

Original Sponsor: Rules Committee by
request of the Governor

Offered: 3/9/76
Referred: Finance

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

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CS FOR HOUSE BILL NO. 646

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

NINTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to selection of architects, engineers,
7 and surveyors for state projects; and providing for
8 an effective date."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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* Section 1. AS 35 is amended by adding a new chapter to read:

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CHAPTER 30. STATE SELECTION OF ARCHITECTS,

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ENGINEERS, AND SURVEYORS.

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Sec. 35.30.010. SELECTION REVIEW BOARD. (a) There is in the

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Department of Public Works an Architects, Engineers, and Land Surveyors

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Selection Review Board.

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(b) The board is composed of seven members, appointed by the

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governor and subject to confirmation by the legislature in joint session.

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Members shall be appointed as follows:

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(1) two members must be registered architects appointed by

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the governor from a list of at least four names submitted by the Alaska

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chapter of the American Institute of Architects;

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(2) two members must be registered engineers appointed by the

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governor from a list of at least four names submitted by the Alaska

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chapter of the National Society of Professional Engineers;

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(3) two members shall be appointed by the governor from the

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general public, neither of whom may be an architect or an engineer or a

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land surveyor; the public members must possess, due to their education,

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experience, or vocation, an understanding of and sensitivity to project

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design or construction;

1 (4) one member must be a land surveyor appointed by the
2 governor from names submitted by the Alaska chapter of the American
3 Society of Professional Land Surveyors.

4 (c) The term of office of board members is two years. Initial
5 appointments within each classification in (b)(1)-(3) of this section
6 shall specify one-year and two-year terms so as to assure the staggering
7 of terms within each classification. If a vacancy occurs on the board,
8 the governor shall appoint a person qualified under the applicable
9 provision in (b) of this section to serve the unexpired term.

10 (d) No member of the board or of a firm or joint venture with
11 which he is associated, or in which he has a financial interest, may be
12 barred, because of his board membership, from contracting to serve as an
13 architect, engineer, or land surveyor for a project or from otherwise
14 participating as a consultant or employee on a project.

15 (e) No member of the board may vote on a grievance matter brought
16 by or against him or by or against a firm or joint venture with which he
17 is associated or in which he has a financial interest.

18 Sec. 35.30.020. ORGANIZATION AND MEETINGS OF BOARD. At the first
19 meeting of the members of the board, the board shall elect a chairman.
20 The board shall also elect other officers it considers necessary for the
21 conduct of its affairs. It shall adopt rules governing its operations
22 and the conduct of its meetings. The rules shall provide for the term
23 of the chairman and other officers if any. The board shall meet at
24 least once every six months. In addition, the board may take official
25 action by mail votes or votes during conference telephone calls on
26 reasonable notice to all members. Four members constitute a quorum.

27 Sec. 35.30.030. DUTIES AND POWERS OF THE BOARD. The board shall

28 (1) adopt regulations under the Administrative Procedure Act.
29 (AS 44.62) that it finds appropriate to supplement the procedure

1 established by this chapter for architect, engineer, and land surveyor
2 selection;

3 (2) review all selection procedures on a periodic basis;

4 (3) review any grievance related to the selection process and
5 recommend appropriate action to the governor; the board's recommendations
6 on grievances are public information;

7 (4) prepare an annual report on architect, engineer, and land
8 surveyor selection and selection grievances.

9 Sec. 35.30.040. REQUIREMENTS FOR PROFESSIONAL SERVICES. (a) Each
10 agency shall make public on at least an annual basis its known present
11 and future construction and planning programs, and its anticipated
12 requirements for professional services for at least the following 12-
13 month period.

14 (b) When professional services are required for a specific project,
15 the chief executive officer of the contracting agency shall submit a
16 written notice to the board. The notice shall include a description of
17 the proposed project, its location, the scope of services required, the
18 proposed completion date, and a description of any special requirements
19 or unique features of the proposed project.

