

SWCD Training Program | *January 2011*

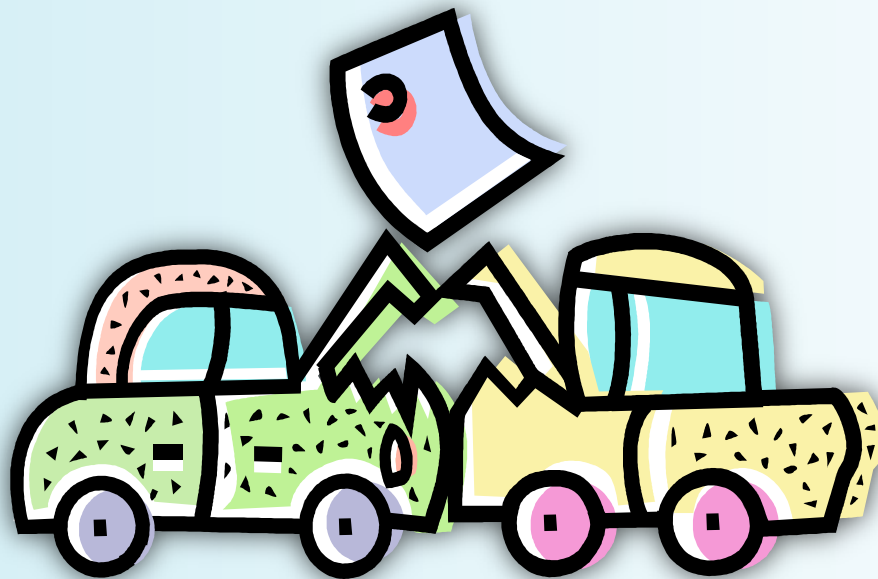
# **Module 6:**

## **Understanding Local, State & Federal Laws, Rules & Regulations Related to SWCDs**



# **District Liability**

- The elected officials sitting on each District's Board of Supervisors are public officials under the State of Alaska.
- Employees of AACD are through AACD's Worker's Compensation and Liability insurance policies.



# **Comply With Local, State & Federal Laws, Rules & Regulations**

The following online resources may be helpful:

➤ **Alaska Constitution:**

<http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://www.jnu01.legis.state.ak.us/cgi-bin/folioisa.dll/acontxt>

➤ **Alaska Statutes:**

<http://www.legis.state.ak.us/basis/folio.asp>

➤ **Alaska Administrative Code:**

<http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://www.jnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac>

➤ **State of Alaska Public Noticing:** <http://notes4.state.ak.us/pn>

➤ **State Environmental Laws Affecting Agriculture in Alaska**  
(Comprehensive, goes far beyond agriculture):

