reports from ship captains and the U.S. Coast Guard.
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State Should Continue to Regulate Pilotage

The State should reenact Chapter 462A and continue to regulate pilotage. The practice has a significant potential for harm to life, property, and the economic well-being of Hawaii. Accidents due to pilot error have occurred in the past. Oil spills, vessel groundings and collisions, damage to ships, piers, and cargo--these are some of the hazards posed by improper pilotage. Because 95 percent of the goods for Hawaii arrive by ship, blockage of Honolulu Harbor could jeopardize the economy of the state. Oil spills pose grave environmental consequences. For these reasons, regulation should be continued.

Examination Program Should Conform to National Standards

The department has substantially improved its examination program by shifting responsibility for examination development from its boards to neutral professional testing authorities. Examinations are now more valid and defensible. Some areas, however, need improvement.

The department should ensure that the examination program for pilots complies with national standards for occupational licensing tests issued jointly by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.¹ The basic standards of a good testing program should include the following:

- The examination should reflect a detailed plan that specifies the qualities (knowledges, skills, abilities) to be tested, the relative importance of these, and the format and other characteristics of the examination.
- The qualities to be tested should be clearly necessary for the functions assumed by licensees.
- Examination questions should be consistent with the nature of the regulated practice and should be carefully constructed and reviewed to ensure fairness to candidates.
- The passing score should distinguish between those who have a minimally acceptable level of skill and those who do not.
- Examinations should be administered under standardized and uniform procedures.
- Scoring should be objective, free from error, and reliable.
- Security must be guaranteed through adherence to appropriate confidentiality procedures in examination development, administration, scoring, and storage of the examination.²

The department's written examination for deputy port pilots does not meet all of these standards. We found no evidence that the deputy port pilot test was developed according to a detailed plan or resulted from a technically sound analysis of pilotage practices. There was no information on the basis for

the passing score or how it was established. Finally, the security of the test could have been breached.

Documentation on examination development

The department did not adequately document the development of the port pilot examination or the activities of the contractor hired to develop the exam. In October 1985, the department contracted with American Community Services, Inc., now known as the National Assessment Institute (NAI), a professional testing organization, to develop and revise licensing examinations for deputy port pilots and several other occupations. That same year, an examination was developed for deputy port pilots but was never used. The department has no documentation on how the examination was developed--we found no test development plan or evidence of a job analysis.

In December 1988, the DCCA licensing administrator asked NAI for information on the validity of the 1985 examination. Although the NAI noted that the examination appeared to have both face and content validity and that the test developer had consulted with port pilots, it offered no supporting evidence.

The department has little documentation about NAI's activities under contract. Even though the examinations are the property of the department, DCCA has no copy of either the original exam developed in 1985 or the revised 1989 version.

Security

More consideration should be given to the security of the examination. In January 1989, NAI held a "task analysis/content outline workshop" for an upcoming 1989 deputy port pilot examination. The purpose of the workshop was to discuss tasks performed by pilots and the knowledge, skills, and abilities needed to perform the tasks. The workshop included a representative of NAI, two port pilots, a representative of the Department of Transportation, a shipping agent, and representatives of the DCCA. According to the NAI representative who conducted the workshop, the DCCA made arrangements for the participants.

A deputy port pilot, who subsequently took the 1989 examination, was present for part of this meeting. This pilot was excused when it was discovered that he was to take the test. However, he may have been exposed to certain aspects of the exam.

Scoring

The scoring of the 1989 examination for deputy port pilots raises questions of bias because applicants and scorers belonged to the same association. The examination included job simulations and questions on the laws and rules of pilotage and the physical features and conditions of Hawaii ports. The NAI paid two licensed port pilots to score the examination, that is, assign points to answers. One pilot belonged to the Hawaii Pilots Association and the other was a former member of that association. The two applicants taking the examination were associated with and are now members of the same organization.

The two port pilot associations, Hawaii Pilots Association and Port Pilots of Hawaii, are competitors and not on good terms. The director has attempted to mediate their differences in the past. While it is a common practice to have persons scoring exams who are knowledgeable in the subject, the choice of scorers should avoid any appearance of bias. The use of pilots to score applicants who are members of their own association raises questions of bias, particularly since the department lacks an answer key or documentation on how the passing score was established.

In the future, the department should have representatives from *both* pilot associations scoring the examination. In addition, the point values should be based on clear criteria for each answer and for the passing score.

Regulations Should Include Physical Standards for Pilots

The work of port pilots requires a high degree of skill, proficiency, and technical training. Pilots must be able to adapt to changing conditions and be prepared to act appropriately. The regulations should help ensure that pilots are in good physical condition.

Physical examinations for port pilots are required every two years when the license fees are due. All nine port pilots, ranging in age from 43 to 69, were relicensed after submitting certificates of medical examination signed by their physicians. The medical examination certificates, however, do not require pilots to meet any physical standards. They contain no basis for judging the applicant's fitness for the position, nor do they require the physician to certify the person's ability to carry out the job. Without physical standards and the physician's statement of a candidate's fitness for the job, the purpose of the examination is not clear.

It should be noted that the U.S. Coast Guard requires an annual physical examination for a pilot to maintain the federal license. All of the state-licensed pilots currently hold federal licenses and take the annual physical examination. Although the standards are general, the physician is required to certify in the Coast Guard's medical examination report whether, in the physician's opinion, the applicant is physically competent to perform duties on a U.S. merchant vessel.

The department should specify the physical standards for performance of pilot duties. The physician can then use these standards to determine whether pilots are qualified to perform their duties.

Drug and alcohol use

Section 462A-8, HRS, provides that the license of a port pilot may be denied, suspended or revoked for "habitual use of any substance rendering a pilot unfit to be entrusted with the charge of a vessel." The department has not developed regulations relating to drug and alcohol use. The department should consider following guidelines from other jurisdictions on drug or alcohol testing programs.

The U.S. Coast Guard has specific guidelines and requirements for carrying out its alcohol and drug testing programs. Currently, marine employers with more than 150 crew members may not employ any individual as a crew member unless that individual passes a chemical test for dangerous drugs. By December 21, 1990, this will be required of all marine employers with 10 or fewer employees.

Federal regulations say that crew members must pass a pre-employment test or a periodic chemical test for dangerous drugs within the previous six months, or they must have been subject to a random testing program during the previous 12 months. They must not have failed a chemical test for dangerous drugs or have refused to take a required test.

Reporting of Incidents and Accidents Should Follow Clear Procedures

The department's regulation requires pilots to notify the director in writing of serious incidents and accidents but does not provide the means for verifying that pilots do so. The regulation says that pilots are to notify the director "as soon as practicable" of any "incident of significance" in the harbors of the state and to file a written report to the director within seven working days if the incident involves injury, death, extensive damage, or running aground. However, such key terms as "injury" and "extensive damage" are not defined,

allowing a pilot to be the sole judge of whether a written report is needed. As a result, there is no way of verifying that all serious incidents and accidents come to the department's attention.

Instead of relying solely on reports from the pilot, the department should arrange to receive damage reports from ship captains to the state Department of Transportation and reports from the U.S. Coast Guard on its investigations of incidents and accidents.

The Commercial Harbors and Tariff regulations of the Department of Transportation require a ship's captain to file a prompt and full written report to the harbor master of any damage to state property or facilities. The report includes the date and hour of the incident, the names, addresses, and descriptions of the witnesses and other persons, vessels, or instrumentalities involved in the damage, and other pertinent information and facts. The DCCA should arrange to receive copies of ship captains' damage reports from the Department of Transportation.

The Coast Guard is authorized to investigate any incident, accident, or act involving the loss, destruction, or damage to any structure that affects or may affect the safety or environmental quality of the ports, harbors, or navigable waters of the United States. The Coast Guard investigates incidents and accidents, such as oil spills and oil fires, that cause environmental damage and involve all types of commercial vessels. The department should arrange to receive copies of these reports from the Coast Guard.

The regulation should be changed to require pilots to report *all* incidents and damage to the director within 7 days of occurrence. The report should also include an estimate of the damage and/or injury. This would provide information and guidance to the executive secretary about the severity of the accident and whether further investigation is warranted.

Recommendations

1. Chapter 462A should be reenacted to continue the licensing of port pilots.
2. The Department of Commerce and Consumer Affairs should have documentation on the development of the port pilot examination and its validity. The department should also have a copy of the examination, the answer

key, and relevant instructions for administering the examination. Further, the department should ensure that the examination is secure and that the testing situation is without bias. The scoring of the examination should be done by representatives of both pilot associations.

3. The Department of Commerce and Consumer Affairs should develop physical standards for the licensure of port pilots. It should include the standards on the certification of medical examination forms. The department should amend its regulations to require physical examinations based on these standards and certification from a physician that the pilot is physically able to perform the job based on the established standards. The department should develop regulations on drug and alcohol use by port pilots.
4. The Department of Commerce and Consumer Affairs should change its regulation to require state licensed pilots to report *all* incidents to the director within 7 days of occurrence with an estimate of the cost of the damage and/or injury. The department should also arrange with the Department of Transportation to receive ship captains' reports of incidents of damage to state property and facilities.
5. The Department of Commerce and Consumer Affairs should arrange with the U.S. Coast Guard to receive its investigative reports on accidents affecting the safety of Hawaii pilotage waters or the environment.

Notes

Chapter 1

1. Hawaii Pilots Association, *Information Relating to Hawaii Port Pilots*, prepared for the Honorable Jack Suwa, Chairman, House Finance Committee, no date.
2. American Institute of Merchant Shipping, "Position Paper on Marine Pilotage," received from J.C. Kitchener, AIMS West Coast Pilotage Committee, no date.
3. Alex L. Parks, *Law of Tug, Tow and Pilotage*, Cambridge, Md., Cornell Maritime Press, 1971, p. 476.
4. Exempt vessels are (1) vessels required by law to be under the direction and control of a federally licensed pilot, (2) public vessels of the United States of America, (3) motor boats (repealed in 1988, Act 131 SLH), and (4) fishing vessels issued a fishery license or appropriately endorsed registry under the Laws of the United States of America, as amended, in Act 111, SLH 1984.
5. Section 462A-17, HRS.
6. Data compiled from reports from the Hawaii Pilots Association and Port Pilots of Hawaii.
7. Hawaii, Legislative Auditor, *Sunset Evaluation Report, Pilotage*, Report No. 85-9, Honolulu, January 1985.

Chapter 2

1. See American Educational Research Association, American Psychological Association, National Council on Measurement in Education, *Standards for Educational and Psychological Testing*, Washington, D.C., 1985.
2. Werner, Eric, "Achieving Better Licensing Examinations: What Policy Makers Should Know," NCEI, Volume VII, Number 3, December 1989, p. 25.

the information already contained in the application or petition. [Eff and
comp 12/2/89; comp] (Auth: HRS §462A-3) (Imp:
HRS §462A-3)

SUBCHAPTER 12

STATEWIDE PILOTAGE SYSTEM

§16-96-61 Statewide pilotage system. All pilots shall be required to participate in assuring the maintenance of the pilotage services in all pilotage waters of the State. Such participation shall require that each pilot:

- (1) Remain in active service;
- (2) Participate in the central scheduling system as set forth in section 16-96-62;
- (3) Participate in the pilot training program as set forth in section 16-96-63; and
- (4) Adhere to the work rules adopted pursuant to this chapter. [Eff and comp] (Auth: HRS §462A-3) (Imp: HRS §462A-3)

§16-96-62 Central scheduling system. (a) All pilots shall participate in the central scheduling system that is established by the director. The director may contract with any person or entity, including any existing pilotage system, to establish and operate a central scheduling office for all pilotage services in the State.

(b) Any person or entity that seeks to operate the central scheduling system shall submit a proposal to the director that shall include, but is not limited to, work rules that:

- (1) Assure that all needed pilotage services will be available at all times and for all designated pilotage waters;
- (2) Address in a reasonable manner any request for a particular pilot or group of pilots or the refusal to use any particular pilot;
- (3) Assure an expeditious grievance process for the resolution of all complaints including a pilot's complaint that the central scheduling system has been operated to the disadvantage of that pilot;
- (4) Assure equitable distribution of pilotage work to all licensed pilots;
- (5) Establish a method of financing for the proposed central scheduling system;
- (6) Establish a method for dealing with pilotage requests for exempt vessels; and
- (7) Establish a method for dealing with the availability of support facilities at reasonable rates for pilots at the various harbors.

(c) All requests for pilotage services shall be made through the central scheduling office and no pilot may engage in any pilotage service that is not assigned through the central scheduling system; provided that this section shall not apply to pilotage of vessels that are exempt from this chapter.

(d) All operating costs for the central scheduling office shall be borne by all licensed pilots on an equal basis. [Eff and comp] (Auth: HRS §462A-3) (Imp: HRS §462A-3)

§16-96-63 Training program. (a) All pilots shall participate in a program to train deputy port pilots which shall be established by the director. The director may contract with any person or entity to establish and operate such a training program. There shall be only one training program in existence at any one time.

(b) All deputy port pilots shall receive their training under the program established pursuant to this section provided that any deputy port pilot licensed prior to the effective date of this section may complete training outside of this program.

(c) All pilots shall accept training assignments made by the program unless the pilot is physically or mentally impaired or unless the pilot is unable to obtain the necessary support facilities at reasonable rates in the port involved.

(d) The costs of operating the training program shall be offset by a fee to be assessed per vessel movement during any period when a deputy pilot is being trained. The fee shall be assessed on all vessel movements whether or not the particular vessel involved is carrying a deputy port pilot. [Eff and comp] (Auth: HRS §462A-3) (Imp: HRS §462A-3)

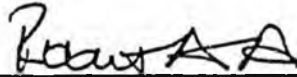
§16-96-64 Work rules. All pilots shall adhere to the work rules of the central scheduling system that is established by the director pursuant to section 16-96-62 or adopted pursuant to subchapters 2 and 3 of this chapter." [Eff and comp] (Auth: HRS §462A-3) (Imp: HRS §462A-3)

2. Material, except source notes, to be repealed are bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments and compilation of chapter 16-96, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on August 9, 1990, and filed with the Office of the Lieutenant Governor.



ROBERT A. ALM

Director of Commerce and Consumer Affairs

APPROVED AS TO FORM:


Deputy Attorney General



CAPTAIN J.L. LE PENDU

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December 10, 1990

NATIONAL TRANSPORTATION SAFETY BOARD
Marine Division
800 Independence Avenue
Washington D.C. 20594

Gentlemen,

The PORT PILOTS OF HAWAII, a private association of State licensed Port Pilots in Hawaii, is seeking information concerning any studies or findings relating to SAFETY in respect to pilot associations in America. Specifically we are interested to know if there are any studies by the N.T.S.B. which have found that having only one pilot association in a Port to be the best means of addressing safety in pilotage.

Here in Hawaii we have two separate pilot associations. Both groups comprised of State licensed port pilots. Neither association is mandated by State Statutes or State Pilotage Regulations to regulate safety in pilotage. All State licensed port pilots are independent contractors by Statute, however may form a nonprofit association in order to reduce each pilots overhead (expenses). The association, by law, shall have no control or direction over the manner in which a pilot performs his duties. Past experience has shown that when there was only one association, the association did nothing to address concerns and complaints by shipping agents dealing with an association pilot. The previous monopoly of one pilot association protected the pilot rather than deal with the concerns which were safety related.

The PORT PILOTS OF HAWAII is an association of professional port pilots licensed by the State of Hawaii, not by an association. We are proud of our safety record and of our efforts to deal directly with the State of Hawaii on issues of Safety in Pilotage. We also favor the existence of more than pilot association within a State Pilotage jurisdiction.

We would be pleased to receive any information you may have regarding studies or rulings relating to safety in relation to pilot associations.

Yours truly,

Jean-Louis LePendu
Vice President,
PORT PILOTS OF HAWAII

TESTIMONY WE PRESENTED + READ AT HOUSE HEARING ON BILL 1693

To: Consumer Protection and Commerce/Finance, Committees
Representative Mazie Hirono/Representative Joseph Souki

From: Captain Lou Geronimo, Port Pilot
2734 Booth Road
Honolulu, Hawaii 96813

Re: H.B. 1693, Relating to Pilotage
Date: February 20, 1991
Time: 2:00 PM

Testimony opposing amendments to HB 1693

Committee Members,

I am Captain Lou Geronimo a State licensed port pilot. I have been a port pilot for 20 years, before that I sailed in the Merchant Marine for 32 years and got my Unlimited Masters License. I survived my ship being sunk during World War II by the Germans. I survived being a prisoner of war. For forty years I have been a good member of the Masters, Mates and Pilots Union, my record is clean. I learned the hard way how to work and to know respect for the law.

