

Ronald A. Garzini
Executive Director
Alaska Energy Authority

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Procurement Construction
Issues

Carolyn E. Jones
Assistant Attorney General
Transportation Section, Anchorage

You have asked several questions regarding the procurement code and its application to proposed construction contracts between the Alaska Energy Authority, electric utilities and political subdivisions of the state. I am answering each question separately.

A. Construction By City of King Cove

The authority is considering construction of a hydroelectric project at King Cove. The project would be financed and owned by the state. The City of King Cove has submitted a proposal to design and construct the project using its own employees, and contractors to be selected by the City.

The authority may contract with the City of King Cove for construction of this project. With one exception not relevant to this memorandum, the State Procurement Code does not apply to contracts between the state and its political subdivisions. AS 36.30.850(c).¹ Therefore the authority may award a sole source contract to the City of King Cove without complying with the provisions of the State Procurement Code.

B. Construction By A Cooperative Electric Utility

The authority is considering the construction of an Intertie between Soldotna and Anchorage, and the upgrade of the Anchorage-Fairbanks Intertie. The interties would be financed and owned by the state. However, several electric cooperatives that would benefit from the interties are interested in constructing these projects, e.g., Chugach Electric Association and Golden Valley Electric Association.

¹ AS 36.30.700 -- 36.30.790 provides for intergovernmental relations between the state and its political subdivisions and is the only article in the procurement code that applies to political subdivisions.

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There is no exception in the State Procurement Code for procurement contracts between the state and an electric cooperative. See AS 36.30.850. The authority would have to advertise the construction contract for competitive bidding under AS 36.30.100 -- 36.30.190, unless the commissioner of transportation and public facilities certifies that there is only one source for the required construction. AS 36.30.30(a). Given the number of bidders on previous AEA projects, it is not likely that the commissioner could make such a certification.

If the authority wishes to pursue the possibility of making the award to an electric cooperative, I suggest the authority amend its statutes to exempt certain Energy Authority projects from the procurement code. There would also have to be a cross-reference amendment in AS 36.30 (the State Procurement Code).²

Approval for such legislation, whether it is a governor's bill or a bill introduced by a "friendly" legislator, would have to be obtained first from the governor's legislative office. Should you decide to seek the suggested amendments, I would be pleased to help you draft the necessary language.

CEJ:bb

² A bill that benefits only one project could be challenged as special legislation and prohibited by article II, section 19 of the Alaska Constitution. Because the bill would arguably address a matter that is unique but of statewide concern -- providing low cost energy to Alaska residents -- I cannot say that such a bill could be invalid. For example, AS 42.05.431(e) was adopted to exempt from APUC review wholesale agreements for power sales from hydroelectric projects licensed by the Federal Energy Regulatory Commission on or before January 1, 1987). In fact, this amendment applies to only one project: the Bradley Lake hydroelectric project.