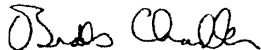


BOYD, CHANDLER & FALCONER, LLP
Attorneys At Law
Suite 302
911 West Eighth Avenue
Anchorage, Alaska 99501
Telephone: (907) 272-8401
Facsimile: (907) 274-3698
bcf@bcf.us.com

MEMORANDUM

TO: Chris Hladick
Unalaska City Manager



FROM: Brooks W. Chandler
City Attorney

RE: HB 239

DATE: January 24, 2011

This is written in response to your request for our review and comment on HB 239. In summary we do not believe the legislation is appropriate as discussed in greater detail below.

We begin by summarizing what the bill requires and how it changes current law. Under current law, rules regarding how local governments need to procure surveying and professional design services when using state grants to pay for those services are contained either in regulations of the department of state government administering the grant or in specific grant agreements. For example, design services for construction of school facilities (but not surveying services) must be competitively procured with specific notice requirements and awarded to the "most qualified" offeror. 4 AAC 31.065(a).

The proposed bill does not simply take existing requirements and codify them as state statutes. Instead it significantly adds to those requirements in the following ways:

1. It requires compensation to be "fair and reasonable".
2. It eliminates the option of rebidding if negotiations with the "most qualified" professional person are not successful.

3. It prohibits awards based on the lowest price. In fact, this statute prohibits even considering price as a “factor” in awarding a contract except in circumstances involving “repetitious” services and “measurable and objective” standards regarding the work to be done.

4. It mandates that consideration of “proximity to the project site of the office of the professional person” be considered in award of a contract.

Here are the concerns I believe the city should have with this legislation:

1. “If it ain’t broke don’t fix it.” There is no evidence in my experience that the current regulations are generating substandard public works projects. Certainly Unalaska has successfully constructed literally hundreds of millions of dollars of exemplary public facilities under the current rules.

2. Local governments should be free to choose for themselves how they weigh factors when awarding contracts for design services. Price should most definitely always be a consideration. Existing state licensing laws and the typical play of the free market should be allowed to function without state interference.

3. It is a stretch in my view to include surveying work in the same category as architectural and engineering work. Certainly this is professional work but it involves much less “creativity” to delineate existing boundaries than to design a new school. Price based procurement of surveying services is fairly logical.

4. It is not logical that a design or engineering firm from Fairbanks should be at a competitive disadvantage from an Anchorage firm when proposing to do work for Unalaska yet that is what this bill requires.

5. The relatively imprecise language “fair and reasonable”, “repetitious”, “measurable and objective” could lead to disputes.

6. The language creates additional barriers for young professionals who may be extremely talented but relatively less experienced. They are precluded from competing for work using lower prices thereby restricting competition and driving prices up for work covered by the statute. In this regard, the bill smacks of “good old boy” protection for existing firms which may not be in the best interests of the citizens of Unalaska. The City typically uses well established firms for our public works projects but it does not make sense to eliminate an option to use a less experienced but impressive young professional especially on a smaller project.