I urge you to deny the proposed amendments to this Bill. They are nothing but a scheme by the Hawaii Pilot Association to create a Monopoly for themselves. I used to be part of this association, but they got rid of me because I found out that they were working illegally. When we first became independent contractors in 1980 things were OK, but then in 1984 some of the pilots reorganized the business and I did not agree with or understand what was going on. I refused to sign the new documents, and was told in writing that if I did not sign them I would not be allowed to pilot. I finally signed under protest because I needed the work to support my kids and my wife. Then in 1987 I found out that my pension plan was no good because of the way the Hawaii Pilot Association was organized. A letter from Richard Saas CPA said, that if the I.R.S. investigated the pension plans of the individual pilots, the plans would not be qualified. I tried to get the Hawaii Pilot Association to reorganize and get things right, but they didn't do anything but make trouble to us who wanted to reorganize, even Richard Saas's letter said we should reorganize. The rest of the association didn't want to make the changes because they were afraid that the I.R.S. would see what was going on and would audit them. The only thing the pilot association did was to oust me and remove me as a director of the

association's

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corporations. Then they found some phony reason to refuse to dispatch me on the grounds that I worked outside of the corporations work rules. What about the other pilots who refused to work for Honolulu Agency vessels. They broke the rules too. But that was OK because they were in the click. The Hawaii Law 462A-15 says that we may form an association, but that the association has no direction over the way a pilot performs his duties. A pilot's duty is to provide his skills to any vessel requiring his services. For two months the association wouldn't let me work, finally I had to do something to make a living so I started working as an independent pilot. A year after I was independent, another pilot joined me and we formed an association called the PORT PILOTS OF HAWAII now there are 3 pilots in our association and things are going pretty good for us. The Hawaii Pilot Association sees their "Golden Egg" cracking apart and want to patch it up by making themselves a Monopoly. Because the Hawaii Pilot Association ousted me, the Union won't accept my dues anymore.

"Safety" seems to be a big concern to the Hawaii Pilot Association, or is it just an excuse to gain the control over pilotage that they once had, along with all the money.

The other part of the proposed changes to HRS 462A is to reestablish a Board of Pilot Commissioners. Well, I've seen the previous Board in action and all they did was what the pilots wanted. Whenever a Board member said anything that did not please the pilots, the pilots would convince him to change his mind. That was easy for them to do because they all belonged to the same social clubs. I remember what a Board member said to the Director of the D.C.C.A. when the board was Sunset back in 1985. It happened at the last commissioners meeting, the board member called the director's department "Slimy Bureaucrats". The pilots have no shame because once back in our pilot quarters they all laughed about it in agreement.

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For the last 5 years the Director of the D.C.C.A. has done a good job of regulating pilotage. He has been fair and open to the needs of the pilots as well as the industry. The Director has also adopted new rules under Hawaii Administrative Rules, Subchapter 12, entitled Statewide Pilotage System. I believe these to be good rules and possibly the best solution to ensuring that all pilotage services and requests are equally taken care of. It will also, over a period of time, weed out any bad pilots that would otherwise be covered up by an association interested in protecting their image.

I would like to see the new rules which were approved of and signed by the Governor be put into effect as soon as possible. It is time that we go on with the business of piloting and stop the feuding over who will control pilotage. It is clearly in the State's best interest as well as the interest of the Public that we Pilots remove ourselves from the notion that we know what is best for the Public's interest when all we really know is how to pilot ships.

Please do not let the proposed amendments become law. Thank you.

Lou Geronimo



CAPTAIN J.L. LE PENDU

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READ AT HEARING ON BILL 1693

To: Consumer Protection and Commerce/Finance, Committees
Representatives: Mazie Hirono/Joseph Souki, Chairpersons

From: Captain Jean-Louis LePendu
J.L. Pilot Service, President
PORT PILOTS OF HAWAII, Vice President

Re: H.B. 1693, Relating to Pilotage
Date: February 20, 1991
Time: 2:00 PM

Testimony in opposition to proposed amendments to H.B. 1693

1. Creation of a single pilot association
2. Reestablishment of a Board of Pilot Commissioners

Committee Members,

This proposed legislation seeks to create a monopoly for the Hawaii Pilots Association by compelling all port pilots to become members thereof. Under the current system, all vessels which require pilotage service are offered the option of hiring pilots from one of two existing pilot associations. The question of Safety, under the current system, is a non-issue. All pilots, regardless of their affiliations, are required to undergo stringent examinations and offer proof of their experience and skills in piloting safely any vessel. A Pilot's only purpose is to provide safety to all vessels. To suggest that this can only be accomplished through a single pilot association is ludicrous. The National Transportation Safety Board (NTSB) letter dated January 29, 1991, has no studies or conclusions which support the premise that a single pilot association is safer than two competing pilot associations. The NTSB does however conclude in a marine accident report, NTSB/MAR-88/01, that of the 27 findings by the NTSB 9 were critical of the pilot association and/or of the Board of Pilot Commissioners. Of the 8 recommendations of that same report 7 recommended improvement in the Board of Pilot Commissioners.

A contributing factor to the "Probable Cause" of the collision "was the failure of the State pilotage oversight system," ie (Board of Pilot Commissioners). This NTSB report very closely parallels the State of Hawaii Legislative Auditor's report for 1985. The similarities of both reports are not coincidences since commissions usually tend to be self serving.

The Board of Pilot Commissioners was "Sunset" in 1985 due to overwhelming criticism by the State Auditor. The Auditor's report said in part, "regulation by the board has not accomplished the objectives intended by the Legislature of providing for the maximum safety of vessels navigating in state waters, or maintaining a highly efficient state pilotage system..." The 1985 Auditor's concluded in it's summary "In almost all areas reviewed, there was evidence of the influence of the pilot association on the board's decision making process. In many cases, board actions furthered the financial interests of licensed pilots and not those of the State."

A return to the old system of a single pilot association and a Board of Pilot Commissioners would seriously undermine the regulatory responsibility of the Director of the Department of Commerce and Consumer Affairs. The Auditor's report of 1990 states, "Since assuming regulatory responsibility in 1985, the Department of Commerce and Consumer Affairs has improved the regulation of pilotage." The Director of D.C.C.A. has established a Statewide pilotage system to guarantee pilot services to all vessels regardless of pilot associations. I would like to recommend that these new rules, which were adopted, be put into effect as soon as possible. I agree with the 1990 Auditor that the public interest is best served by reenactment of the Statute 462A-Pilotage.

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I am strongly opposed to the amendments to the Statute proposed by the Hawaii Pilot's Association for the creation of a single pilot association, and for the return of the pilot commission. I urge you to deny these proposed amendments. Thank You.

Jean-Louis LePendu

enclosures: 3

1. 1985 Auditor's Report
2. 1990 Auditor's Report
3. Subshapter 12, Statewide Pilotage System

U.S. Department
of Transportation
**United States
Coast Guard**



Commander
Seventeenth
Coast Guard District

P.O. Box 3-5000
Juneau, AK 99802-1217
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Staff Symbol: mfvs

16637
April 10, 1991

Representative Cheri L. Davis
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Davis:

Thank you for meeting with us this week and for giving us the opportunity to review your draft of House Bill No. 194. The safety of Marine Pilots and the vessels they serve is very important to the Coast Guard. Uniformity between state and federal pilotage requirements is also desired to promote equal treatment for similar vessel operations.

As Rear Admiral Ciancaglioni directed in your meeting with him, I am offering the following comments on the 4/4/91 draft of this bill:

Sec. 08.62.040(a)(6): If a mandatory random drug and alcohol testing program is established for state pilots, I recommend that it agree with the federal testing programs in 46 CFR Part 16. This will avoid duplicate testing requirements and confusion since all state pilots also hold a federal pilot license. *OK*

Sec. 08.62.040(a)(9): It should be clarified that a regional pilot organization is prohibited from operating before its bylaws etc. are approved if it is the intent of the legislature that only approved organizations are to be allowed the privilege of functioning. *OK*

Sec. 08.62.040(a)(12): When marine pilotage regions are established by regulation, it is desirable that the boundaries of the regions be similar, to the extent possible, to those established for federal pilotage waters in 46 USC 8502(a). *OK*

Sec. 08.62.050: It is recommended that the duties of the Marine Pilot Coordinator be defined more explicitly; e.g. does he investigate accidents and misconduct of pilots? *Boles*

Sec. 08.62.080(a): Will regulations be issued to clarify a license structure for various types and sizes of vessels? It appears desirable to use the same license structure as now contained in federal regulations for uniformity. This could be accomplished by requiring that the pilot hold a federal license for the service and size of vessels operated. *Boles*

April 10, 1991

Sec. 08.62.080(b): Would establishing a currency of knowledge provision, similar to the federal requirement in 46 CFR 10.713, achieve the same safety concern that is addressed by restricting pilots to only one pilotage region?

Sec. 08.62.100(3): The words "three years experience" should be clarified to indicate if calendar years or actual time, e.g. 1095 8-hour days, are required.

6 Sec. 08.62.150(a)(3): Possession of narcotic or hallucinogenic drugs should be included with use and selling as prohibited activities. All of these activities, if proved, will be grounds for revocation of the pilot's federal license.

6 Sec. 08.62.150(a)(8): Suspension of the pilot's federal pilot license should be addressed in addition to full revocation of the license.

6 Sec. 08.62.160: The terms "inland" and "coastal" have different meanings in many legal applications. Recommend that these terms be changed to read "state waters inside the 3-mile Territorial Sea Line."

6 Sec. 08.62.180(1): The words "except as provided in AS 08.62.185" should be deleted from this section as it violates 46 USC 8501(d) and 8502(c). Also, the words "vessels under enrollment" should be changed to read "vessels subject to federal pilot requirements in 46 USC 8502."

Adopt 11" 112 Sec. 08.62.180(2): We assume that you are using the term "fishing vessels" in the same context as defined in 46 USC 2101(11a) and are not exempting "fish processing" and "fish tender" vessels, as defined in 2101(b) and 2101(c), from pilotage. Some very large tenders and processors, some over 600 ft and 5,000 gross tons, are now operating in and out of Alaskan ports. When not subject to federal pilotage requirements, such large vessels should be subject to state pilotage.

6 Sec. 08.62.185(a)(2): For the above reason, the words "whose duty station has been on that tanker throughout that specific voyage" should also be deleted from this existing statute.

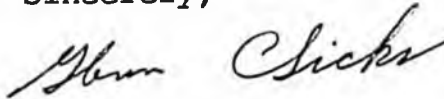
Sec. 08.62.190(a): The phrase "when a licensed pilot is available" seems too vague as stated. Recommend that some time frame and effort-to-obtain criteria be added to avoid each company making their own decision as to the availability of a licensed pilot.

16637

April 10, 1991

The above comments are based upon my quick review of this draft bill. I am enclosing copies of federal statutes and regulations cited above for your quick reference. Also enclosed please find a copy of Captain Bodron's letter to Senator Drue Pearce concerning the improvement of Alaska's marine pilotage system. As he states in that letter, we are available to assist you in drafting state standards, participating in Pilot Review Boards, and advising on federal standards. We look forward to working with you and your staff in the development of this bill.

Sincerely,



Glenn C. Sicks

Lieutenant Commander, U. S. Coast Guard
Chief, Fishing Vessel Safety Branch

By direction of the District Commander

Enclosures: As stated above

PILOTAGE ORGANISATION FOR PORT EMPLOYED PILOTS

Captain Jim Varney, FNI, FIMH, MCIT

Immediate Past-President, International Maritime Pilots' Association

Lately Marine Services Manager/Harbour Master, Ports of Auckland Ltd

This chapter is taken from the new major book The Nautical Institute on Pilotage and Shiphandling, published this month, and serves well to introduce the book.

THE PUBLICATION of this book on Pilotage is timely, given the changes that are taking place in various parts of the world with regard to the employment of pilots.

As president of IMPA, and a member of the maritime safety committee of the International Association of Ports and Harbours (IAPH) I was recently given the task of reviewing and updating the chapter dealing with 'Pilots and Pilotage' in the IAPH publication *Guidelines on Port Safety and Environmental Protection*.

I am pleased to record that all recommendations were accepted in full, and the revised chapter was reprinted and published in June 1989. At the time I recommended to all IMPA members that *regardless of how they were employed; private, State, or port, every pilot station should obtain a copy*. While they are not mandatory, but simply 'Guidelines' for IAPH members, the observance and fair implementation of them should ensure better working relationships with all those concerned in the efficient operation of any port regardless of its size or complexity. The unknown (to me) authors of the original chapter are to be congratulated on the manner in which they addressed this topic.

To this end I make no apology for including the following extract from the 'Guidelines' with the hope that their wider publication will assist pilots of all persuasions as well as other members of the seagoing profession and those whose job it is to administer pilotage services.

PILOTS AND PILOTAGE

PILOTAGE IS A UNIQUE SERVICE based upon local knowledge and special conditions prevailing in the pilotage area. It may be performed in coastal waters, estuarial waters, rivers, ports, harbours, lakes or enclosed dock systems or any combination of these areas which may come within a port's jurisdiction.

A pilot's function is to combine technical knowledge concerning the operation of a vessel with local knowledge concerning special conditions which exist in the port area and with which the master of the vessel cannot be expected to be conversant. In this respect, pilots must first of all be technically capable of piloting vessels of all types which call at the port. They must be well versed in the latest equipment and navigational aids as well as the regulatory and environmental requirements.

The second and perhaps most important part of the pilot's function, however, is an overall appreciation due to his local knowledge of the special regulations and unique conditions which exist in the port area.

Administration

The rules governing pilotage should be designed to meet the special conditions and needs of each port area. In order to maintain a safe and efficient pilotage service and for this service to meet the special conditions of the port area, an authority must be established which will have the ultimate regulatory control over the pilotage service. Essentially, this system is now in operation throughout many ports in the world. Such a body is ordinarily a group of maritime-oriented people, having interests in the port area, who make regulations to cover the following considerations.

- The eligibility of pilots to perform pilotage services within its jurisdiction;
- The requirements for obtaining a licence or other type of operating authority for pilots;
- The administration of the examination procedures necessary in order to ensure that applicants for pilot licences are properly trained, qualified and have the requisite local knowledge;
- The requirement that pilots keep themselves abreast of the latest technological developments and the latest navigational aids;
- The investigation of casualties, accidents and alleged transgressions by pilots, and the conduct of any necessary disciplinary measures;
- The fixing of the proper number of pilots necessary to ensure a satisfactory traffic flow;
- The fixing of fair and reasonable rates for pilotage services;
- The requirements to ensure that pilots receive proper and fair treatment, timely remuneration, and any other action necessary to ensure that an efficient pilotage service is rendered;
- Determine the necessary equipment (boats, accommodation, etc.) and manning scales for its efficient and safe operation; and
- The requirement that pilots report breaches of ratified international conventions (overloading, faulty pilot boarding/disembarking systems, pollution by oils or other noxious substances, etc.) and breaches of national and port regulations, etc.
- For the bond to limit the liability of a pilot, in those countries where there is no legal protection. (The level of pilotage fee charged must to some extent be reflected in the insurance costs of the service. Therefore, the introduction of 'limited liability' should lower insurance premiums and thus costs);
- Pilots should meet the medical and eye-sight requirements prescribed by their national administration.

Training

Pilot training covers two major aspects—viz., technical training in vessel operations and in the use of

the latest vessel equipment and navigational aids and the training and acquisition of experience with respect to the special and unique conditions which exist in the port area. These background skills for pilots have been developed in two principal ways.

Pilots with experience as deep-sea mariners possessing a master's or mate's licence or as licensed tugboat officers: these pilots have acquired their technical background skills through actual vessel operations and their training as pilots in a particular port area requires them to become thoroughly familiar with and aware of the conditions which exist in the port area. The amount of training and the length of training period for a prospective pilot whose technical skills have been acquired through actual vessel operations will depend upon a number of factors, such as the complexities of the special conditions in the port area and the amount and type of traffic in the port. The initial training period would probably be from six months to a year.

Pilots train under what was historically known as the guild system and which is now commonly described as the apprenticeship system. This training programme is used by some State pilot associations in the United States and elsewhere in the world and has proved to be successful and effective. The apprenticeship system takes a relatively young person with a good educational background, who is physically qualified to be a pilot and who then undergoes a period of apprenticeship with the licensed pilots in the port area. Such an apprenticeship or learning period usually lasts between five and ten years. The apprentice pilot simultaneously learns technical skills concerning vessel operations and the conditions of the port area during a period of actual on-the-job training. This training also involves a programme of study for the apprentice, who must acquire adequate technical background, skills and knowledge.

There is also a system of training which is a combination of the other two systems. A candidate for a pilot's licence spends alternating periods as an apprentice pilot and at sea, qualifying for his mate's and/or master's certificates or licences.

Pilotage of any type of vessel would be possible only after a pre-determined number of years, during which a pilot would progress to vessels of increasing tonnage and/or draught. In some circumstances it may be required that an upper age limit be imposed on pilots for certain types or classes of ships.

Enrichment of skills

It must be recognised that pilots are learning and reinforcing their skills every day. They are continuously finding different combinations of weather, current, traffic and of course, different standards of vessels and crews. This requires a variation in their approach to the manoeuvres they have to make, which in turn adds to their store of knowledge. Pilots should be encouraged to attend one or more of the many training establishments located throughout the world. These include radar simulators, bridge simulators and model basins for both day and/or night-time scenes and ship-handling.

Some pilot associations promote this improvement of skills by having 'sounding trips'—trips on which a

pilot is observed by a more senior colleague who assesses his ability and performance and his suitability for advancement to piloting ships of a greater size or draught. In other districts, on vessels of unusual size, shape and/or manoeuvring characteristics, a second pilot is put aboard to observe the pilotage and perhaps assist with such tasks as communications.

Prevention of the one-man error

The pilot must take into account not only the safe conduct of the vessel he is piloting, but also the safety, protection and well-being of other vessels and users of the port, the port itself and the environment. The effective utilisation of pilots depends most critically upon the effectiveness of the communications developed between the pilot and the master and upon the mutual respect which each has for the functions and duties of the other, also the effectiveness of communications to the VTS and the masters of attending tugs.