20 Sec. 35.30.050. QUALIFICATION OF ARCHITECTURAL, ENGINEERING, AND
21 SURVEYING FIRMS; SELECTION COMMITTEES. (a) The Department of Public
22 Works shall encourage firms engaged in the lawful practice of archi-
23 tecture, engineering, or land surveying to submit at least annually a
24 statement of qualifications. The department shall maintain an up-to-
25 date listing of qualified firms and shall make it available to selection
26 committees formed under this section. The department shall maintain a
27 complete file of all qualified firms who have submitted a statement
28 within the previous two years.

29 (b) When an agency of the state expects to enter into a contract

1 for architectural, engineering, or land surveying services, the chief
2 executive officer of that contracting agency shall appoint two persons
3 from that agency to a three-member selection committee. The chief
4 executive officer of the user agency for the proposed project shall
5 appoint a person from the user agency as the third member of the com-
6 mittee. If it is anticipated that there will be more than one user
7 agency, then the third committee member shall be appointed by the
8 commissioner of administration. Committee members appointed from the
9 Department of Public Works must be employees in the classified service
10 under AS 39.25. The members shall elect a chairman.

11 (c) The committee, upon its appointment, shall make a public
12 announcement of the proposed project which includes a description of the
13 proposed project, its location, the scope of service required, the
14 proposed completion date, and a description of any special requirements
15 or unique features. The announcement shall invite firms to submit to
16 the committee an application to perform services for the project which
17 may include supplemental descriptions of their firms and statements of
18 qualifications with supporting data as it relates to the proposed pro-
19 ject.

20 (d) The committee shall examine all applications from interested
21 firms and certify those firms qualified to perform the services for the
22 project under consideration. Among the factors to be considered in
23 making this finding are the capability, adequacy of personnel, past
24 record, and experience of the firm.

25 (c) In evaluating the firms certified under (d) of this section,
26 the committee shall apply the following criteria, along with other
27 criteria established by administrative regulations of the department if
28 any:

29 (1) specialized experience and design and technical compe-

1 tence of the firm, including a joint venture or association, regarding
2 the type of service required;

3 (2) capability of the firm to perform the work, including any
4 specialized services, within the time limitations;

5 (3) past record of performance on contracts with government
6 agencies and private industry with respect to such factors as control of
7 costs, quality of work, and ability to meet schedules;

8 (4) proximity to and familiarity with the area in which the
9 project is located; and

10 (5) the desirability of selecting the most highly qualified
11 firm; however, the volume of work previously awarded to the firm by the
12 state shall also be considered, with the object of effecting an equi-
13 table distribution of contracts among qualified firms and of assuring
14 that the interest of the public in having available a substantial number
15 of qualified firms is protected.

16 (f) After making this review and technical evaluation, the com-
17 mittee shall hold discussions with not less than three of the most
18 highly qualified firms regarding their capability and methods of approach
19 for furnishing the required services. Professional compensation may not
20 be considered in these discussions.

21 (g) The committee shall prepare a public report for submission to
22 the board, recommending, in order of highest qualification, no less than
23 three firms that are considered most highly qualified to perform the
24 required services. This report shall include a statement of the extent
25 of the evaluation and review and the considerations upon which the
26 recommendations were based. If the committee has found under (d) of
27 this section that less than three firms are qualified to perform the
28 services, it shall include in its report the reasons for qualifying less
29 than three. The report shall be made within 45 days after the committee

1 is appointed.

2 Sec. 35.30.060. NEGOTIATIONS. (a) The contracting agency shall
3 conduct negotiations on scope of work and professional compensation
4 initially with the highest ranked firm. If a mutually satisfactory
5 contract cannot be negotiated with that firm, the agency head shall
6 formally terminate the negotiations and notify the firm. Negotiations
7 then shall be initiated with the second-ranked firm and this procedure
8 shall be continued until a mutually satisfactory contract has been
9 negotiated. If negotiations fail with the listed firms, the names of
10 additional firms shall be selected and ranked by the committee and
11 negotiations shall continue in the manner described in this subsection.

12 (b) Upon successfully negotiating a contract with a firm, the
13 agency shall promptly report to the board the results of its negotia-
14 tions, with documentation of the factors affecting any unsuccessful
15 negotiations with higher ranked firms.

