

Original Sponsor: Rules Committee by
request of the Governor

Offered: 5/15/76
Referred: Finance

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 646

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 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 registered land surveyor appointed
2 by the governor from names submitted by the Alaska chapter of the
3 American 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, in accordance with AS 44.62.-
25 310 - 44.62.312 the board may take official action by mail votes or
26 votes during conference telephone calls on reasonable notice to the
27 public and to all members. Four members constitute a quorum.

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

29 (1) adopt regulations under the Administrative Procedure Act

1 (AS 44.62) that it finds appropriate to supplement the procedure estab-
2 lished by this chapter for architect, engineer, and land surveyor
3 selection;

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

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

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

10 Sec. 35.30.040. COMPENSATION, PER DIEM, AND EXPENSES. Members of
11 the board are entitled to per diem, reimbursement for travel and other
12 expenses authorized by law for other boards.

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

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

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

1 committees formed under this section. The department shall maintain a
2 complete file of all qualified firms who have submitted a statement
3 within the previous two years.

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

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

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

29 (e) In evaluating the firms certified under (d) of this section,

1 the committee shall apply the following criteria, along with other
2 criteria established by administrative regulations of the department if
3 any:

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

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

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

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

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

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

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

1 recommendations were based. If the committee has found under (d) of
2 this section that less than three firms are qualified to perform the
3 services, it shall include in its report the reasons for qualifying less
4 than three. The report shall be made within 45 days after the committee
5 is appointed.

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

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

20 Sec. 35.30.080. PUBLIC REPORTS. The selection committee estab-
21 lished under sec. 60 of this chapter shall select the firm to design
22 each proposed project, shall make a public announcement of the selected
23 firm and shall provide prompt notification to each selected firm. The
24 board shall review each design contract awarded under this section and
25 shall issue an annual report summarizing the projects processed during
26 the year and the firms selected to design them. The annual report also
27 shall list each grievance received, give the board's recommendation on
28 the grievance, and state what action was taken in response to the
29 board's recommendation.

1 Sec. 35.30.090. PROHIBITION AGAINST CONTINGENT FEES; MISDEMEANOR.

2 (a) Each contract entered into by an agency for professional services
3 shall contain a prohibition against contingent fees as follows: "The
4 contractor providing professional services warrants that he has not
5 employed or retained any person whose fee, commission, percentage, gift,
6 or any other consideration is contingent upon or results from the award
7 or making of this agreement." For a violation of this provision, the
8 agency may terminate the agreement without liability and, in its dis-
9 cretion, may deduct from the contract price, or otherwise recover, the
10 full amount of the fee, commission, percentage, gift or consideration.

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

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

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

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

29 (b) The board may, on a case-by-case basis, exempt emergency

1 projects from the selection process. A brief statement of the emergency
2 that caused the exemption of any project shall be included in the
3 board's annual report made under sec. 80 of this chapter.

4 Sec. 35.30.120. DEFINITIONS. In this chapter, unless the context
5 requires otherwise,

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

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

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

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

15 (5) "committee" means a selection committee established under
16 sec. 60 of this chapter;

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

21 (7) "professional service" means architectural, engineering,
22 or land surveying service;

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

1 nance manuals, and other related service;

2 (9) "user agency" means the agency which will occupy or use
3 the product of the professional service.

4 * Sec. 2. AS 39.50.200(9) is amended by adding a new subparagraph to read:

5 (LL) Architects, Engineers and Land Surveyors Selection
6 Review Board.

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

9 * Sec. 4. AS 35.30.030(2), (3), and (4), 35.30.050, and 35.30.060 -
10 35.30.080, enacted in sec. 1 of this Act, take effect January 1, 1977. All
11 other provisions of this Act take effect immediately in accordance with
12 AS 01.10.070(c).

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