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Deputy Commissioner
Department of Natural Resources

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269-5240

Soil & Water Conservation
Districts/building
restrictions

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Natural Resources Section - Anchorage

You requested assistance in determining the legal requirements applicable to the Upper Susitna Soil and Water Conservation District (District) efforts to assemble a building received as a donation to the District. Specifically, you requested advice as to the applicable state procedures, and whether the Department of Transportation and Public Facilities (DOT/PF) must be involved in the construction effort. For the reasons discussed below, we conclude that the State Procurement Code would not apply to services truly donated to the construction effort, and that the Department of Natural Resources (DNR) can provide supervision and oversight of the project without the formal involvement of ADOT/PF.

Factual Background

You indicated the District is presently in possession of a building which they would like to assemble and use for District business. The building was donated by the United States Soil Conservation Service, and is currently being stored (in pieces) near Trapper Creek. Construction funding has not yet been obtained, but the District anticipates that most labor will be supplied by members of the District.¹

This memorandum should be read with an understanding of the March 12, 1992, memorandum of advice from this office on the legal status of soil and water conservation districts.

Application of the State Procurement Code

The State Procurement Code, AS 36.30, "applies to every expenditure of state money by the state, acting through an agency, under a contract." AS 36.30.850(b).² Therefore, in

¹ This is understood to mean that most of the labor will be donated by members of the District, as part of a community project.

² Exceptions to the application of the procurement code are

order for the procurement code to apply, there must be 1) an expenditure of state money and 2) a contract for the provision of goods or services. However, in some instances, the procurement code will apply even if there is no actual expenditure of state money. An April 17, 1991 memorandum of advice from this office indicates that, "[a]lthough the procurement code mentions the expenditure of money, the procurement code must be read to cover cases where instead of money some other type of valuable consideration is provided by the state in exchange for a good or service." 1991 Inf. Op. Att'y Gen. (Apr. 17; 663-91-0366). This is supported by the code's definition of "procurement" which includes "buying, purchasing, renting, leasing, or otherwise acquiring . . . services." AS 36.30.990(15). In addition, the code defines contract as "all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies, equipment for the state fleet, services, professional services, or construction." AS 36.30.990(7).

Apparently the District plans to construct the building primarily through the use of labor donated by members of the district. Therefore, there is presently no plan to spend state money for construction of the building. If at some point in the future, funds are obtained in order to contract for goods and/or services for construction of the building, the District must follow the dictates of the procurement code in obtaining the services. If, however, the labor and services needed to construct the building are truly donated, and there is no contract for an exchange of goods or services, or exchange of other valuable consideration, then the procurement code will not apply.

Authority to Construct Building

Alaska Statute 44.42.020 provides that DOT/PF shall construct all buildings. However, AS 36.30.015 provides that the commissioner of DOT/PF may delegate to another agency the authority to contract for construction. DOT/PF has delegated construction contract authority to DNR for projects up to \$200,000 (vertical), \$500,000 (horizontal) and \$100,000 (force account, or work performed solely by agency employees).

Due to the delegation of authority for construction contracts from DOT/PF to DNR, the District is not required to involve DOT/PF in the project.³ Instead, District personnel
(..continued)
listed in AS 36.30.850(b)(1)-(32).

³ This conclusion is obviously based on an assumption that, given the nature of the project described, expenditures will not exceed the limits of DNR's delegated construction authority.

should consult DNR employees within the Division of Parks and Outdoor Recreation about construction plans and project oversight.⁴ In the event that contracting for services and or supplies becomes necessary in order to complete the project, the DNR personnel who oversee construction projects can provide assistance with procurement code requirements as well.⁵

NJN:mc

cc: Bill Long, DNR
Tom Young, DNR

⁴ Tom Young of the Division of Parks and Outdoor Recreation is generally aware of the District's goal.

⁵ AS 36.30.320 provides that a procurement for supplies, services, or construction that does not exceed an aggregate dollar amount of \$25,000 may be made in accordance with regulations for small procurements.