16 Sec. 35.30.070. PUBLIC REPORTS. The board shall make a public
17 announcement of the firm selected for each proposed project and shall
18 provide prompt notification to each recommended firm. The board shall
19 issue an annual report summarizing the projects processed during the
20 year and the firms selected to design them. The annual report also
21 shall list each grievance received, give the board's recommendation on
22 the grievance, and state what action was taken in response to the
23 board's recommendation.

24 Sec. 35.30.080. PROHIBITION AGAINST CONTINGENT FEES; MISDEMEANOR.
25 (a) Each contract entered into by an agency for professional services
26 shall contain a prohibition against contingent fees as follows: "The
27 contractor providing professional services warrants that he has not
28 employed or retained any person whose fee, commission, percentage, gift,
29 or any other consideration is contingent upon or results from the

1 award or making of this agreement." For a violation of this provision,
2 the agency may terminate the agreement without liability and, in its
3 discretion, may deduct from the contract price, or otherwise recover,
4 the full amount of the fee, commission, percentage, gift or considera-
5 tion.

6 (b) A public official or other person who offers, agrees, or
7 contracts to solicit or secure a state agency contract for professional
8 services for any other person for a fee, commission, percentage, gift or
9 other consideration contingent upon or resulting from, the award or the
10 making of a contract for professional services, is guilty of a misde-
11 meanor.

12 (c) An architect, engineer, land surveyor, or other person who
13 offers or pays or otherwise furnishes any consideration prohibited in
14 (b) of this section is guilty of a misdemeanor.

15 Sec. 35.30.090. OFFICE, STAFF, AND RECORDS. The Department of
16 Public Works shall provide the board a suitable place to hold meetings
17 and keep records. The commissioner of public works shall designate an
18 employee of the department to serve as executive secretary to the
19 board. He shall devote the time necessary to promote the expeditious
20 conduct of the board's duties and responsibilities.

21 Sec. 35.30.100. EXEMPTIONS. (a) Contracts where compensation to
22 be paid under the contract is less than \$20,000 are exempt from the
23 requirements of this chapter.

24 (b) The board may, on a case-by-case basis, exempt emergency
25 projects from the selection process. A brief statement of the emergency
26 that caused the exemption of any project shall be included in the board's
27 annual report made under sec. 70 of this chapter.

28 (c) This chapter does not apply to the selection of architects,
29 engineers or surveyors for state projects administered by the Department

1 of Highways.

2 Sec. 35.30.110. DEFINITIONS. In this chapter, unless the context
3 requires otherwise

4 (1) "agency" means all officials, departments, and agencies
5 of the state government, including the University of Alaska and the
6 Alaska State Housing Authority;

7 (2) "architect, engineer, or land surveyor" means an archi-
8 tect, engineer, or land surveyor registered to practice under AS 08.48;

9 (3) "board" means the Architects, Engineers, and Land Sur-
10 veyors Selection Review Board;

11 (4) "contracting agency" means the agency administering a
12 contract for architectural, engineering, or land surveying services;

13 (5) "committee" means a selection committee established under
14 sec. 50 of this chapter;

15 (6) "firm" means an architect, engineer, or land surveyor, or
16 a partnership, association, or corporation comprised primarily of
17 architects or engineers or land surveyors registered to practice under
18 AS 08.48;

19 (7) "professional service" means architectural, engineering,
20 or land surveying service;

21 (8) "project" means a construction project using professional
22 services associated with design and construction, alteration, or repair
23 of real property, as well as services incidental to it, including but
24 not limited to studies, investigations, surveys, evaluations, land
25 appraisals, consultations, planning, programming, conceptual designs,
26 plans and specifications, cost estimates, inspections, shop drawing
27 reviews, sample recommendations, preparation of operating and maintenance
28 manuals, and other related service;

29 (9) "user agency" means the agency which will occupy or use

1 the product of the professional service.

2 * Sec. 2. Nothing in this Act affects the validity or effect of any
3 contract in existence on January 1, 1977.

4 * Sec. 3. AS 35.30.030(2), (3), and (4), 35.30.040, and 35.30.050--
5 35.30.070, enacted in sec. 1 of this Act, take effect January 1, 1977. All
6 other provisions of this Act take effect immediately in accordance with AS
7 01.10.070(c).

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