When a pilot boards a vessel, he is given the conduct or the charge of piloting the vessel while the master remains in command. The pilot's function is to manoeuvre the vessel within the port area so that local hazards, special regulations, environmental requirements and any other unique local conditions existing in the port area are brought to the attention of the master for adherence or avoidance, as the case may be. Problems of so-called one-man error may arise in situations due to a lack of communication between the pilot, the master, the harbour information control organisation or the tugs. Communication by the pilot to all involved should be relatively standardised and it should always be complete.

The pilot would usually undertake the following procedure:

- Inform the master of the instructions the pilot had received concerning the vessel with respect to docking, time of arrival, assistance of tugs, whether port or starboard docking is to be effected and any other pertinent information such as manoeuvres to be carried out;
- Inform the master of any special conditions that may be expected during the passage;
- Inform the master of the traffic anticipated (through traffic systems in ports where such systems exist), especially if the traffic is expected to be unusual; and
- Inform the master of the known weather conditions and the weather expected on the intended route.

The master should inform the pilot:

- The characteristics of the vessel: length, beam, height of mast, draught of vessel fore and aft, type of engines, number of propellers and rudders, bow and stern thrusters, whether the propellers are right handed or left handed, whether the pitch is fixed or controllable.
- The manoeuvring characteristics of the vessel: number of revolutions at each speed, maximum number of revolutions astern, time response of the engine and of the rudder, turning ability, minimum speed at which the vessel will steer under normal circumstances, maximum time that the engine can run continuously astern.
- Any unusual characteristics or defects or problems that could affect the safe manoeuvring of the vessel, number of crew available for mooring.

All pilots should be familiar with the IMO vocabulary, especially in countries in which the English language is not the first language.

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Control of tugs and other craft

A programme of close co-ordination and communication with operators of tugs and other craft is an integral part of pilotage practice. A uniform practice and procedure is essential to assure absolute compliance with all instructions and orders given from the bridge. Tug and other craft operators assisting the vessel must at all times be under the control of the pilot. Past instances on record, when disaster or damage was caused or nearly caused, could probably have been averted had there been closer co-operation and better communication between the bridge and the assisting craft. This could be effected by ensuring that in the port area certain VHF channels are reserved exclusively for ships, tugs and mooring craft, etc. The master, upon the advice of the pilot, shall determine the number of tugs to be employed but the port authority may stipulate a minimum number. The pilot shall determine the positioning, speeds and how the tugs are to be made fast.

Port practice and policies

The personnel infrastructure of a port area includes many different elements such as tugboat operators, stevedoring companies, waterside labour, local coast guard authorities, customs officials, pilots and others. In a port, pilots may operate in any of the following areas: sea and estuaries, rivers, docks, canals and lakes. Some pilots may only perform berthing/unberthing functions and in addition some of senior status may be required for VLCCs and similar large vessels.

The achievement of safe, efficient and pollution-free operations within a port area obviously depends upon the effective co-ordination of all these elements. A pilot certainly has an essential role in the achievement of this objective but not the only role. Port co-ordination must be achieved through some authoritative form of co-operative effort, between all the groups which operate within the port area.

In some ports where there is not already one co-ordinating body, it may be advisable to have a port/marine liaison committee, made up of representatives of organisations charged with the establishment, maintenance and protection of the port's aids to navigation, vessel traffic services and port facilities. In addition, the committee should also include representatives of other services necessary for the safe movement of vessels within the port area. This committee would advise on matters such as (but not restricted to):

- Draught limitations.
- When and where tugboat escort and/or assistance is needed.
- Suggested time for movements under various tidal conditions.
- Regulations governing movement of marine traffic in the ports.
- A review of all matters affecting the safe and efficient operation of the port and the promulgation of such guidelines as are warranted to achieve these purposes. These should include consideration of the different types of accident that could occur and a review of the means at the disposal of the port in case of an accident, especially one involving a vessel carrying oil, gas, chemicals or other noxious and/or hazardous cargo. This would enable a decision to be made about the most appropriate measures to be taken to safeguard the safety of lives,

vessels, installations and the environment, in turn determining what additional equipment is needed to cope with potential emergencies.

- An advisory role in port development and renovation.

VTS is a service provided for the purpose of: enhancing the safety of the vessels navigating or moored in the area, of the harbour installations and the protection of the environment; and co-ordinating, expediting and maintaining an orderly flow of traffic. The VTS will provide information, advice and instructions mainly based on the rules and regulations promulgated by the port marine liaison committee.

It is obvious that a VTS can only be properly operated if there is close co-operation between all the parties involved and more particularly between the VTS operators and the pilots who are the direct link between the VTS centre and the vessels and who are fully conversant with the local rules, regulations and procedures.

The presence of a pilot on board a vessel will enable the VTS to simplify its procedures and interventions as far as that vessel is concerned. Pilots may also be called upon by the operators of the VTS to participate in its operation, where their particular knowledge of local conditions and expertise in handling various sizes and types of ships can be invaluable. □

FURTHER TO THIS I would add.

1. The ultimate objective for any pilot service, no matter how the pilots are employed, must be to provide a pilot as and when required for every vessel requesting such a service.
2. The person provided should be properly qualified and experienced in handling the size and type of vessel to which they are allocated.
3. They should be physically fit and mentally alert to enable them to carry out the duties of a pilot throughout the pilotage act.
4. This can vary greatly, and is not only dependent upon distance; harbour, dock work, river, or estuary pilotage or combination of these, but is also subject to the vagaries of weather; tide; traffic patterns, and last but not least, equipment failure, all of which can play havoc with rosters and duty turns in a busy pilotage district.

Basic qualification

This may differ from country to country, but, in the main, the government or State will be responsible for setting the basic qualification that a candidate for a pilot's licence must hold. The vast majority today insist on the master foreign-going certificate or its equivalent, with or without command time. In many ways this is an advantage to port authorities who employ pilots, as they can then utilise the skills of these people more fully for a greater range of work. This again is dependent upon the size and nature of the port and its workforce.

To those of you who are intent on joining the profession—I wish you well. After 26 years as a pilot, I still think that one of the most pleasurable moments is to arrive on the bridge of a ship and be greeted by a firm handshake, a friendly and sometimes mightily relieved master, and the magical words 'she's all yours, pilot'. As long as you don't take this too literally you can then settle down to enjoy your work—i.e., the sheer pleasure of controlling, in most cases, the largest objects built by mankind capable of being moved, which will require your undivided attention. Just be sure that they are also capable of being stopped. □

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

P.O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2534

DIVISION OF OCCUPATIONAL LICENSING

April 8, 1991

The Honorable Cheri Davis
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Davis:

The Board of Marine Pilots is pleased to support House Bill 194. The board appreciates your efforts and shares your concerns about the seriousness of enacting a modern pilotage law for the State of Alaska.

If there is any way that the Board of Marine Pilots can be of any assistance to you in this fight, please call upon me.

Very truly yours,



M. Paul Taylor, P.E., Chairman
BOARD OF MARINE PILOTS

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STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898
PHONE: (907) 465-3900

May 4, 1992

Senator Curt Menard
Chairman
Senate Transportation Committee
State Capital
Juneau, Alaska 99811

Dear Senator Menard:

We would like to take this opportunity to set the record straight regarding several points of testimony offered at the recent teleconference for Senate Bill 245. As you are aware, this bill would clarify the direction and intent of procurement of heavy trucks and heavy equipment, to include factors other than minimum specifications and price when making an award. Testimony of several members of the vendor community in opposition to SB 245 contained statements that I do not feel can be substantiated. I am writing this letter to address those issues and provide you with information from the Department of Transportation and Public Facilities.

1. The vendor community indicated the problem of addressing value and quality in equipment bids could be resolved through the specification process. To a point, we agree; and, it should be noted for the record that the State Equipment Fleet (SEF) has been very proactive in strengthening the specification process. This has included the use of longer term warranties requiring both parts and labor coverage beyond the normal manufacturer's warranty. Also, we have been working with vendors in public specification workshops to produce more precise specifications. However, these efforts still result in a minimum specification that judges a machine barely meeting the requirements, equal to a machine that exceeds the minimum requirements. The issues that SEF desires to address are those finer points of quality and value (some of which are relatively intangible and subjective) which are not easily credited given the non-restrictive specification provisions of the procurement code (AS 36.30.060). The intent language in SB 245 would have reinforced SEF's attempts to refine this process.
2. SEF has been more aggressive than other state procurement entities in taking a proactive approach to protecting the state's interests. For

example, SEF has disbarred two vendors from doing business with the state for up to a year because of their failure to deliver goods meeting specification requirements or for failure to meet delivery deadlines. To our knowledge, this type of action has not been taken by other state procurement groups. Additionally, on at least two occasions, SEF has recovered monies from vendors as penalties or judgements resulting from their failure to comply with SEF procurement requirements. This aggressive (and sometimes unpopular) approach has led to a fairer, more even-handed procurement process which has benefited vendors and manufacturers who fully comply with requirements, and has put less serious vendors on notice that material bid requirements must be met.

3. In spite of comments to the contrary during the teleconference, productivity of procurement has steadily increased during the last three years. At the beginning of 1989, replacement of heavy equipment was two to three years behind schedule, and replacement of light vehicles was nearly two years behind. This situation had increased the state's costs because older equipment is more costly to maintain. There was also an adverse impact on the ability of agencies to perform their work efficiently, because older equipment breaks down more often. In 1989, over 53 percent of the fleet was in extended life status, indicating the serious lag in equipment replacement. By July 1, 1991, this figure had been reduced to 38 percent. The graph shown in Exhibit 1 clearly indicates the upward trend in procurement replacement. The volume of bids being processed at the current time is equal to or better than SEF has ever done.
4. At least one vendor made a statement that "protests are at an all time high." The record shows this statement to be absolutely untrue. Alaska's procurement code was revised in 1986, and procurement authority for vehicles and equipment was transferred to DOT&PF. The new code (AS 36.30) contained provisions that were unfamiliar to both SEF staff and to the vendor community. As a result, protests began to increase as the code went into effect in 1987. This increase continued until it peaked in 1989, as provisions of materiality and independent verification were challenged in the protest process. During this two year learning process, SEF's applications of the new code was sustained by Hearing Officers from the Department of Administration and independent private attorneys. Vendors became accustomed to the new provisions, and SEF became more adept at applying the new code. These efforts were enhanced by SEF's complete overhaul of outdated bid documents and beginning the practice of holding specification workshops with the vendor community prior to bid opening. Accordingly, protests dropped off substantially during 1990 and 1991, and to date, no protests have been filed at all in 1992. The graph and chart shown in Exhibit 2 reveals the true picture of protest activity since 1986. It should be

noted not only has the number of protests decreased, but during the same time, the number of bids processed increased nearly fourfold.

5. Another comment made during the teleconference indicated more input should be received from field people, i.e., the actual users of equipment. The implication seemed to be that specifications were developed independently by the SEF staff. This is not accurate. All new specifications are developed by reviewing criteria of equipment we already own, and asking regional equipment managers and user agencies to submit any desired changes. All specifications are signed off by the user agency **before** bids go on the street. Sometimes we cannot get exactly what the user agency wants, because of limitations in the procurement code. Sometimes users are not aware of these limitations and become frustrated because SEF doesn't buy the brand operator's desire. SEF's current practice is to spend considerable time in the field, receiving input on equipment specifications from users, and asking for their final sign-off before bids are advertised.
6. The last vendor to testify referred to a petition that was circulated a couple of years ago which had been, in his words, "completely ignored by DOT&PF." The petition referred to asking DOT&PF to move the SEF Headquarters unit from Juneau to Anchorage, to save costs and cut down on unnecessary travel. Contrary to the testimony that DOT&PF "ignored" the vendor's request, the move of SEF Headquarters to Anchorage was completed during the summer of 1991.
7. Comments were also made that "the low bid was the standard of the industry," and "what all the other states are using." This is not necessarily the case. A review of the award language from all fifty states shows that most have less restrictive award language than Alaska. Many use terms like those found in Vermont's award language, which is worded in this fashion:

"...shall be awarded to the person whose bid or qualifications is in the best interest of the state...in his determination of the best interest of the State shall consider (1) specified quality, (2) price, (3) ease of access of supplies, (4) incidental administrative costs, (5) proven reliability of bidder."

According to a study conducted by the National Association of State Purchasing Officials, at least half of the states in the nation use quality and criteria other than price in their contract award language.

Vendor testimony indicated a consensus that SEF could use criteria other than price under the current code, and a change was not required. Attempts to use variations of the low bid process in the past, have met with considerable resistance by the vendor community.

An attempt to use a guaranteed buy back approach for the purchase of graders two years ago received so much resistance from some vendors that SEF relented and used the standard invitation to bid process again. Because of this resistance, SEF has been hesitant to use other methods in the past. SEF will go forward, trying reasonable and fair approaches within guidelines of the procurement code, in its endeavor to obtain better quality equipment for the state's needs.

As new approaches are tried, even those vendors at the teleconference said were available within the current code, there is a high probability that vendor protest activity will increase.

Finally, I have attached a petition signed by a number of vendors. The petition came about as a result of the hearing on SB 245. The vendors are asking that the procurement code be amended to allow the state to be sued by a potentially aggrieved bidder and that punitive damages be awarded where the courts deem appropriate. They accuse the Attorney General of failing to uphold the current law because it won't take action against another agency. I question the motives of the vendors in making this request. Under the code as written today, potentially aggrieved bidders can appeal adverse decisions by the department to the Superior Court. To date, of all the wrongdoing the department has been accused of, only one bid has been appealed to the courts (bidder withdrew after TRO was refused). If vendors are not willing to appeal to the courts when they feel they have been damaged by an improper bid, what is their motivation for now wanting to be able to sue the state and get punitive damages? They seem more interested in trying to punish someone who allegedly wronged them than reaching and accepting the correct answer. This questionable motivation is further shown by the fact that some vendors will do anything, no matter how underhanded, to attack Mr. Langel; even to the point of changing the wording of a petition after people have signed it (see letter attached to petition).

If you would like to discuss these matters further, please contact me.

Sincerely,



Frank G. Turpin
Commissioner



April 30, 1991

Position Paper

SJR 23 - Transportation Fund

The Alaska Municipal League supports the purpose behind SJR 23; to ensure that Alaska's transportation system is adequately maintained. SJR 23 proposes that the Constitution be amended to allow that fees and taxes on fuel be dedicated to the maintenance and operation, as well as the construction, of transportation facilities. The AML requests that the resolution be amended to include that an equitable portion of the funds be returned to local governments for transportation purposes.

An adequate transportation system is critical to the economic and community development of the State. The origin and destination of most traffic, whether by surface, air or water, are the municipalities around the State. The majority of the fuel is purchased in municipalities. And, the network of transportation facilities within municipalities is a critical link in the State's transportation system.

While the majority of the State's transportation system is built and maintained by the State of Alaska, some of the system is built and/or maintained locally. The responsibility for local transportation system improvements and maintenance will undoubtedly increase as general state financial assistance to municipalities continues to decline. In order to provide funds for local improvements and maintenance and to gain additional support for the Constitutional amendment, the AML requests that SJR 23 be amended to provide for a equitable sharing in the dedicated funds. An equitable share to be returned to local governments, whether based on road miles, airport activity etc., can be determined upon implementation at a later date.

AML requests the following amendment on Page 1, line 15:

"...by law, shall be placed in a transportation fund. The transportation fund shall be used for the maintenance of all state-maintained Class 1, Class 2 and Class 3 roads in existence as of January 1, 1990, regardless of future ownership or maintenance responsibility. In addition, all municipal and state-owned airports and harbors, as well as the Alaska Marine Highway System, shall share equitably in the fund. The legislature may appropriate from the fund..."

sab6:tranfund

JAN 31 1992

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

HEADQUARTERS, STATEWIDE EQUIPMENT FLEET

WALTER J. HICKEL, GOVERNOR

4601 AIRCRAFT DRIVE
ANCHORAGE, ALASKA 99501
(907) 241-7671 (FAX 248-4550)

Notice of Intent to Award

Ref: ITB SEF-140

Date of Notice: January 30, 1992

Thank you for your response to the Invitation to Bid referenced above.

The enclosed abstract and summary indicate to whom FINAL AWARD is pending. An aggrieved bidder may appeal the award by submitting a protest in writing within ten (10) days of the date of this notice.

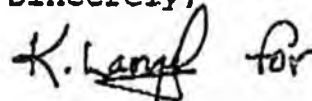
Should a protest be filed relative to any item/lot of this award, all bidders affected by that protest will be notified by this office.

Any item/lot not pertinent to the protest may be awarded.

All bidders are cautioned against taking action relative to satisfying an anticipated award prior to receipt of Final Award which will be in the form of purchase order(s), delivery order(s) or contractual document(s).

Your continued interest in fulfilling the needs of the State Equipment Fleet is appreciated. If we can be of further service, please advise.