<http://www.nasda.org/nasda/nasda/foundation/state/Alaska.pdf>

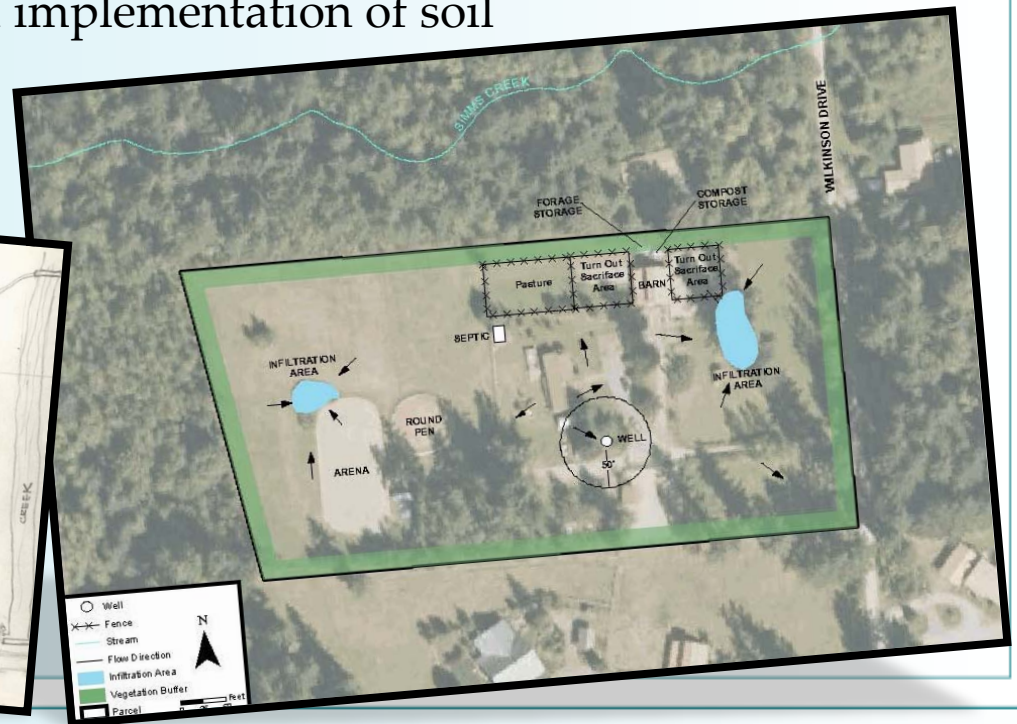
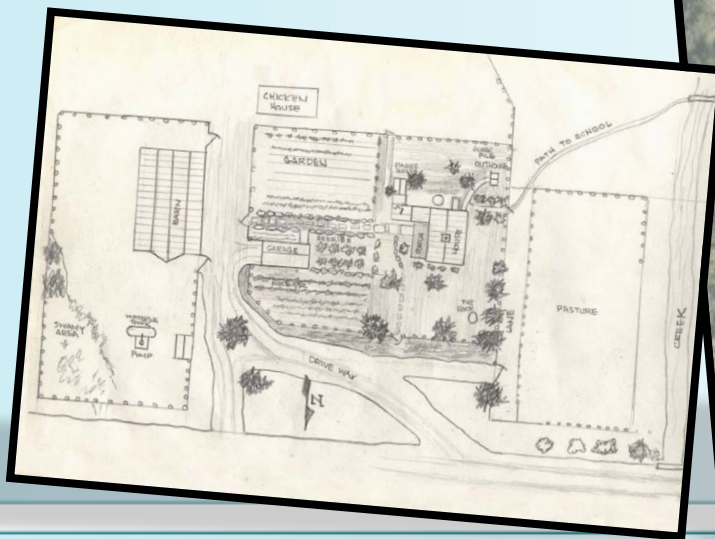
- **Alaska Municipal/Borough Codes:**  
<http://www.sled.alaska.edu/municode.html>
- **U.S. Constitution, Declaration of Independence:**  
<http://www.usconstitution.net/>
- **U.S. Code:** <http://www.law.cornell.edu/uscode/>
- **Code of Federal Regulations:** <http://www.gpoaccess.gov/cfr/>
- **Internal Revenue Service: Tax Information for Federal, State and Local Governments:** <http://www.irs.gov/govt/fslg/index.html>
- **Database of all federal regulations, including proposed:**  
<http://www.regulations.gov/search/Regs/home.html#home>

STATUTE	TITLE
AS 41.10	Soil & Water Conservation Law
AS 39.52	Alaska Executive Branch Ethics Act
AS 40.21	Management & Preservation of Public Records
AS 40.25	Public Record Disclosures
AS 44.62	Alaska Open Meetings Act

# Statutory Responsibilities of SWCDs in Alaska

## Certification of Soil/Farm Conservation Plans for Ag Parcels --

AS 38.05.321(d)(1): For state land classified as agricultural land that is conveyed under this section, the commissioner may require the landowner to cooperate with the appropriate soil and water conservation district under AS [41.10](#) in the development and implementation of soil conservation plans as authorized by AS [41.10.110](#) (6);



