

Original Sponsor: Rules Committee by  
request of the Governor

Offered: 3/11/76  
Referred: Rules

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 CS FOR HOUSE BILL NO. 646 (Finance)

3 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."

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

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

11 CHAPTER 30. STATE SELECTION OF ARCHITECTS,  
12 ENGINEERS, AND SURVEYORS.

13 Sec. 35.30.010. SELECTION REVIEW BOARD. (a) There is in the  
14 Department of Public Works an Architects, Engineers, and Land Surveyors  
15 Selection Review Board.

16 (b) The board is composed of seven members, appointed by the  
17 governor and subject to confirmation by the legislature in joint session.  
18 Members shall be appointed as follows:

19 (1) two members must be registered architects appointed by  
20 the governor from a list of at least four names submitted by the Alaska  
21 chapter of the American Institute of Architects;

22 (2) two members must be registered engineers appointed by the  
23 governor from a list of at least four names submitted by the Alaska  
24 chapter of the National Society of Professional Engineers;

25 (3) two members shall be appointed by the governor from the  
26 general public, neither of whom may be an architect or an engineer or a  
27 land surveyor; the public members must possess, due to their education,  
28 experience, or vocation, an understanding of and sensitivity to project  
29 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  
5 and recommend appropriate action to the governor; the board's recom-  
6 mendations 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. COMPENSATION, PER DIEM, AND EXPENSES. Members of  
10 the board are entitled to per diem, reimbursement for travel and other  
11 expenses authorized by law for other boards.

12 Sec. 35.30.050. REQUIREMENTS FOR PROFESSIONAL SERVICES. (a) Each  
13 agency shall make public on at least an annual basis its known present  
14 and future construction and planning programs, and its anticipated  
15 requirements for professional services for at least the following 12-  
16 month period.

17 (b) When professional services are required for a specific pro-  
18 ject, the chief executive officer of the contracting agency shall submit  
19 a written notice to the board. The notice shall include a description  
20 of the proposed project, its location, the scope of services required,  
21 the proposed completion date, and a description of any special require-  
22 ments or unique features of the proposed project.

23 Sec. 35.30.060. QUALIFICATION OF ARCHITECTURAL, ENGINEERING, AND  
24 SURVEYING FIRMS; SELECTION COMMITTEES. (a) The Department of Public  
25 Works shall encourage firms engaged in the lawful practice of archi-  
26 tecture, engineering, or land surveying to submit at least annually a  
27 statement of qualifications. The department shall maintain an up-to-  
28 date listing of qualified firms and shall make it available to selection  
29 committees formed under this section. The department shall maintain a

1 complete file of all qualified firms who have submitted a statement  
2 within the previous two years.

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

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

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

28 (e) In evaluating the firms certified under (d) of this section,  
29 the committee shall apply the following criteria, along with other

1 criteria established by administrative regulations of the department if  
2 any:

3 (1) specialized experience and design and technical compe-  
4 tence of the firm, including a joint venture or association, regarding  
5 the type of service required;

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

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

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

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

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

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

1 this section that less than three firms are qualified to perform the  
2 services, it shall include in its report the reasons for qualifying less  
3 than three. The report shall be made within 45 days after the committee  
4 is appointed.

5 Sec. 35.30.070. NEGOTIATIONS. (a) The contracting agency shall  
6 conduct negotiations on scope of work and professional compensation  
7 initially with the highest ranked firm. If a mutually satisfactory  
8 contract cannot be negotiated with that firm, the agency head shall  
9 formally terminate the negotiations and notify the firm. Negotiations  
10 then shall be initiated with the second-ranked firm and this procedure  
11 shall be continued until a mutually satisfactory contract has been  
12 negotiated. If negotiations fail with the listed firms, the names of  
13 additional firms shall be selected and ranked by the committee and  
14 negotiations shall continue in the manner described in this subsection.

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

19 Sec. 35.30.080. PUBLIC REPORTS. The board shall make a public  
20 announcement of the firm selected for each proposed project and shall  
21 provide prompt notification to each recommended firm. The board shall  
22 issue an annual report summarizing the projects processed during the  
23 year and the firms selected to design them. The annual report also  
24 shall list each grievance received, give the board's recommendation on  
25 the grievance, and state what action was taken in response to the  
26 board's recommendation.

27 Sec. 35.30.090. PROHIBITION AGAINST CONTINGENT FEES; MISDEMEANOR.  
28 (a) Each contract entered into by an agency for professional services  
29 shall contain a prohibition against contingent fees as follows: "The

1 contractor providing professional services warrants that he has not  
2 employed or retained any person whose fee, commission, percentage, gift,  
3 or any other consideration is contingent upon or results from the  
4 award or making of this agreement." For a violation of this provision,  
5 the agency may terminate the agreement without liability and, in its  
6 discretion, may deduct from the contract price, or otherwise recover,  
7 the full amount of the fee, commission, percentage, gift or considera-  
8 tion.

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

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

18 Sec. 35.30.100. OFFICE, STAFF, AND RECORDS. The Department of  
19 Public Works shall provide the board a suitable place to hold meetings  
20 and keep records. The commissioner of public works shall designate an  
21 employee of the department to serve as executive secretary to the  
22 board. He shall devote the time necessary to promote the expeditious  
23 conduct of the board's duties and responsibilities.

24 Sec. 35.30.110. EXEMPTIONS. (a) Contracts where compensation to  
25 be paid under the contract is less than \$20,000 are exempt from the  
26 requirements of this chapter.

27 (b) The board may, on a case-by-case basis, exempt emergency  
28 projects from the selection process. A brief statement of the emergency  
29 that caused the exemption of any project shall be included in the

1 board's annual report made under sec. 80 of this chapter.

2 Sec. 35.30.120. 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. 60 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 mainte-  
28 nance 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(?), (3), and (4), 35.30.050, and 35.30.060 -  
5 35.30.080, 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  
7 AS 01.10.070(c).

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