Sincerely,



Jess L. Bulkley
Procurement Officer
Statewide Equipment Fleet

STATE OF ALASKA
Department of Transportation & Public Facilities
Statewide Equipment Purchasing

S U M M A R Y O F I N T E N T T O A W A R D

** DATE OF THIS SUMMARY OF INTENT: January 07, 1992 **

Page 1 of 2

ITB NUMBER	AWARD DATE	SUBJECT	PROCUREMENT OFFICER
SEF-140	2/11/92	TRACTOR MOUNTED MOWERS & ROTARY MOWER	Jess L. Bulkley <i>K. Lang for</i>

The figures shown on the attached bid abstract indicate the low responsive bidder(s). This summary explains the basis for designating awards as noted. If no protest of award is received from an aggrieved bidder within ten (10) days following the date of this notice, final awards will be executed. Any bidder for which an award is shown is hereby instructed not to proceed prior to receipt of purchase order(s) or contract document(s).

LOT 1:

First Low Bidder: Craig Taylor Equipment Co. offered a new 1992 John Deere 2955 Tractor with a Morrim LMT-21-5R Mower for delivery to Anchorage, Alaska for a total lot price of \$188,610.00. The bidder failed to address product information requirements of specification item 13.3. This was an astrisked item requiring clarification of the cutterhead below ground reach. Accordingly, their bid is Non-Responsive per Section II, para 8 of the ITB.

Second Low Bidder: Alaska Truck Center offered a new 1992 Ford 7740SLB tractor with an Alamo AB20 mower for delivery to Anchorage, Alaska for a total lot price of \$196,697.07. The bidder failed to address product information requirements of specification item 3.5. This was an astrisked item requiring clarification of the tractor weight. Accordingly, their bid is Non-Responsive per Section II, para 8 of the ITB.

Third Low Bidder: Sahlberg Equipment Co. offered a new 1992 Case Maxxum 1-5130 Tractor with a Tiger TRB-50C mower for delivery to Anchorage, Alaska for a total lot price of \$199,218.00.

Since no exceptions or deviations were taken nor discovered during bid analysis, Sahlberg Equipment Co.'s offer is found to be fully responsive and is accepted.

Final award of lot 1 will therefore be issued to Sahlberg Equipment Co.

This Intent to Award is subject to protest.

In order to be considered, a protest of this Intent to Award must be received in this office prior to close of business, February 11, 1992, with protest documentation in full compliance with AS 36.30.560.

T/C NO: 92-04-010
 DATE: MAR. 9, 1992
 SPONSOR: (S) TRANSPORTATION
 SUBJECT: SB245
 MODERATOR: ROSETTA
 SITE: ANCHORAGE

PARTICIPANT LIST

CHUCK
 PARKER
 SBA

"ADMINISTRATION"

 TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
✓ 1. LARYL METHEID			SB245
2. MIKE HUSTON/V.P. TOTEM EQUIP			SB245
3. WILLIAM ANGLIN/AK SALES AND SER			SB245
4. KEN LANGE			SB245
5. FRED S. GAYTON/MCDONALD IN-AK			SB245
6. KEITH HELSON/DOT PF			SB245
7. MORRY HOLLOWELL			SB245
8. JOHN P. SNOW			SB245
9.			

*

*

SUBJECT LINE TO READ: TC NO.; PL NO. OR FS; SHORT SUBJECT; DATE

JNU MOD: LIOCSEA

T/C NO: 92-04-010
 DATE: THURSDAY, APRIL 9, 1992
 SPONSOR: SENATE TRANSPORTATION COMMITTEE
 SUBJECT: SB 245 - STATE PURCHASE OF TRUCKS/HEAVY EQUIP.
 MODERATOR: CHRISTI
 SITE: FAIRBANKS

PARTICIPANT LIST

TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. JACK RICHARDSON			SB 245
2. RICHARD GADBURY			SB 245
3.			
4.			

T/C NO: 92-04-010
DATE: 4/9/92
SPONSOR: S TRA
SUBJECT: SB 245-STATE PROCUREMENT TRUCKS
MODERATOR: CHARLOTTE
SITE: MATSU LIO

PARTICIPANT LIST # 1 FROM MATSU

TESTIFIER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1. LOU HOLZKNECHT			

2.

3.

4.

5.

OBSERVER

NAME/REPRESENTING	ADDRESS	PHONE	BILL NO.
1.			
2.			

1.

2.

**AMENDMENT TO CS FOR SENATE BILL
NO. 245 (FINANCE)**

AMEND THE DEFINITION OF "HEAVY EQUIPMENT AND HEAVY TRUCKS" IN SEC. 6, PAGE 3, LINE 30 TO READ AS FOLLOWS:

(22) "heavy trucks and heavy equipment" means earth-moving, material handling, [road] maintenance, motive power, rolling stock, and construction equipment, including dump trucks, generators, track type tractors, motor graders, excavators, land fill compactors, ballast regulators, wheel tractors, scrapers, wheel loaders, wheel lathes, dozers, cranes, attachments, and specialty construction equipment.

New Text Underlined [DELETED TEXT BRACKETED]

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

3132 CHANNEL DRIVE
JUNEAU, ALASKA 99801-7898
PHONE: (907) 465-3900

May 4, 1992

Senator Jalmar M. Kerttula
Co-Chairman
Senate Finance Committee
State Capital
Juneau, Alaska 99811

Dear Senator Kerttula:

We would like to take this opportunity to set the record straight regarding several points of testimony offered at the recent teleconference for Senate Bill 245. As you are aware, this bill would clarify the direction and intent of procurement of heavy trucks and heavy equipment, to include factors other than minimum specifications and price when making an award. Testimony of several members of the vendor community in opposition to SB 245 contained statements that I do not feel can be substantiated. I am writing this letter to address those issues and provide you with information from the Department of Transportation and Public Facilities.

1. The vendor community indicated the problem of addressing value and quality in equipment bids could be resolved through the specification process. To a point, we agree; and, it should be noted for the record that the State Equipment Fleet (SEF) has been very proactive in strengthening the specification process. This has included the use of longer term warranties requiring both parts and labor coverage beyond the normal manufacturer's warranty. Also, we have been working with vendors in public specification workshops to produce more precise specifications. However, these efforts still result in a minimum specification that judges a machine barely meeting the requirements, equal to a machine that exceeds the minimum requirements. The issues that SEF desires to address are those finer points of quality and value (some of which are relatively intangible and subjective) which are not easily credited given the non-restrictive specification provisions of the procurement code (AS 36.30.060). The intent language in SB 245 would have reinforced SEF's attempts to refine this process.
2. SEF has been more aggressive than other state procurement entities in taking a proactive approach to protecting the state's interests. For

example, SEF has disbarred two vendors from doing business with the state for up to a year because of their failure to deliver goods meeting specification requirements or for failure to meet delivery deadlines. To our knowledge, this type of action has not been taken by other state procurement groups. Additionally, on at least two occasions, SEF has recovered monies from vendors as penalties or judgements resulting from their failure to comply with SEF procurement requirements. This aggressive (and sometimes unpopular) approach has led to a fairer, more even-handed procurement process which has benefited vendors and manufacturers who fully comply with requirements, and has put less serious vendors on notice that material bid requirements must be met.

3. In spite of comments to the contrary during the teleconference, productivity of procurement has steadily increased during the last three years. At the beginning of 1989, replacement of heavy equipment was two to three years behind schedule, and replacement of light vehicles was nearly two years behind. This situation had increased the state's costs because older equipment is more costly to maintain. There was also an adverse impact on the ability of agencies to perform their work efficiently, because older equipment breaks down more often. In 1989, over 53 percent of the fleet was in extended life status, indicating the serious lag in equipment replacement. By July 1, 1991, this figure had been reduced to 38 percent. The graph shown in Exhibit 1 clearly indicates the upward trend in procurement replacement. The volume of bids being processed at the current time is equal to or better than SEF has ever done.
4. At least one vendor made a statement that "protests are at an all time high." The record shows this statement to be absolutely untrue. Alaska's procurement code was revised in 1986, and procurement authority for vehicles and equipment was transferred to DOT&PF. The new code (AS 36.30) contained provisions that were unfamiliar to both SEF staff and to the vendor community. As a result, protests began to increase as the code went into effect in 1987. This increase continued until it peaked in 1989, as provisions of materiality and independent verification were challenged in the protest process. During this two year learning process, SEF's applications of the new code was sustained by Hearing Officers from the Department of Administration and independent private attorneys. Vendors became accustomed to the new provisions, and SEF became more adept at applying the new code. These efforts were enhanced by SEF's complete overhaul of outdated bid documents and beginning the practice of holding specification workshops with the vendor community prior to bid opening. Accordingly, protests dropped off substantially during 1990 and 1991, and to date, no protests have been filed at all in 1992. The graph and chart shown in Exhibit 2 reveals the true picture of protest activity since 1986. It should be

noted not only has the number of protests decreased, but during the same time, the number of bids processed increased nearly fourfold.

5. Another comment made during the teleconference indicated more input should be received from field people, i.e., the actual users of equipment. The implication seemed to be that specifications were developed independently by the SEF staff. This is not accurate. All new specifications are developed by reviewing criteria of equipment we already own, and asking regional equipment managers and user agencies to submit any desired changes. All specifications are signed off by the user agency **before** bids go on the street. Sometimes we cannot get exactly what the user agency wants, because of limitations in the procurement code. Sometimes users are not aware of these limitations and become frustrated because SEF doesn't buy the brand operator's desire. SEF's current practice is to spend considerable time in the field, receiving input on equipment specifications from users, and asking for their final sign-off before bids are advertised.
6. The last vendor to testify referred to a petition that was circulated a couple of years ago which had been, in his words, "completely ignored by DOT&PF." The petition referred to asking DOT&PF to move the SEF Headquarters unit from Juneau to Anchorage, to save costs and cut down on unnecessary travel. Contrary to the testimony that DOT&PF "ignored" the vendor's request, the move of SEF Headquarters to Anchorage was completed during the summer of 1991.
7. Comments were also made that "the low bid was the standard of the industry," and "what all the other states are using." This is not necessarily the case. A review of the award language from all fifty states shows that most have less restrictive award language than Alaska. Many use terms like those found in Vermont's award language, which is worded in this fashion:

"...shall be awarded to the person whose bid or qualifications is in the best interest of the state...in his determination of the best interest of the State shall consider (1) specified quality, (2) price, (3) ease of access of supplies, (4) incidental administrative costs, (5) proven reliability of bidder."

According to a study conducted by the National Association of State Purchasing Officials, at least half of the states in the nation use quality and criteria other than price in their contract award language.

Vendor testimony indicated a consensus that SEF could use criteria other than price under the current code, and a change was not required. Attempts to use variations of the low bid process in the past, have met with considerable resistance by the vendor community.

An attempt to use a guaranteed buy back approach for the purchase of graders two years ago received so much resistance from some vendors that SEF relented and used the standard invitation to bid process again. Because of this resistance, SEF has been hesitant to use other methods in the past. SEF will go forward, trying reasonable and fair approaches within guidelines of the procurement code, in its endeavor to obtain better quality equipment for the state's needs.

As new approaches are tried, even those vendors at the teleconference said were available within the current code, there is a high probability that vendor protest activity will increase.

Finally, I have attached a petition signed by a number of vendors. The petition came about as a result of the hearing on SB 245. The vendors are asking that the procurement code be amended to allow the state to be sued by a potentially aggrieved bidder and that punitive damages be awarded where the courts deem appropriate. They accuse the Attorney General of failing to uphold the current law because it won't take action against another agency. I question the motives of the vendors in making this request. Under the code as written today, potentially aggrieved bidders can appeal adverse decisions by the department to the Superior Court. To date, of all the wrongdoing the department has been accused of, only one bid has been appealed to the courts (bidder withdrew after TRO was refused). If vendors are not willing to appeal to the courts when they feel they have been damaged by an improper bid, what is their motivation for now wanting to be able to sue the state and get punitive damages? They seem more interested in trying to punish someone who allegedly wronged them than reaching and accepting the correct answer. This questionable motivation is further shown by the fact that some vendors will do anything, no matter how underhanded, to attack Mr. Langel; even to the point of changing the wording of a petition after people have signed it (see letter attached to petition).

If you would like to discuss these matters further, please contact me.

Sincerely,



Frank G. Turpin
Commissioner

STATEWIDE PETITION

TITLE 36

To; All State Senate, and House members: April 10, 1992

We the voters, and business community request the following actions be taken by the Governor, and Legislature for the Department of Transportation.

On April 09, 1992 the Senate Transportation sub-committee held a teleconference on S/B-246.

This committee wanted input as to how to handle procurement problems within DOT/PF.

DOT/PF appointee Randy Simmons stated that they wanted guidance from the legislature.

The input was clear;-

A. DOT/PF had no procurement problems with title 36 up to January 1988.

B. Contrary to the testimony of DOT's Mr. Bartholomew, and Langel that they had to award to low bid. Title 36 actually requires that you must award to the responsive, and responsible bidder who complies with the terms, and conditions of the contract, and meets, or exceeds all specifications. Buying low bid as they are, constitutes class C felonies of, and per title 36. The Attorney General will not take action against its own client. Mr. Langel is continually violating title 36 by disregarding terms & conditions, and contract specifications.

The following required changes are in the states best interests;

1. Add to title 36 under Enforcement as paragraph (b)-
THE STATE MAY BE SUED FOR VIOLATIONS OF THIS CHAPTER.
PUNITIVE DAMAGES MAY BE AWARDED.
2. | Don't allow DOT/PF to pass Bill #245 via regulation.

NAME	ORGANIZATION	PHONE NUMBER
<u>Mary Hollowell</u>	<u>YUKON Equipment Inc</u>	<u>277-1541</u>
<u>John L. Taylor</u>	<u>YUKON EQUIPMENT, INC.</u>	<u>277-1541</u>
<u>Charles C. Parker</u>	<u>Sahlberg Equip.</u>	<u>276-5494</u>
<u>James Beach</u>	<u>WHITECONE OF ALASKA</u>	<u>561-2311</u>
<u>John Smith</u>	<u>TASKER CRANE INC</u>	<u>563-3238</u>
<u>Jack D. Richardson</u>	<u>Camry Taylor Equip</u>	<u>279-8950</u>

SERVING ALASKA SINCE 1945



YUKON EQUIPMENT, INC.

ANCHORAGE
FAIRBANKS

April 23, 1992

Statewide Equipment Fleet
P.O. Box 196900
4601 Aircraft Drive
Anchorage, AK 99519

Attention: Mr. Kenneth L. Langel,
Manager Statewide Equipment Fleet

Dear Mr. Kenneth L. Langel:

You were sent a copy of the enclosed petition in regards to the DOT/PF Statewide Equipment Fleet.

The petition you received is not the one that myself and Mr. Earl Lackey signed in our office. One sentence was added after the fact and we object to the statement as well as adding to this petition after the fact.

What was added under "B": "Mr. Langel is continually violating title 36 by disregarding terms and conditions, and contract specifications"

The petition we signed addressed the issues, not individuals. It is not our purpose or position to try and dictate who manages the S.E.F.

Having stated this -- please disregard the added statement on the petition signed by myself and Earl Lackey and focus, if you will, on the issues of the petition.

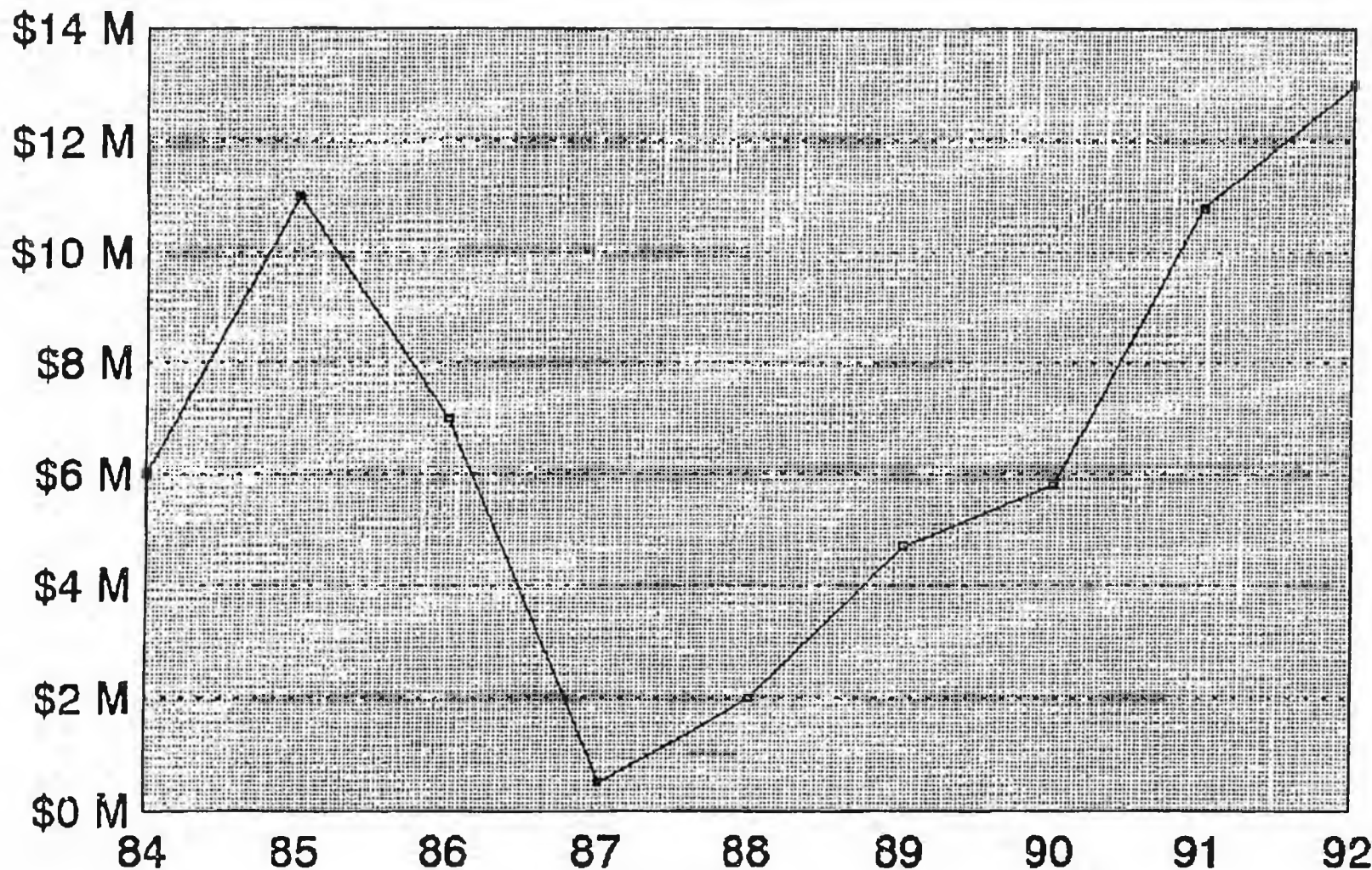
Sincerely,

YUKON EQUIPMENT, INC.