## Right to Farm Bill –

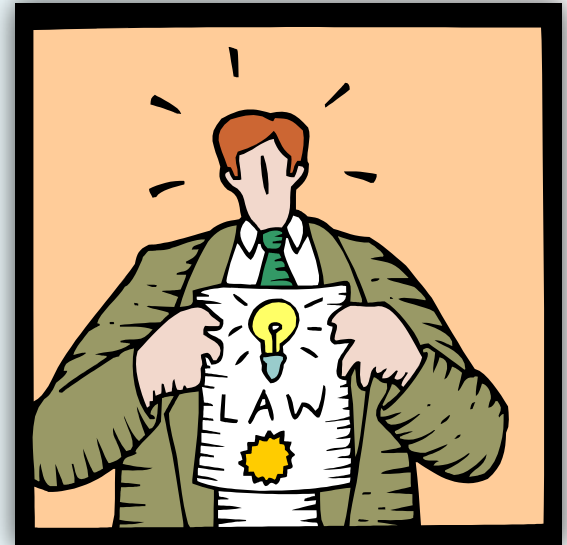
AS 09.45.235(a): Agricultural Operations as private nuisances – An agricultural facility or an agricultural operation at an agricultural facility is not and does not become a private nuisance as a result of a changed condition that exists in the area of the agricultural facility if the agricultural facility was not a nuisance at the time the agricultural facility began agricultural operations. For purposes of this subsection, the time an agricultural facility began agricultural operations refers to the date on which any type of agricultural operation began on that site regardless of any subsequent expansion of the agricultural facility or adoption of new technology.



*An agricultural facility or an agricultural operation at an agricultural facility is not a private nuisance if the governing body of the local soil and water conservation district advises the commissioner in writing that the facility or operation is consistent with a soil conservation plan developed and implemented in cooperation with the district.*

# Procurement

- SWCDs are required to follow State procurement procedures, the DNR Procurement Office is the contact point within the State for SWCDs.  
Contact Marlys Hagen at (907) 269-8666  
[marlys.hagen@alaska.gov](mailto:marlys.hagen@alaska.gov) or Shana Joy.



- **Resources**
  - **Procurement Regulations in Alaska Administrative Code** can be found at:  
<http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://wwwjnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac>
  - **Procurement Statutes** can be found at:  
<http://www.legis.state.ak.us/basis/folio.asp>

- ✓ May use existing state contracts with vendors.  
To see what statewide contracts exist for immediate use by Districts, go to:

- **State:**

- <http://doa.alaska.gov/dgs/cam/index.html>

- **Western States Contracting Alliance:**

- [http://www.aboutwsca.org/content.cfm/id/wsca\\_current\\_contracts](http://www.aboutwsca.org/content.cfm/id/wsca_current_contracts)

- ✓ May use the State's General Services Property Office to obtain surplus State equipment:  
<http://doa.alaska.gov/dgs/property/index.html>
- ✓ SWCDs shall keep complete records of all procurements, including copies of all solicitations, responses, amendments, Intent to Award (if applicable), contracts, and justification for the award.



- Districts are empowered to make small purchases, less than \$5,000 of goods or services adhering to the Level 1 Procurement Manual.
- Work with State Procurement Office on all large procurements, exceptions to procedures may be made according to AAC and through working with the Procurement Office, but only in rare circumstances.
- May NEVER artificially fragment the purchase or services to avoid a higher level of competition, i.e. if the work is going to be \$10,000 complete, cannot issue two \$5,000 contracts.
- Alaskan vendors must be solicited prior to soliciting non-Alaskan vendors.
- SWCDs must consult with DNR Procurement for ANY construction project over \$2,000 due to unique requirements for such projects.

## Standard Procedures

- up to \$5,000 - Use reasonable and adequate procedures that ensure fairness to potential offerors, done via delivery order, invoice or other forms that provide record keeping and accountability. Typically done with an informal letter (or telephone/fax with recordkeeping) requesting quote, minimum of three bidders.
- \$5,001 to \$25,000 - Must work with DNR Procurement Office, minimum of three firms or persons shall be contacted for quotation or informal proposal, solicitation and responses must be in writing. Professional Services contracts shall utilize DNR-mandated form(s), suggest solicitation be 'on the street' a minimum of 10 days.
- \$25,001 to \$50,000 - Must work with DNR Procurement Office, minimum of three firms or persons shall be solicited, solicitation and responses must be in writing. Must use DNR-mandated forms, solicitation must be public a minimum of 10 days.
- Greater than \$50,000 - Must work with DNR Procurement Office, must issue formal Request for Proposals form, solicitation must be publicly noticed for a minimum of 21 days, after Intent to Award is sent out there is a 10 day appeal period, after the appeal period the contract may be awarded.

- **Contract Amendments** - For a contract to be amended, the work or goods must be within the scope of the original contract, must be unanticipated or unforeseen, and cannot constitute an effort to evade the procurement process. All amendments to contracts shall be in writing, with copies on record with the DNR Procurement Office.
- **Preferences**
  - SWCDs give an Alaska Bidder Preference
  - Alaska Offerors per 2 AAC 12.260(e)
  - Employment Program per AS 36.30.170(c)
  - Alaskans with Disabilities per AS 36.30.170(e)
  - Employers of People with Disabilities per AS 36.30.170(f)
  - Use of Alaska Forest Products per AS 36.30.322
  - Use of Alaska products and recycled Alaska products per AS 36.30.324
  - Use of Recycled Products per AS 36.30.337
  - Local Agriculture & Fisheries Products per AS 36.15.050

## Tips on avoiding protests

- Be fair to all bidders or potential bidders. Keep them all informed of any changes to the terms, conditions and specifications of your solicitations.
- Avoid providing supplemental information to individual bidders that allows them to compete unfairly.
- Do not negotiate with a vendor after quotes are received from competing vendors.
- Carefully consider questions or criticisms raised by bidders or potential bidders in response to your solicitations. Be willing to modify your terms and conditions if warranted and practicable.
- Be willing to admit and correct mistakes. If you can't correct a mistake on a current solicitation, correct it in future solicitations.
- Do not accept personal favors or discounts from vendors that are not available to the general public.  
( See Ethics section)



- If a SWCD violates the State of Alaska Procurement Code, they may be subject to civil and criminal penalties as set forth in AS 36.30.930
- **Conflict of Interest - even an appearance of conflict should be avoided.**



# Procurement Ethics

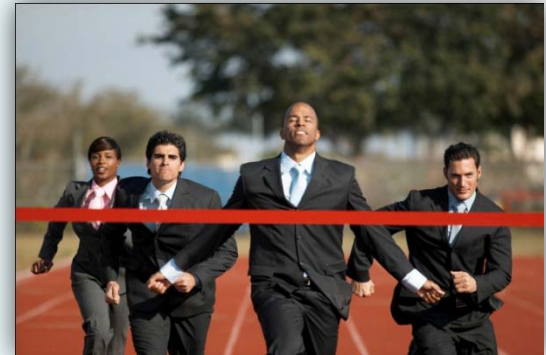
## Governing Laws

- State Procurement Code
  - AS 36.30
  - 2AAC 12
  - AK Administrative Manual 81 and 82
  
- State Ethics Code
  - AS 39.52



# Procurement Code Purpose

- Increase public confidence
- Promote fair and equitable treatment
- Maximize purchasing value
- Ensure effective broad-based competition
- Safeguards for maintenance of quality and integrity



# Code of Ethics

## Alaska Statute Title 39

- Code – equates public office to public trust, any effort to benefit a person or financial interest through official action is a violation of that trust
- Conduct procurements in a fair and impartial manner
- Notify supervisor of potential conflicts
- Avoid even the appearance of a conflict of interest