Morry Hollowell
President

SEF FUNDS EXPENDITURES

EQUIPMENT REPLACEMENT



Figures for FYs 84-88 come from a 1987 OMB Audit Report. Amounts for 1988 are estimated.

SEF BID PROTEST SUMMARY

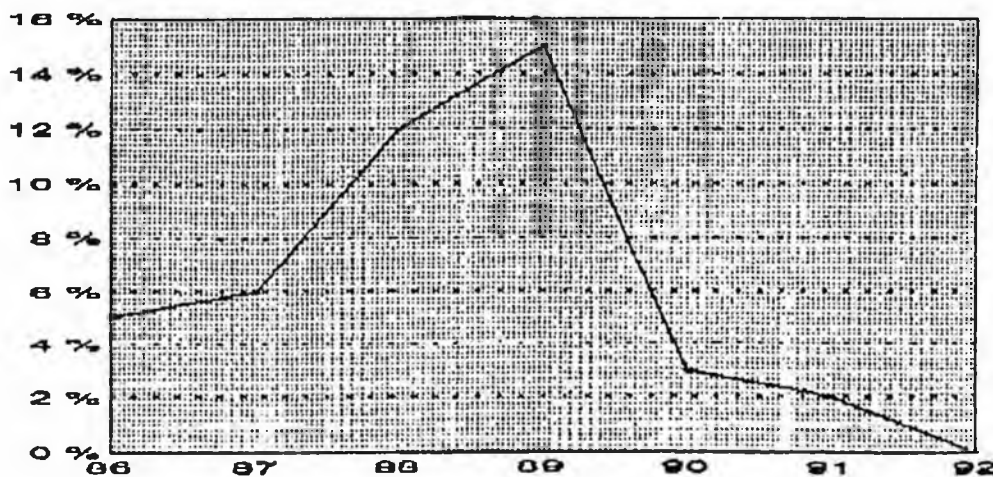
<u>YR</u>	<u>BIDS</u>	<u>PROTESTS</u>	<u>%</u>	<u>APPEALS</u>	<u>PROTESTS/ APPEALS UPHELD</u>
86	42	2	5	0	0
87	33	2	6	2	0
88	49	6	12	5	2
89	60	9	15	9	0
90	92	3	3	2	0
91	154	3	2	0	0
92*	101	0	0	0	0

*YTD

NOTES:

1. Number of bids includes all individual lots in each bid.
2. Number of protests includes multiple protests on a single bid.
3. Data is for calendar years.

SEF BID PROTEST HISTORY
PERCENT OF BIDS PROTESTED





McDONALD INDUSTRIES ALASKA, INC.

2756 Commercial Drive
Anchorage, Alaska 99501

(907) 279-5411
FAX: (907) 276-3101

April 6, 1992

Senator Curt Menard
ALASKA STATE LEGISLATURE
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Menard:

I am writing to express my deep concern with both SB0245B and HB0245E.

The changes that are being proposed by these two bills are in direct conflict with the spirit and intent of the State of Alaska procurement code. The procurement code, as it stands, affords State departments all the flexibility and protection necessary to assure that equipment acquisitions are matched to job requirements and allows costs related to these purchases to be closely controlled by the competitive bid process.

To change the procurements process to a subjective, non-competitive system would open the door to both favoritism and corruption. No checks and no balances. Under the suggested scenario, purchases would be executed solely at the whim and fancy of individuals rather than under the protective umbrella or a logical self-policing competitive system. The process, as described in these two bills, would usurp the best interest of the taxpayers by creating systems within systems, kingdoms within kingdoms and a few, very powerful emperors within the structure of the empire. The potential for abuse of power and influence is overwhelming.

Clearly the current procurement policy is a well written, well thought out, process that, when administered properly, protects the State from the pitfalls of subjectivity, higher than necessary costs and poor product performance. The key is the proficiency of administration. Past performance of this policy's administrators includes rebids, awards outside the specific guidelines, delivery delays and protest after protest. The area of administration should be closely scrutinized and objectively evaluated before the purchasing mechanism itself is reinvented. When the procurement guidelines are adhered to and clear specifications are provided at the outset, the system works.



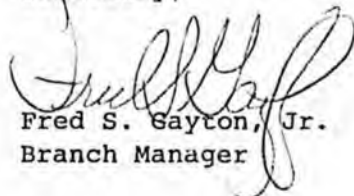
MCDONALD INDUSTRIES ALASKA, INC.

APRIL 6, 1992
PAGE TWO

The practice of competitive bidding, although not always to the liking of the second and third low bidders, has always delivered productive and cost effective equipment to the Department of Transportation. In those cases where product quality, performance or costs have not been what the State anticipated them to be, the problem can, in the greatest majority of cases, be traced to a poorly written specification or a specification that does not direct itself to performance and application.

McDonald Industries Alaska, Inc. whole heartedly opposes the intent and content of both the House and Senate version of 425.

Sincerely,



Fred S. Gayton, Jr.
Branch Manager

FSGJ/amv

**AMENDMENT TO CS FOR SENATE BILL
NO. 245 (FINANCE)**

AMEND THE DEFINITION OF "HEAVY EQUIPMENT AND HEAVY TRUCKS" IN SEC. 6, PAGE 3, LINE 30 TO READ AS FOLLOWS:

(22) "heavy trucks and heavy equipment" means earth-moving, material handling, [road] maintenance, motive power, rolling stock, and construction equipment, including dump trucks, generators, track type tractors, motor graders, excavators, land fill compactors, ballast regulators, wheel tractors, scrapers, wheel loaders, wheel lathes, dozers, cranes, attachments, and specialty construction equipment.

New Text Underlined [DELETED TEXT BRACKETED]



To: Senate Transp Co	From: H. Springer
Co. Sen Curt Menard	Co. AGC
Dept. State Senate	Phone # 561-5354
Fax # 465-3756	Fax #

ASSOCIATED GENERAL CONTRACTORS of ALASKA

4011 B STREET • ANCHORAGE, ALASKA 99503
PO BOX 240609 • ANCHORAGE, ALASKA 99521 0609
TELEPHONE (907) 561-5354 • FAX (907) 562-6116

7. April 1992

To

Senate Transportation Committee

Curt Menard, Chm.

FAX 465-3756

Subject: CS SB 245

An Act relating to state purchase of heavy trucks and heavy equipment.

AGC supports the sealed, competitive bidding process for purchasing and contracting by public entities. In order to effectively compare the bid results all bid criteria needs to be on an equal basis in the bid documents. Interpretation of bids and bid results by bureaucrats has to be avoided.

In some cases, especially in remote areas, it may be in the State's best economic interest to include items other than intitial purchase price. In such a case the bid documents need to show clear and precise information and criteria, which allows direct comparison of bid results, which are not open to interpretation.

Henry Springer

Exec. Director

SENATE FINANCE COMMITTEE

STATEWIDE EQUIPMENT FLEET OVERVIEW

March 27, 1992

**Ken Langel
Statewide Equipment Fleet Manager**

SENATE FINANCE BRIEFING

- 1. Procurement**
- 2. Finances (HEWCF)**
- 3. EMS**
- 4. Equipment Maintenance**
- 5. Future Horizons**

**ALASKA STATEWIDE EQUIPMENT FLEET
HEWCF CASH FLOW PROJECTION FOR 6/30/92
AS OF March 18, 1992**

CASH BALANCE \$15,707,662

SOURCES OF CASH:

REVENUE PROJECTION

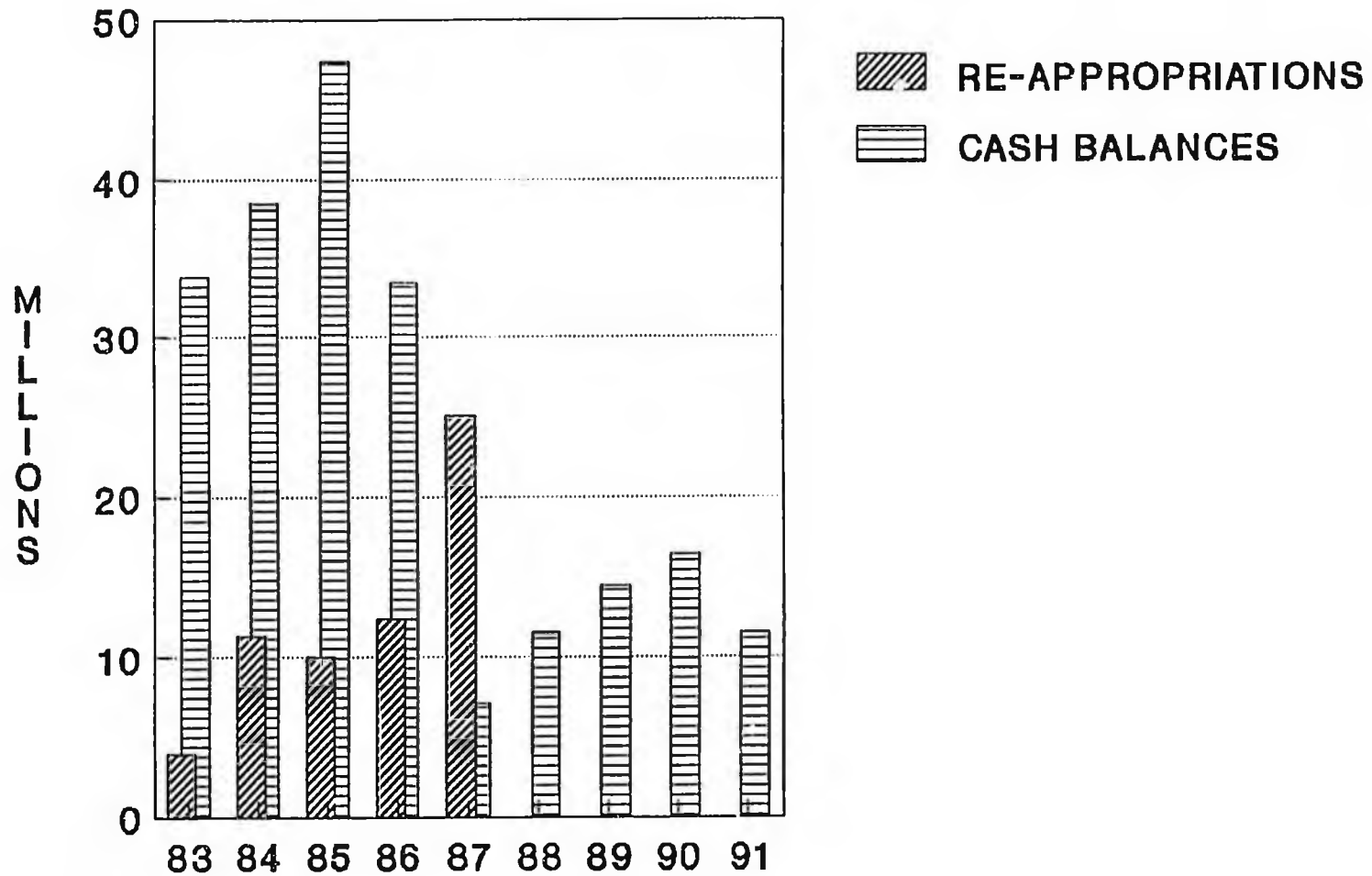
OPERATING	6,101,901	
REPLACEMENT	2,476,242	8,578,143

USES OF CASH:

REPLACEMENT ENCUMBERED FUNDS	(4,458,804)	
OPERATING & REPLACEMENT RESERVE	(2,950,000)	
BIDS IN PROCESS	(3,616,525)	
OPERATING EXPENSE PROJECTION	(8,882,828)	
		<u>(19,908,157)</u>

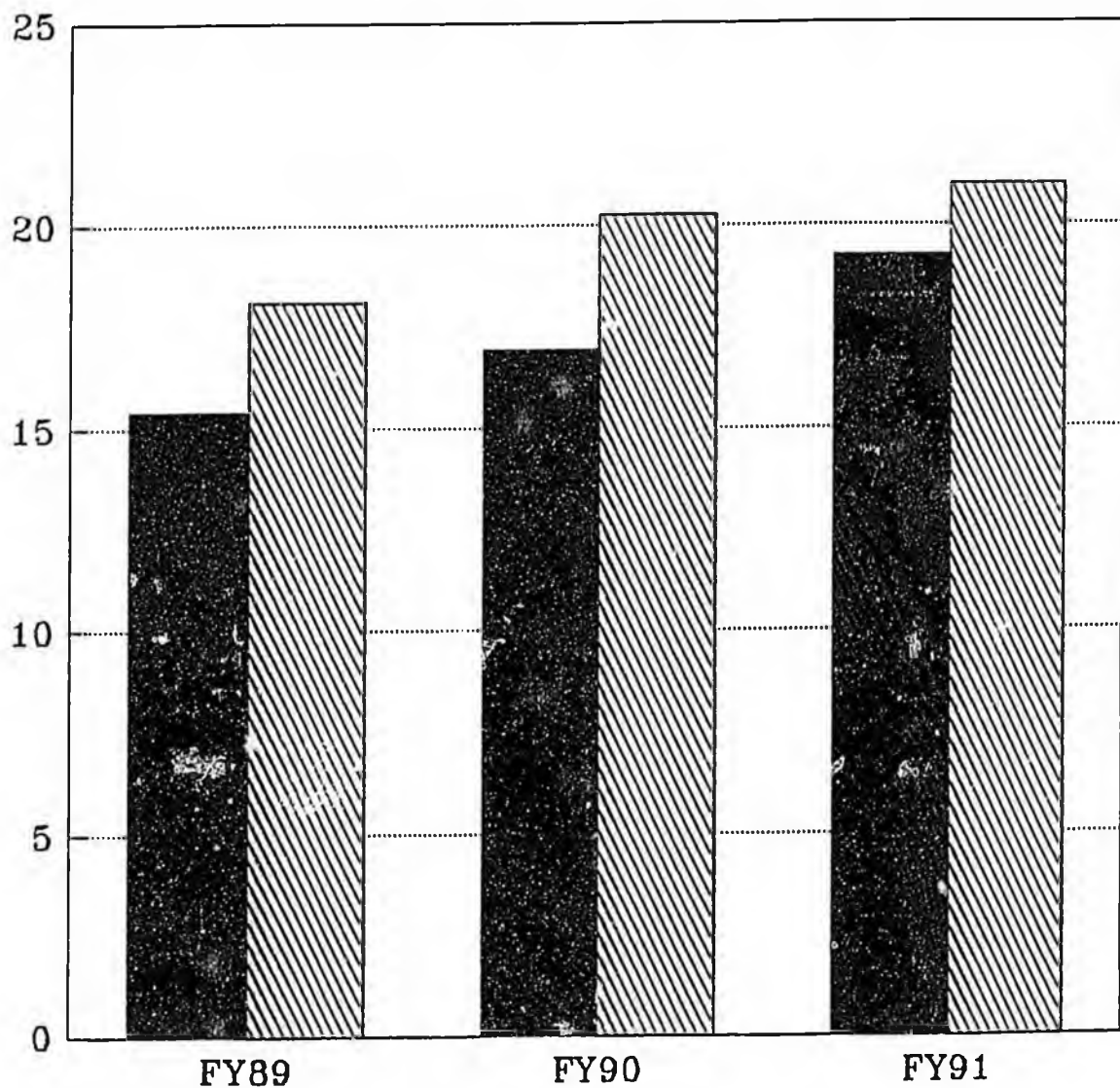
PROJECTED BALANCE @ 6/30/92 4,377,648

HIGHWAY EQUIPMENT WORKING CAPITAL FUND CASH TRENDS



JUNE 30, 1991

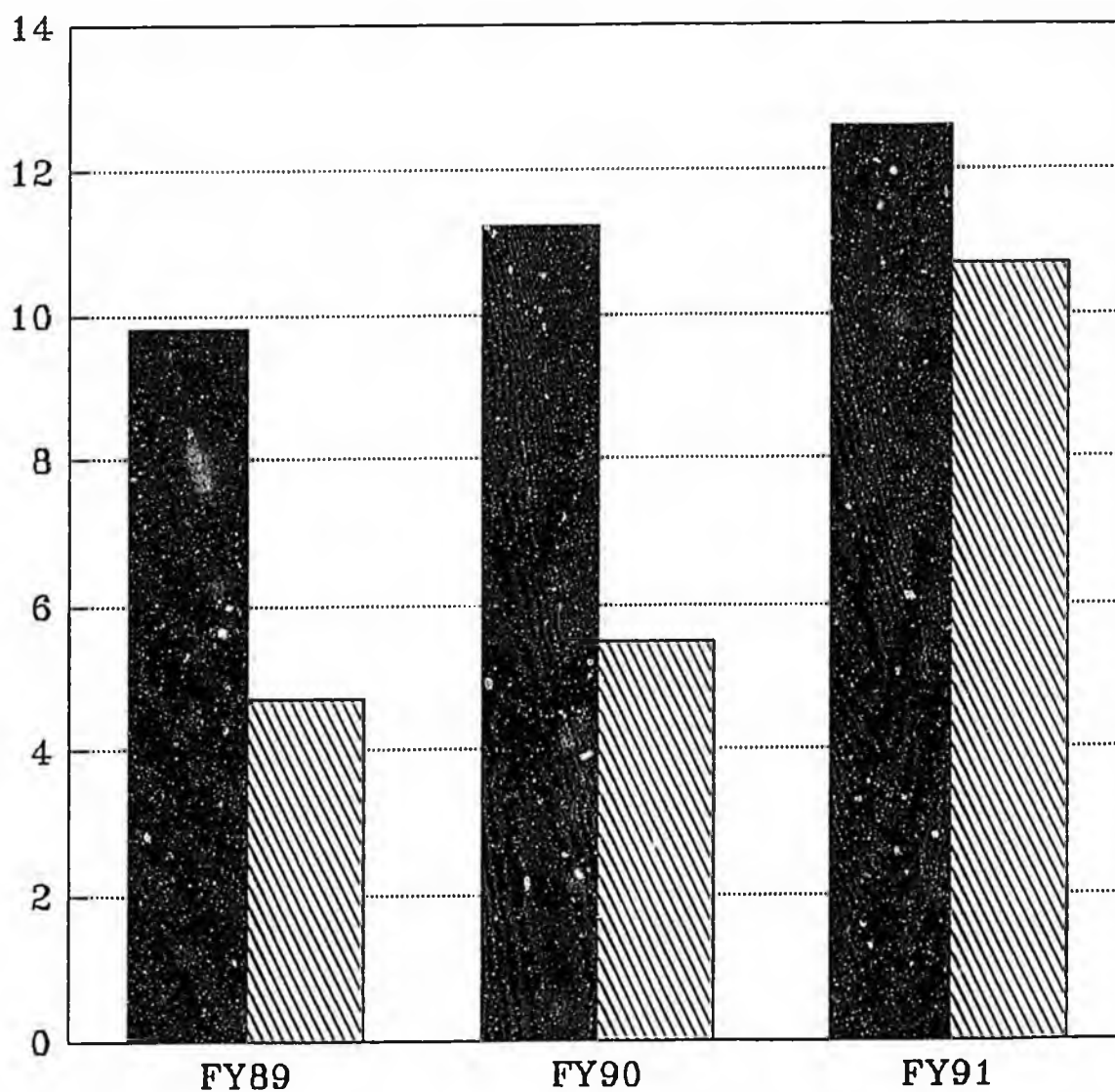
OPERATING ACTIVITY HEWCF



■ REVENUE ▨ EXPENDITURES

MILLIONS

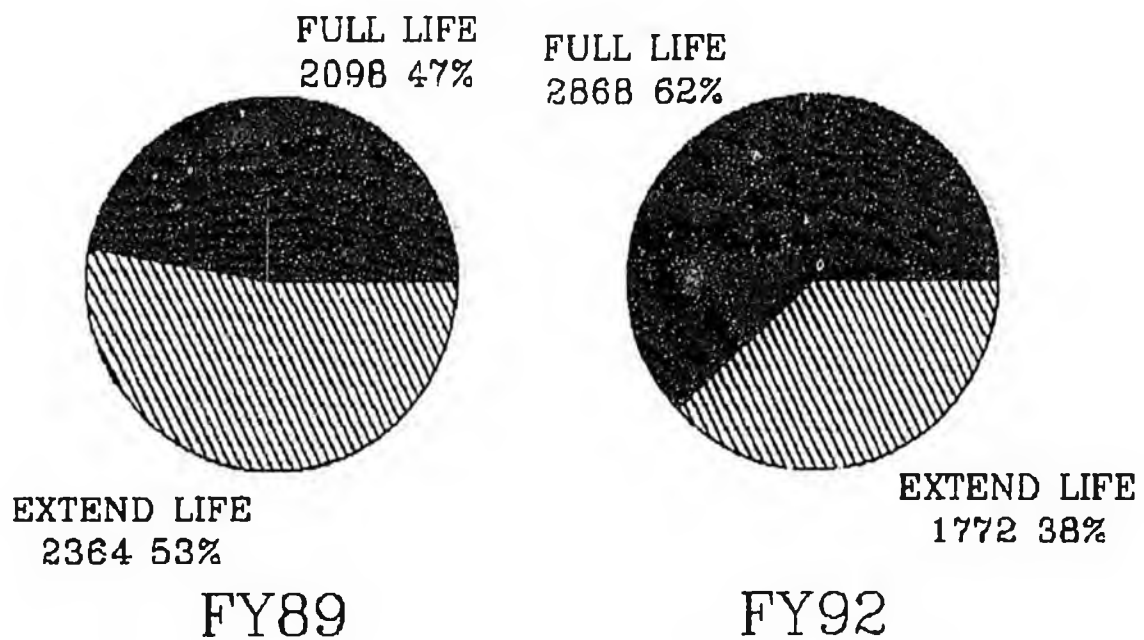
REPL ACTIVITY HEWCF



■ REVENUE ▨ EXPENDITURES

MILLIONS

FLEET AGE HEWCF UNITS

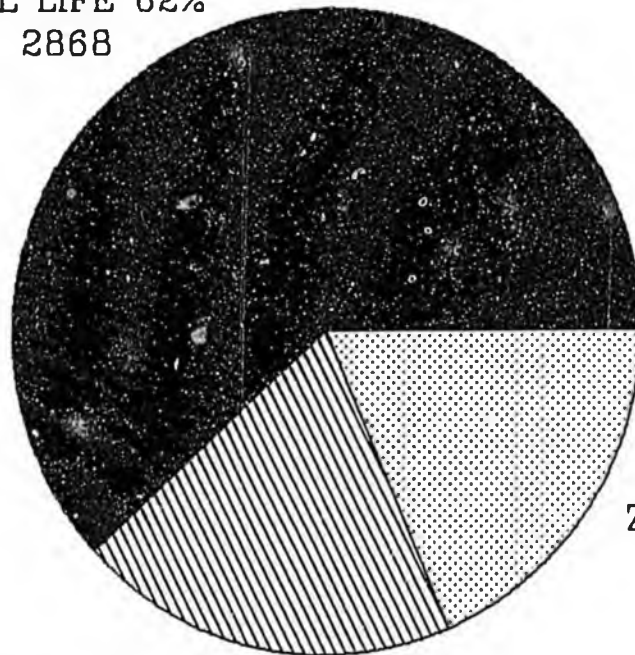


- * Extended life includes both X and Z status
- * As the procurement of Replacement Equipment has accelerated the % of extended life has dropped from 53% to 38%

MARCH 25, 1992

CURRENT FLEET COMPOSITION

FULL LIFE 62%
2868



Z STATUS 19%
866

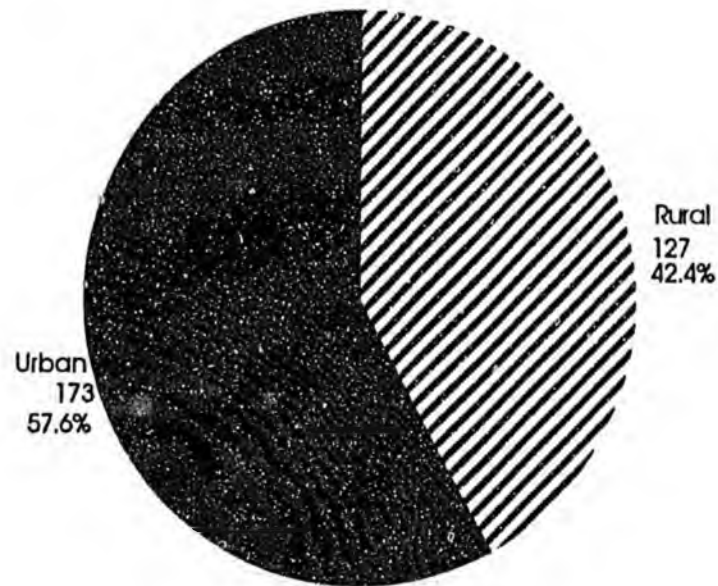
X STATUS 20%
906

MARCH 25, 1992

SUMMARY

RURAL VERSUS URBAN VEHICLE/EQUIPMENT PURCHASES

Total Vehicles/Equipment Purchased, Rural vs Urban



\$ Values of Vehicles/Equipment Purchased, Rural vs Urban



PLEASE NOTE:

A. "Urban" is defined as Anchorage, Fairbanks and Juneau. All other areas are considered "Rural" for this study.

B. Figures shown do not take into account vehicles and equipment delivered to urban areas for initial check in to an SEF shop, then re-shipped to rural locations.

C. These figures are for FY1991.



McDONALD INDUSTRIES ALASKA, INC.

2756 Commercial Drive
Anchorage, Alaska 99501

(907) 279-5411
FAX: (907) 276-3101

April 6, 1992

Senator Dick Shultz
ALASKA STATE LEGISLATURE
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Shultz:

I am writing to express my deep concern with both SBO245B and HBC245E.

The changes that are being proposed by these two bills are in direct conflict with the spirit and intent of the State of Alaska procurement code. The procurement code, as it stands, affords State departments all the flexibility and protection necessary to assure that equipment acquisitions are matched to job requirements and allows costs related to these purchases to be closely controlled by the competitive bid process.

To change the procurements process to a subjective, non-competitive system would open the door to both favoritism and corruption. No checks and no balances. Under the suggested scenario, purchases would be executed solely at the whim and fancy of individuals rather than under the protective umbrella or a logical self-policing competitive system. The process, as described in these two bills, would usurp the best interest of the taxpayers by creating systems within systems, kingdoms within kingdoms and a few, very powerful emperors within the structure of the empire. The potential for abuse of power and influence is overwhelming.

Clearly the current procurement policy is a well written, well thought out, process that, when administered properly, protects the State from the pitfalls of subjectivity, higher than necessary costs and poor product performance. The key is the proficiency of administration. Past performance of this policy's administrators includes rebids, awards outside the specific guidelines, delivery delays and protest after protest. The area of administration should be closely scrutinized and objectively evaluated before the purchasing mechanism itself is reinvented. When the procurement guidelines are adhered to and clear specifications are provided at the outset, the system works.



McDONALD INDUSTRIES ALASKA, INC

APRIL 6, 1992
PAGE TWO

The practice of competitive bidding, although not always to the liking of the second and third low bidders, has always delivered productive and cost effective equipment to the Department of Transportation. In those cases where product quality, performance or costs have not been what the State anticipated them to be, the problem can, in the greatest majority of cases, be traced to a poorly written specification or a specification that does not direct itself to performance and application.

McDonald Industries Alaska, Inc. whole heartedly opposes the intent and content of both the House and Senate version of 425.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred S. Gayton, Jr.", is written over the typed name and title.

Fred S. Gayton, Jr.
Branch Manager

FSGJ/amv



To	Senate Trump Co	From	H. Springer
Co.	Sen Curt Menard	Co.	AGC
Dept.	State Senate	Phone	561-5354
Fax #	465-3756	Fax #	

ASSOCIATED GENERAL CONTRACTORS of ALASKA

4011 B STREET • ANCHORAGE, ALASKA 99503
P.O. BOX 20069 • ANCHORAGE, ALASKA 99521-0609
TELEPHONE (907) 561-5354 • FAX (907) 562-6116

7. April 1992

To

Senate Transportation Committee

Curt Menard, Chm.

FAX 465-3756

Subject: CS SB 245

An Act relating to state purchase of heavy trucks and heavy equipment.

AGC supports the sealed, competitive bidding process for purchasing and contracting by public entities. In order to effectively compare the bid results all bid criteria needs to be on an equal basis in the bid documents. Interpretation of bids and bid results by bureaucrats has to be avoided.

In some cases, especially in remote areas, it may be in the State's best economic interest to include items other than incitial purchase price. In such a case the bid documents need to show clear and precise information and criteria, which allows direct comparison of bid results, which are not open to interpretation.

Henry Springer

Exec. Director

JAN 31 1992

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

HEADQUARTERS, STATEWIDE EQUIPMENT FLEET

WALTER J. HICKEL, GOVERNOR

4601 AIRCRAFT DRIVE
ANCHORAGE, ALASKA 99501
(907) 241-7671 (FAX 248-4550)

Notice of Intent to Award

Ref: ITB SEF-140

Date of Notice: January 30, 1992

Thank you for your response to the Invitation to Bid referenced above.

The enclosed abstract and summary indicate to whom FINAL AWARD is pending. An aggrieved bidder may appeal the award by submitting a protest in writing within ten (10) days of the date of this notice.

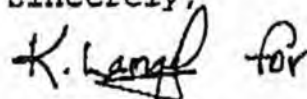
Should a protest be filed relative to any item/lot of this award, all bidders affected by that protest will be notified by this office.

Any item/lot not pertinent to the protest may be awarded.

All bidders are cautioned against taking action relative to satisfying an anticipated award prior to receipt of Final Award which will be in the form of purchase order(s), delivery order(s) or contractual document(s).

Your continued interest in fulfilling the needs of the State Equipment Fleet is appreciated. If we can be of further service, please advise.

Sincerely,



Jess L. Bulkley
Procurement Officer
Statewide Equipment Fleet

STATE OF ALASKA
Department of Transportation & Public Facilities
Statewide Equipment Purchasing

S U M M A R Y O F I N T E N T T O A W A R D

** DATE OF THIS SUMMARY OF INTENT: January 07, 1992 **

Page 1 of 2

ITB NUMBER	AWARD DATE	SUBJECT	PROCUREMENT OFFICER
SEF-140	2/11/92	TRACTOR MOUNTED MOWERS & ROTARY MOWER	Jess L. Bulkley <i>[Signature]</i>

The figures shown on the attached bid abstract indicate the low responsive bidder(s). This summary explains the basis for designating awards as noted. If no protest of award is received from an aggrieved bidder within ten (10) days following the date of this notice, final awards will be executed. Any bidder for which an award is shown is hereby instructed not to proceed prior to receipt of purchase order(s) or contract document(s).

LOT 1:

First Low Bidder: Craig Taylor Equipment Co. offered a new 1992 John Deere 2955 Tractor with a Motrim LMT-21-5R Mower for delivery to Anchorage, Alaska for a total lot price of \$188,610.00. The bidder failed to address product information requirements of specification item 13.3. This was an astrisked item requiring clarification of the cutterhead below ground reach. Accordingly, their bid is Non-Responsive per Section II, para 8 of the ITB.

Second Low Bidder: Alaska Truck Center offered a new 1992 Ford 7740SLE tractor with an Alamo AB20 mower for delivery to Anchorage, Alaska for a total lot price of \$196,697.07. The bidder failed to address product information requirements of specification item 3.5. This was an astrisked item requiring clarification of the tractor weight. Accordingly, their bid is Non-Responsive per Section II, para 8 of the ITB.

Third Low Bidder: Sahlberg Equipment Co. offered a new 1992 Case Maxxum 1-5130 Tractor with a Tiger TRB-50C mower for delivery to Anchorage, Alaska for a total lot price of \$199,218.00.

Since no exceptions or deviations were taken nor discovered during bid analysis, Sahlberg Equipment Co.'s offer is found to be fully responsive and is accepted.

Final award of lot 1 will therefore be issued to Sahlberg Equipment Co.

This Intent to Award is subject to protest.

In order to be considered, a protest of this Intent to Award must be received in this office prior to close of business, February 11, 1992, with protest documentation in full compliance with AS 36.30.560.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR SHULTZ

TO: CSSB 245 (FINANCE)

Page 1, line 9, through page 3, line 12:

Delete all material.

Re-number the following bill sections accordingly.

Page 3, line 25, following "charges;":

Insert "and"

Page 3, lines 26 - 27:

Delete "; and

(10) other factors determined to be pertinent or peculiar to the procurement"

HICKEY & ASSOCIATES

Planning * Management * Lobbying

9091 Sheiye Way, Juneau, Alaska 99801
Telephone (907) 790-2424, Fax (907) 790-2425

MEMORANDUM

TO: Johanna Munson
Senator Curt Menard's Staff

FROM: Mark S. Hickey *MSH*
Alaska Railroad Legislative Liaison

SUBJ.: SB 245 Amendment

DATE: April 2, 1992

Per our discussions, attached is a proposed amendment to the definition of "heavy trucks and heavy equipment" contained in CSSB 245 (Finance). This change would ensure the purchasing criteria applies to railroad locomotives, rolling stock and related heavy maintenance equipment. It would be desirable to address this change in a Senate Finance or Rules CS to avoid trying to address the matter on the Senate floor.