## Misuse of Official Position

- May not use position for personal gain or give unwarranted benefit or treatment
- May not take or withhold official action in which you have a personal or financial interest
- May not unduly influence the award of a contract
- May not accept money from anyone other than the District for performance of your official duties



## Improper Gifts

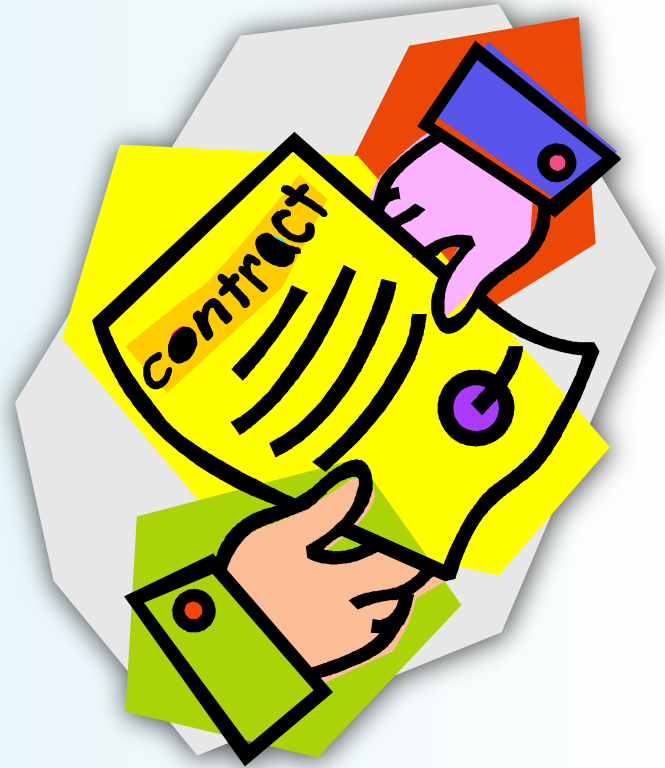
- Public employees may not solicit or accept gifts that benefit them if it can be reasonably inferred that the gift is intended to influence their actions or judgment.
- Gifts valued over \$150 are substantial and must be reported to your ethics supervisor.



Just say 'no' to gifts from  
vendors or potential  
contractors

# Improper Influence

You may not take actions or withhold action on the award or administration of a District contract if you have any personal or financial interest.



## Notification of Potential Ethics Violations

If you are involved in a situation which may be in violation of the Code of Ethics:

- Refrain from taking any action
- Immediately inform your ethics supervisor



## Guidelines for Ethical Purchasing

- Avoid the appearance of unethical or compromising situations
- Identify and avoid making decisions where a potential conflict of interest exists
- Never solicit or accept anything of value from suppliers or potential vendors
- Treat everyone equally



## **Duty of Public Officials**

Government officials must always aim for what is best for the public, not merely what might be 'okay.' Every public official has a duty of loyal, faithful and honest service which is clearly inherent in the responsibilities of public office at all levels.



# Procurement Resources

- **Level 1 Procurement Manual**  
Purchases up to \$5,000  
([www.doa.alaska.gov/dgs/pdf/Level1ProcurementManual.pdf](http://www.doa.alaska.gov/dgs/pdf/Level1ProcurementManual.pdf))
- **Small Procurement Matrix**  
Purchases up to \$25,000  
([www.doa.alaska.gov/dgs/pdf/matrix1.pdf](http://www.doa.alaska.gov/dgs/pdf/matrix1.pdf))
- **Large Procurement Matrix**  
Purchases up to \$50,000  
([www.doa.alaska.gov/dgs/pdf/matrix2.pdf](http://www.doa.alaska.gov/dgs/pdf/matrix2.pdf))
- **Procurement forms, training, etc:**  
<http://doa.alaska.gov/dgs/purchasing/index.html>

DNR Procurement Officer:

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Executive Director, NRCDB