Senator Shultz is aware of this request and has a copy of this package. Please call if there are questions, or you need additional information. Thank you for your consideration of this matter.

Attachment

cc. Robert S. Hatfield, ARRC President & CEO

Alaska State Legislature



Sen. Curt Menard, *Chair*
Sen. Lloyd Jones, *Vice-Chair*
Sen. Bette Fahrenkamp, *Member*
Sen. Drue Pearce, *Member*
Sen. Dick Shultz, *Member*

P.O. Box V
Juneau, AK 99811

907 465-4921

Senate Transportation Committee

April 3, 1992

Dear Vendor:

The Senate Transportation Committee will be taking public testimony on SB 245, an act relating to state purchases of heavy trucks and heavy equipment, on Thursday, April 9, from 1:30 - 3:30 p.m. I would like to invite you to participate in the public hearing.

As you may know, the bill would require the State DOTPF to utilize the competitive sealed proposal process rather than the sealed bidding process for the purchasing of heavy trucks and equipment. The purpose of the legislation is to enhance the State Equipment Fleet's ability to purchase heavy trucks and heavy equipment that would perform better and reduce long-term maintenance and replacement costs to the state.

While I recognize that there have been significant problems in procurement practices at DOTPF in the past, it is the intent of the Committee to take comments which are constructive, positive and specifically address the issue of whether or not a revision is needed in the law to allow the DOTPF flexibility in the acquisition of heavy trucks and equipment. The hearing will not be a DOTPF "bashing" session.

I have scheduled teleconferences in Anchorage, Fairbanks, Mat-Su and Juneau. If you would like to participate from other locations in the state, please let me know and we can add you to the site list. I look forward to your participation in the hearing.

Warm regards,

A handwritten signature in black ink, appearing to read "Curt Menard", written over the typed name.

Senator Curt Menard, Chairman
Senate Transportation Committee

SENATE BILL 245

This Bill would eliminate the competitive bidding procedure relating to heavy trucks and heavy equipment. It would give the Commissioner and his department unlimited power in the selection of this type of equipment.

Department of Transportation has already shown ineptness in administering the present Procurement Code. This is evidenced in the problems relating to SEF-109 Fresia snowblower purchase. Machines were accepted out of specification, delivered five (5) months late, and failed the performance test. This is just one example of many procurement code violations.

Procurement can be done by capable people, using the existing Procurement Code, and following the decision handed down by the U. S. District Court of Massachusetts in 1983. (see attachment)

Senate Bill 245 would lead to:

- A. Opportunity for corruption.
- B. Increased equipment cost.
- C. Further deterioration of equipment quality.



Water & Wastewater Equipment Manufacturers Association, Inc.
P. O. Box 17402, Dulles International Airport, Washington, D. C. 20041 703/661-6011

MEMORANDUM

TO: WWEMA Members

FROM: John H. Schaefer

DATE: January 10, 1983

RE: Federal Court Says "Or Equal" Up to Specifying Source

Affirming a decision handed down by the U. S. District Court of Massachusetts, the Federal 1st Circuit Court in the case of Whitten Corp. vs. Paddock, Inc., was backed up by the U. S. Supreme Court which refused to hear further appeals. The decision is unique in that it defines the specifying party's clear authority at the federal level where previous decisions have been in lower courts.

Four major rulings regarding specifications come from this landmark decision:

1. The court ruled that proprietary specifications are not a violation of anti-trust laws. Further, the court stated that trained professionals - specifiers - make informed judgments on products which they feel best serve their client's needs. Technically, few brands of materials or equipment are exactly alike, and if the specifier wants to limit the specification to one source he has the right to do so and to enforce it.

2. The court ruled that other suppliers or manufacturers can qualify as "Or Equal" only when the specifier chooses to waive specifications or permit those suppliers or manufacturers to bid.

However, it clearly stated that the specifying source is charged with the responsibility and judgment for determining whether a proposed substitution is an "Or Equal." Further, where "Or Equal" is not stated in the specifications, it is still the specifying source's decision as to what products do or do not qualify as "Or Equal."

3. The court stated that the specifier "...may waive specifications in order to obtain a more desirable product for the client." The implication is again that only the specifier (from start to finish of the construction process) can ultimately decide that another desirable product is available in lieu of the product originally specified in the client's best interest.

WWEMA Members

Federal Court Says "Or Equal" Up to Specifying Source

Page 2

4. The court concluded "the burden is on the supplier or manufacturer who has not been specified to convince the specifier that their product is equal for the purpose of a particular project."

This is probably one of the most powerful court judgments in construction law history to come down the road - in that the judgment now establishes the specifier's legal right toward brand selection. It should also merit very important consideration for those manufacturer's that desire to make a better quality product and thereby get paid the necessary price to stay viable with it.

JMS/bh



*Department of Transportation
and Public Facilities*

POSITION PAPER

BILL NO: SB 245

APPROVED: *Pandy Luman* for FT

TITLE: State Purchases of Trucks/Heavy
Equipment

DATE: April 17, 1991

The Department of Transportation and Public Facilities has the statutory responsibility for management of the Statewide Equipment Fleet (SEF). SEF is responsible for procurement of new replacement equipment for the fleet in order to provide safe, reliable, and cost-effective vehicles and heavy equipment to state agencies.

The proposed bill responds to issues that were discussed in Senate Finance Committee budget hearings relative to the need for the state to purchase better quality equipment and apply accepted industry standardization principles. Resolution of these issues requires taking factors other than initial price into account when necessary. Current equipment awards are essentially made to the low bidder with little consideration given to the overall quality or resale value of the unit. In some instances, the low bid does not equate to the best value for the state. The legislative intent and the procurement flexibility provided by the proposed bill would enhance SEF's ability to purchase heavy trucks and heavy equipment that would perform better and give lower overall cost to the state in the long run.

The department supports this legislation as being in the best interests of the state by reducing long-term cost for the acquisition of heavy trucks and equipment while providing more reliable units for use in maintenance of airports, roads, and streets.



Alaska State Legislature

SENATOR DICK SHULTZ

P.O. Box V
Juneau, Alaska 99801
(907) 465-4940
Home: P.O. Box 487
Tok, Alaska 99780

Member
Finance Committee
Transportation Committee
Special Committee on Oil & Gas

Senate
District J

MEMORANDUM

TO : Senate Finance Committee

FROM : Senator Dick Shultz *DS*

DATE : April 3, 1991

RE : Procurement of heavy trucks and heavy equipment.

District 17

- ALCAN BORDER
- ANDERSON
- BIG DELTA
- BOUNDARY
- CANTWELL
- CHICKEN
- CHISTOCHINA
- CLEAR
- COPPER CENTER
- DELTA JUNCTION
- DENALI PARK
- DOT LAKE
- DRY CREEK
- EAGLE
- EAGLE VILLAGE
- GAKONA
- GLENNALLEN
- GULKANA
- HEALY
- HEALY LAKE
- KENNY LAKE
- MENDELTA
- MENTASTA LAKE
- NABESNA
- NELCHINA
- NENANA
- NORTHWAY
- PAXSON
- SLANA
- TANACROSS
- TAZLINA
- TETLIN
- TOK
- TOLSONA
- TONSINA

During operating budget hearings on the State Equipment Fleet and the Highway Working Capital Fund, several issues were raised regarding current practices of procurement that result in inefficiencies and unnecessary expense to the state of Alaska.

Heavy trucks and heavy equipment represents a significant investment for the maintenance of our transportation facilities and has a major impact on safety of our roads and airports.

Having the right equipment for the particular requirement and reducing costs of operations, is not always compatible with the method of awarding the lowest bid. "Buying the cheapest does not always buy the best value" for the state. Other factors need to be considered in evaluating the most appropriate equipment.

Considerations of life-cycle cost and even routine maintenance of the equipment are complicated and expensive in relation to the distance away from urban distribution centers. The public's reliance on the maintenance of roads and airports and other public facilities particularly in rural areas depends on efficient equipment operation. Many of us have heard reports of this problem from our constituents and those who use the equipment.

District 18

- BADGER ROAD
- EIELSON/MOOSE CREEK
- NEWBY
- NORTH POLE
- PLACK
- RICHARDSON
- SALCHA

While drafting this legislation, it became apparent that agencies in addition to DOT/PF procure heavy equipment, therefore this legislation has been drafted to apply to all state purchases of heavy trucks and heavy equipment.

This draft legislation seeks to address the procurement of the types of equipment that represent a high per unit cost, and also have a significant impact on the operating budget. It is intended that this legislation will address these specific needs, clarify the states best interest, and result in greater efficiency in terms of effort, operations, and cost.

I would like to ask for your consideration of this issue and would hope that the Senate Finance Committee would consider sponsoring this bill. Please contact me if you have any questions or have staff contact Steve Soenksen in my office at 4740.

Thank you for your consideration.

Collateral references. — Right of bidder for state or municipal contract to rescind bid on ground that bid was based upon his own mistake or that of his employer. 2 ALR4th 991.

Sec. 36.30.170. Contract award after bids. (a) Except as provided in (b), (c), and (d) of this section, the procurement officer shall award a contract based on the solicited bids with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid.

(b) The procurement officer shall award a contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent and an Alaska products preference as described in AS 36.30.322 — 36.30.338 have been applied. In this subsection, "Alaska bidder" means a person who

(1) holds a current Alaska business license;

(2) submits a bid for goods, services, or construction under the name as appearing on the person's current Alaska business license;

(3) has maintained a place of business within the state staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the date of the bid;

(4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship, and the proprietor is a resident of the state or is a partnership, and all partners are residents of the state; and

(5) if a joint venture, is composed entirely of ventures that qualify under (1) — (4) of this subsection.

(c) If a bidder qualifies under (b) of this section as an Alaska bidder, is offering services through an employment program as defined under AS 36.30.100(c), and is the lowest responsible and responsive bidder with a bid that is not more than 10 percent higher than the lowest bid of a nonresident, the procurement officer shall award the contract to that bidder.

(d) The procurement officer shall award an insurance-related contract based on solicited bids to the lowest responsive and responsible bidder after an Alaska bidder preference of five percent. In this subsection, "Alaska bidder" means a person who meets the criteria set out in (b)(1) — (5) of this section and who is an Alaska domestic insurer. (§ 2 ch 106 SLA 1986; am §§ 7 — 9 ch 65 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, in subsection (a) inserted "(c), and (d)": in subsection (b) substituted the first sentence for "Notwithstanding an Alaska product preference under AS 36.30.322 — 36.30.338, the procurement officer shall award a contract based on solicited bids to the lowest responsible and responsive Alaska bidder if the bid is not more than five percent higher than the lowest nonresident bidder's"; and added subsection (d).

for public inspection until after the notice of intent to award a contract is given. To the extent the bidder designates and the procurement officer concurs, trade secrets and other proprietary data contained in a bid document are confidential. (§ 2 ch 106 SLA 1986; am § 6 ch 65 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, in subsection (a) deleted "publicly in the presence of one or more witnesses" following "open bids" in the first sentence and added the second sentence.

Sec. 36.30.150. Bid acceptance and bid evaluation. (a) Bids shall be unconditionally accepted without alteration or correction, except as authorized in AS 36.30.160. The procurement officer shall evaluate bids based on the requirements set out in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, delivery, and suitability for a particular purpose. The criteria that will affect the bid price and be considered in evaluation for award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation to bid must set out the evaluation criteria to be used. Criteria may not be used in bid evaluation if they are not set out in the invitation to bid.

(b) A contract based on total or life cycle costs may be awarded only when the chief procurement officer or, for construction contracts or procurements for the state equipment fleet, the commissioner of transportation and public facilities, determines in writing at the time of contract solicitation that the contract promotes overall economy for the purposes intended, encourages competition, is not unduly restrictive, and is in the best interests of the state. (§ 2 ch 106 SLA 1986)

Sec. 36.30.160. Late bids; correction or withdrawal of bids; cancellation of awards. (a) Bids received after the bid due date and time indicated on the invitation to bid may not be accepted unless the delay was due to an error of the contracting agency.

(b) Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on bid mistakes may be permitted in accordance with regulations adopted by the commissioner. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition may not be permitted. Except as otherwise provided by regulation, a decision to permit the correction or withdrawal of a bid, or to cancel an award or contract based on bid mistake, shall be supported by a written determination made by the procurement officer. If a bidder is permitted to withdraw a bid before award, an action may not be maintained against the bidder or the bid security. (§ 2 ch 106 SLA 1986)

2 AAC 12.090. NO RESTRICTIVE SPECIFICATIONS. All specifications must describe the requirements to be met without having the effect of exclusively requiring a proprietary supply, service, or construction item, or procurement from a sole source, unless no other manner of description will suffice. (Eff. 1/1/88, Reg. 104)

Authority: AS 36.30.040
AS 36.30.060

2 AAC 12.100. BRAND NAME SPECIFICATION. A specification that limits the procurement of items to a specific manufacturer's name or catalog numbers may be used only if the procurement officer makes a written determination that only the identified brand name item or items will satisfy the state's needs. (Eff. 1/1/88, Reg. 104)

Authority: AS 36.30.040
AS 36.30.060

2 AAC 12.110. QUALIFIED PRODUCTS LIST. (a) A qualified products list may be developed with the approval of the chief procurement officer, or the commissioner of transportation and public facilities, if testing or examination of the supplies or construction items before issuance of the solicitation is desirable or necessary in order to best satisfy state requirements.

(b) When developing a qualified products list, a representative group of potential suppliers must be solicited, in writing, to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration.

(c) Inclusion on a qualified products list must be based on results of tests or examinations conducted in accordance with state requirements. Test results may be made public in a manner that protects the confidentiality of the identity of the competitors, such as using numerical designations. Except as otherwise provided by law, trade secrets, test data, and similar information provided by the supplier will be kept confidential if requested in writing by the supplier.

(d) The existence of a qualified products list

does not constitute prequalification of any prospective supplier of prequalified products. (Eff. 1/1/88, Reg. 104)

Authority: AS 36.30.04
AS 36.30.06

ARTICLE 3. COMPETITIVE SEALED BIDDING; MULTISTEP BIDDING

Section

- 120. Invitations for competitive sealed bids
- 130. Public notice
- 140. Pre-opening correction or withdrawal of bids
- 150. Receipt, opening, and recording of bids
- 160. Late bids, late corrections, and late withdrawals
- 170. Inadvertent errors discovered after opening but before award
- 180. Bid evaluation and award
- 190. Only one responsive bid received
- 200. Documentation of award
- 210. Notice of intent to award

2 AAC 12.120. INVITATIONS FOR COMPETITIVE SEALED BIDS. (a) An invitation to bid must include the following:

(1) instructions and information to bidders concerning the bid submission requirements, the time and date set for receipt of bids, the address of the office to which bids are to be delivered, the maximum time for bid acceptance by the state, and any other special information;

(2) a purchase or project description, evaluation factors, delivery or performance schedule, and the inspection and acceptance requirements that are not included in the purchase or project description;

(3) a description of all applicable contract terms and conditions, including warranty and bonding or other security requirements;

(4) a requirement for certification by the bidder that it complies with the applicable portions of 42 U.S.C. 1971, 1975, and 2000 (the Federal Civil Rights Act of 1964), AS 18.80 and regulations adopted or promulgated under those laws by the federal government and the state, as applicable; and

Table 3. Requirements for Sealed Bids

- (16) Is there a requirement in the state's purchasing law for sealed bids, publicly opened?
- (17) Above what dollar amount are you required to use sealed bids?
- (18) Below this dollar amount, do your small purchase procedures usually require competitive quotations?
- (19) What is the usual dollar amount below which agencies are authorized to obtain their own quotations locally?
- (20) Can state agencies obtain quotations for local purchase of items or types of items that are available under a contract issued by the central purchase office?
- (21) What are the statutory criteria for evaluating sealed bids (IFB's) and awarding contracts? Please quote from the relevant statutory provision(s) and provide a complete citation. (Printed in italics under states' names.)

TABLE 3

STATE	Public Opening of Sealed Bids Requirement	Dollar Amount Required for Sealed Bids	Competitive Quotations Required for Small Purchases	Dollar Amount Allowed for Agencies to Obtain Own Quotations	Authorizations for Independent Agency Quotation if Central Purchasing Contract Exists
ALABAMA	Y	2,000	Y	100	N
<i>"... award shall be made to the lowest reasonable bidder taking into consideration the qualities of the commodities proposed to be supplied, their conformity with specifications, the purpose for which required, the terms of delivery, transportation charges, and the dates of delivery." Title 41-16-32</i>					
ALASKA	Y	10,000 5,000	Y	5,000	N
<i>The procurement officer shall award a contract "... to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set out in the invitation to bid." A.S. 36.30.170</i>					
ARIZONA	Y	10,000	Y	750	N
<i>"The contract shall be awarded to the lowest responsible and responsive bidder whose bid conforms in all material respects to the requirements and criteria set forth in the invitation for bids." (A.R.S. §41-2533.G.)</i>					
ARKANSAS	Y	5,000	Y	5,000	N
<i>"The contract shall be awarded with reasonable promptness by written notice to the lowest responsive and reasonable bidder whose bid meets the requirements and criteria set forth in the invitation for bids, and all other bidders requesting to be notified of the award decision shall be promptly notified of said decision." Arkansas Statutes 1947 Annotated Sec. 14-254(H)</i>					
CALIFORNIA	Y	10,000	Y	960	N
<i>Award to "lowest responsible bidder meeting specifications": (Public Contract Code Section 10301)</i>					
COLORADO	Y	3,000	Y	500	N
<i>"All orders awarded or contracts made by the state purchasing director shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with the specifications, the purposes for which they are required, and the date of delivery." Colorado 24-103-202</i>					
CONNECTICUT	Y	7,500	Y	400	N
<i>"All ... contracts shall be awarded to the lowest responsible qualified bidder, the quality of article to be supplied, their conformity with the specifications, their suitability to the requirements of the state government and the delivery terms being taken into consideration and, at the discretion of the commissioner of administrative services, trade-in or resale volume of the articles may be considered where it appears to be in the best interests of the state." Conn. General Statutes, Section 4-114</i>					
DELAWARE	Y	5,000	N	5,000	Y
<i>"... shall be awarded ... by the agency or a representative delegated by the agency, in accordance with regulations prescribed by the agency, to the lowest responsible vendor unless, in the opinion of the agency or its delegated representative, the interest of the State ... shall be better served by the awarding of the contract to some other vendor, which may then be done, provided the agency shall set down in its minutes the reason or reasons for granting the contract to the person other than the lowest responsible vendor, and clearly describing how the interest of the State or the contracting county shall be better served by awarding the contract to other than the lowest vendor. In determining how the interest of the State or contracting county is better served in making an award to other than the lowest responsible vendor, the agency may take into consideration unsatisfactory performances on any previously awarded contract by the vendor being rejected." Chapter 69, ss 6907, Title 29 of the Delaware Code</i>					
FLORIDA	Y	3,000	Y	3,000	N
<i>Laws: None. Regulations: 13A-1.02(9) - "Determination of Best Bid - It shall be the responsibility of the agency to determine the lowest responsive bidder meeting specifications and conditions of a bid invitation. In any case where an agency makes a determination to award to a bid other than the low bid meeting specifications, it shall first submit to the Division of Purchasing its complete file containing all information available to that agency, including reasons for recommending a bid other than the low bid."</i>					
GEORGIA	Y	5,000	Y	5,000 (6)	N
<i>"... shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied and conformity with the standard specifications which have been established and prescribed, the purpose for which said articles are required, the discount allowed for prompt payment, the transportation charges and the date or dates of delivery specified in the bid." GA Laws 1937 pp. 503, 508; 1939, pp. 160, 165 (GA Code Ann. ss40-1910)</i>					
HAWAII	Y	4,000	N	(1)	N
<i>"All contracts ... shall be made with the lowest responsible bidder..." Section 103-32, Hawaii Revised Statutes</i>					

TABLE 3 (Continued)

STATE	Public Opening of Sealed Bids Requirement	Dollar Amount Required for Sealed Bids	Competitive Quotations Required for Small Purchases	Dollar Amount Allowed for Agencies to Obtain Own Quotations	Authorizations for Independent Agency Quotation if Central Purchasing Contract Exists
IDAHO	Y	5,000	Y	500(2)	Y
<i>"Lowest Responsible Bidder. The responsible bidder whose bid reflects the lowest acquisition once to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed as set out in the specifications, in determining the lowest acquisition price." ID</i>					
ILLINOIS	Y	5,000	Y	2,500	N
<i>"That all purchases, contracts and expenditure of funds shall be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, quality and serviceability..." Chapter 127, para. 1321, section 6a, Illinois Revised Statutes.</i>					
INDIANA	Y	5,000	Y	50	Y
Sec. 1. (a) <i>"Contracts for supplies must be awarded under section 2 (competitive sealed bidding)"</i> of this chapter. (b) <i>"Contracts for services are not required to be awarded under this chapter."</i> Indiana Code 4-13.4-5-1 Sec. 2. (a) <i>"A contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids."</i> Indiana Code 4-13.4-5-2					
IOWA	Y	5,000	Y	500	Y
<i>"... Contracts for the purpose of items shall be awarded on the basis of the lowest competent bid. Contracts not based on competitive bidding shall be awarded on the basis of bidder competence and reasonable price." Code of Iowa, 1979 edition, Section 18.6, pp. 72-73.</i>					
KANSAS	Y	5,000	Y	2,000	N
<i>"... shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids." KSA 75-3740(a)</i>					
KENTUCKY	Y	1,000	Y	1,000	N
<i>"The contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or lowest evaluated bid price." Kentucky Model Procurement Code 45A.080(5)</i>					
LOUISIANA	Y	5,000	Y	(8)	N
<i>"The contract shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the Invitation To Bid" (LRS 39:1594G)</i>					
MAINE	Y	2,500	Y	250	N
<i>"Except as otherwise provided by law, orders awarded or contracts made shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the services, supplies and materials..." Maine R.S. 5-1816 (7)</i>					
MARYLAND	Y	10,000	Y	1,000	N
<i>The Department shall make awards on the basis of competitive sealed bidding. "Lowest bid price or the lowest evaluated bid price, whichever is applicable."</i>					
MASSACHUSETTS	Y	500	N	500	Y
<i>"No criteria defined or set forth."</i>					
MICHIGAN	N	9,999	Y	1,000	N
<i>"Lowest responsive and responsible bidder meeting specifications" - Rule</i>					
MINNESOTA	Y	15,000	Y	100/1,500(10)	N
<i>"All contracts and purchases made by or under the supervision of the commissioner or any state department or agency for which competitive bids are required shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids." Minnesota Statutes 16.08</i>					
MISSISSIPPI	Y	2,500	Y	500	N
<i>"Awards shall be made to the lowest and/or best bid meeting all requirements of the specifications." Chapter 7, "Public Purchasing Section 31-7-13, Regulation 6 - Purchasing Division Regulation</i>					
MISSOURI	Y	2,000	Y	2,000	N
<i>"The contract shall be let to the lowest and best bidder." Missouri Revised Statutes 1969, Section 34.040</i>					
MONTANA	Y	2,000	Y	500	N
<i>"In awarding contracts for purchase of products, materials, supplies, or equipment such board, commission, officer, or individual shall award the contract to any such resident whose offered materials, supplies, or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than 3% higher than that of the lowest responsible bidder whose offered material, supplies, or equipment are not so manufactured or produced, provided that such products, materials, supplies and equipment are comparable in quality and performance." Montana Code Annotated, 1978, Title 18, Chapter 1, Part 1; 18-1-102</i>					
NEBRASKA	Y	5,000	Y	35	N
<i>"(award) ... shall be made to the lowest responsible bidder, taking into consideration the best interest of the state, the quality or performance of the articles or property proposed to be supplied for which required, and the times of delivery." Nebraska Revised Statutes 81-161</i>					
NEVADA	Y	7,500	Y	500	N
<i>"Every contract or order shall be awarded to the lowest responsible bidder, taking into consideration: (1) The location of the using agency to be supplied; (2) The qualities of the articles to be supplied; (3) Their conformity with the specifications; (4) The purposes for which they are required; (5) The dates of delivery." Nevada R.S. 333.340</i>					
NEW HAMPSHIRE	N	2,000*	Y(3)	100	N
<i>None</i>					

TABLE 3 (Continued)

STATE	Public Opening of Sealed Bids Requirement	Dollar Amount Required for Sealed Bids	Competitive Quotations Required for Small Purchases	Dollar Amount Allowed for Agencies to Obtain Own Quotations	Authorizations for Independent Agency Quotation if Central Purchasing Contract Exists
NEW JERSEY	Y	2,500	Y	1,500	N
	"... award shall be made ... to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State, price and other factors considered." New Jersey Statutes Annotated 52:34-12				
NEW MEXICO	Y	5,000	Y	250	N
	"Awards for all material and services are awarded based on the lowest responsible bid meeting the minimum specifications and delivery requirements."				
NEW YORK	Y	5,000	Y	5,000	N
	"Contracts ... shall be let to the lowest responsible bidder, as will best promote the public interest, taking into consideration the reliability of the bidder, the qualities of the articles proposed to be supplied, their conformity with the specifications, the purposes for which required and the terms of delivery ..." N.Y.S. Finance Law, Article XI, Section 174				
NORTH CAROLINA	Y	5,000	Y	5,000	N
	"... acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the article offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use, the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question which if controlling shall be made a matter of record." GS 143-52, pp. 2-3 Public Laws Relating to the North Carolina Purchase and Contract Division				
NORTH DAKOTA	Y	2,000*	Y	300	N
	"... purchasing contracts shall be awarded to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability." SB 2048 Section 5				
OHIO	Y	1,000	N	1,000	N
	"Contracts shall be awarded to the lowest and best bidder on each item and the Department of Administrative Services may accept or reject any or all bids in whole or by item." Ohio Revised Code Section 125.11				
OKLAHOMA	Y	500	N	500	N
	"Award shall be made to the lowest and best bidder..." Oklahoma State Purchasing Act, Section 85.5				
OREGON	Y	15,000	Y	5000	N
	"... shall award the contract to the lowest responsible bidder." ORS 279.029				
PENNSYLVANIA	Y	300	Y	5,000	N
	"... award the contracts to the lowest responsible bidder..." The Administrative Code of 1929 of the Commonwealth of Pennsylvania, as amended, Section 2409				
RHODE ISLAND	N	*(4)	Y	100	N
	"Awards will be made to the lowest responsible bidder, as will best promote the public interest, taking into consideration the reliability of the bidder, the qualities of the materials, equipment or supplies to be furnished, their conformity with the specifications, the purpose for which required and the terms of delivery." State of Rhode Island Division of Purchases, General Specification for all quotations and contracts, paragraph 25, Title: Award				
SOUTH CAROLINA	Y	2,500	Y	2,500	N
	"The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids ..." (IFB) Section 11-24-1530(7)				
SOUTH DAKOTA	Y	3,000	Y	500	N
	"In determining the successful bidder, the lowest or most advantageous price upon grade, quality, or quantity and general conditions specified, shall be the determining factors." S.D. Code 5-23-11.1				
TENNESSEE	Y	2,000	Y	1,000	N
	"Each contract shall be awarded and let by the commissioner in the name of the State of Tennessee with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid."				
TEXAS	Y	(5)	Y	1,500	N(9)
	"The Commission shall award contracts to the bidder submitting the lowest and best bid conforming to the specifications required." Section 3.11(e), Article 601b, V.T.C.S.				
UTAH	Y	10,000	Y	1,000	N
	"The contract shall be awarded ... to the lowest responsive and responsible bidder whose bid meets the requirement and criteria set forth in the Invitation For Bids." Utan 63-56-20				
VERMONT	N	10,000*	Y	200	N
	"... shall be awarded to the person whose bid or quotation is in the best interest of the state ... in his determination of the best interest of the state shall consider (1) specified quality (2) price (3) ease of access of supplies (4) incidental administrative costs (5) proven reliability of bidder." Requisition for supplies and materials (T. 29, Sec. 903)				
VIRGINIA	Y	10,000	Y	1,200	N
	"... the contract shall be let to the lowest responsible bidder, taking into consideration the quality of the articles proposed to be supplied, their conformity with specifications, the purposes for which required, and the times of delivery provided however that whenever the Division has reason to believe that the low bid is not the best price, it shall have authority to enter into further negotiations with the apparent low bidder to the end that the price paid shall be the best price obtainable." Code of Virginia 2.1-442				

TABLE 3 (Continued)

STATE	Public Opening of Sealed Bids Requirement	Dollar Amount Required for Sealed Bids	Competitive Quotations Required for Small Purchases	Dollar Amount Allowed for Agencies to Obtain Own Quotations	Authorizations for Independent Agency Quotation if Central Purchasing Contract Exists
WASHINGTON	Y	5,000	Y	2,500	N
<p>"... the contract shall be let to the lowest responsible bidder... In determining 'lowest responsible bidder,' in addition to price, the following elements shall be given consideration: (1) The ability, capacity and skill of the bidder to perform the contract or provide the service required; (2) The character, integrity, reputation, judgment, experience and efficiency of the bidder; (3) Whether the bidder can perform the contract within the time specified; (4) The quality of performance of previous contracts of services; (5) The previous and existing compliance by the bidder with laws relating to the contract or services; (6) Such other information as may be secured having a bearing on the decision to award the contract." 1965 c 8 ss 43.19.1911</p>					
WEST VIRGINIA	Y	5,000	Y	5,000	N
<p>"... shall be awarded to the lowest responsible bidder, taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the state government and the delivery terms." W. VA Code ss 5A 3-14 (1972)</p>					
WISCONSIN	Y	10,000	Y	5,000	N
<p>"All orders awarded or contracts made by the department for all materials, supplies, equipment and contractual services, except as otherwise provided in subs. (2), (6) and (7), shall be awarded to the lowest responsible bidder, taking into consideration the location of the institution or agency, the quantities of the articles to be supplied, their conformity with the specifications, the purposes for which they are required and the date of delivery; but preference shall always be given to materials, supplies, equipment and contractual services of Wisconsin producers, distributors, suppliers and retailers." Subchapter IV, Section 16.75-1</p>					
WYOMING	Y	1,500	Y	1,000	N
<p>"... award on the basis of lowest evaluated price..." WS 9-2-101b (XIV) (A)</p>					

KEY: *Even though there is no legal requirement, by policy above this amount sealed bids are used.

- (1) Agencies are not mandated to buy them through Central Purchasing.
- (2) No bidding requirements; some agencies given authority of \$1,000, \$2,500 or \$5,000 of which certain requirements have to be met, including monthly reports.
- (3) At buyers' discretion.
- (4) All solicitations.
- (5) No specified amount.
- (6) Four major universities up to \$5,000.
- (7) Agencies listed in Question 4 have same purchase authority as state purchasing office, all other agencies and boards can go up to \$500.
- (8) Depends on Delegated Purchasing Authority which varies from \$250 - 5,000.
- (9) Unless the order is under the contract minimum order quantity, then agencies may purchase on a SPOT basis.
- (10) Two levels of local Purchase Authority.

SOURCE: November 1987 Survey by The Council of State Governments for the National Association of State Purchasing Officials.

It is the intent of the Legislature that, to the maximum extent allowable under existing law, the State Equipment Fleet take factors other than lowest price into account when making bid awards for heavy equipment. These factors should include resale value; service as measured by warranty, parts availability, and service locations; and durability as measured by projected operating and maintenance costs. This should be done with the goal of acquiring the best value considering the price and the quality of equipment purchased.

B R I E F I N G P A P E R

X-CLASS EQUIPMENT (Non-replaceable with HEWCF Funds)

INTRODUCTION

There are certain pieces of equipment designated as "X-Class" which are not replaceable under the authority of the Highway Equipment Working Capital Fund (HEWCF). Generally, units in this category represent equipment that has been replaced, but the old unit is in good enough condition to remain in service for awhile longer. Agencies have turned to vehicles and equipment in this category as a way to field equipment needed to cover expanding services. This works well to fill short term needs until funding can be secured to purchase the needed additional equipment. But when funding is not available, these units are kept in service on a more or less permanent basis. This leads to old, unreliable equipment kept in use which has no replacement funds set aside, and which has a higher maintenance cost.

The purpose of this briefing paper is to provide an overview of the status of the X-Class fleet.

1. X-CLASS DEFINITION

A unit which has been replaced but is still in use by the agency. They pay 25% of the regular replacement fee to recover the loss of salvage or sale value. This vehicle is intended to be for a short term need or a special project only. It is not intended to be an addition to the number of vehicles an agency has.

2. SIZE OF X-CLASS FLEET

Because of effort expended by SEF to accelerate the lagging replacement program, the number of units in X-Class status has declined somewhat in the last year. Currently, approximately 12% of the fleet is in X status. The numbers of units in each major equipment category is shown below.

Light Vehicles	315
Heavy Trucks & Equipment	109
Attachments	77
Other	<u>35</u>
TOTAL UNITS	536

3. POTENTIAL COST OF REPLACING X-CLASS EQUIPMENT

There is a legitimate use and place for X-Class units in a fleet, so not all units in this category would be considered as needing replacement. A rough order of magnitude (ROM) estimate to replace all units is shown below. Of this amount, only a portion of the heavy truck and equipment area would need serious consideration for actual replacement with a permanent unit. ROM costs to replace all units is shown below.

Light Vehicles

315 units @ \$20K avg repl cost = \$ 6.3M

Heavy Trucks & Equip

109 units @ \$100K avg repl cost = \$10.9M

Attachments

77 units @ \$ 15K avg repl cost = \$ 1.2M

Other

35 units @ \$ 20K avg repl cost = \$ 0.7M

Total = \$19.1M

Of this amount, probably only \$5M is really needed to address the most critical needs.

4. COST OF MAINTENANCE

SEF does not have detailed computer records to accurately analyze the additional maintenance cost for the older X-Class units. But a cursory review does reveal that it costs the state more money to keep these older units in service.

5. SUMMARY

Agencies need to identify X-Class vehicle and equipment units that are needed on a permanent basis and request funding so replacements can be made and set up in the HEWCF.