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Referred: Commerce

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SPONSOR SUBSTITUTE FOR HOUSE BILL 227

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST 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. Members shall be appointed as follows:

18 (1) two members must be registered architects appointed by
19 the governor from names submitted by the Alaska chapter of the American
20 Institute of Architects;

21 (2) two members must be registered engineers appointed by
22 the governor from names submitted by the Alaska chapter of the National
23 Society of Professional Engineers;

24 (3) two members shall be appointed by the governor from the
25 general public, neither of whom may be an architect or an engineer or
26 a land surveyor; the public members must possess, due to their educa-
27 tion, experience, or vocation, an understanding of and sensitivity to
28 project design or construction;

29 (4) one member must be a land surveyor appointed by the

1 governor from names submitted by the Alaska chapter of the American
2 Society of Professional Land Surveyors.

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

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

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

17 Sec. 35.30.020. ORGANIZATION AND MEETINGS OF BOARD. At the
18 first meeting of the members of the board, the board shall elect a
19 chairman. The board shall also elect other officers it considers
20 necessary for the conduct of its affairs. It shall adopt rules
21 governing its operations and the conduct of its meetings. The rules
22 shall provide for the term of the chairman and other officers if any.
23 The board shall meet at least once every six months. In addition, the
24 board may take official action by mail votes or votes during conference
25 telephone calls on reasonable notice to all members. Four members
26 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
29 Act (AS 44.62) that it finds appropriate to supplement the procedure
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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
8 land surveyor selection and selection grievances.

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

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

20 Sec. 35.30.050. QUALIFICATION OF ARCHITECTURAL, ENGINEERING, AND
21 SURVEYING FIRMS; SELECTION COMMITTEES. (a) All firms engaged in the
22 lawful practice of architecture, engineering or land surveying in the
23 state comprise a basic list for consideration for state contracts in
24 the field or fields in which each is licensed.

25 (b) When an agency of the state expects to enter into a contract
26 for architectural, engineering, or land surveying services, the chief
27 executive officer of that contracting agency shall appoint two persons
28 from that agency to a three-member selection committee. The chief
29 executive officer of the user agency for the proposed project shall

1 appoint a person from the user agency as the third member of the
2 committee. If it is anticipated that there will be more than one user
3 agency, then the third committee member shall be appointed by the
4 commissioner of administration. Committee members appointed from the
5 contracting agency must be employees in the classified service under
6 AS 39.25. The members shall elect a chairman.

7 (c) The committee, upon its appointment, shall announce the pro-
8 posed project by a means calculated to reach the firms licensed to
9 perform the services required. The announcement shall include a
10 description of the proposed project, its location, the scope of service
11 required, the proposed completion date, and a description of any
12 special requirements or unique features. The announcement shall
13 invite firms to submit to the committee an application to perform
14 services for the project which may include descriptions of their firms
15 and statements of qualifications with supporting data as it relates to
16 the proposed project.

17 (d) The committee shall examine all applications from interested
18 firms and certify those firms qualified to perform the services for
19 the project under consideration.

20 (e) In evaluating the firms certified under (d) of this section,
21 the committee shall apply the following criteria, along with other
22 criteria established by administrative regulations of the department
23 if any:

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

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

29 (3) past record of performance on contracts with government

1 agencies and private industry with respect to such factors as control
2 of costs, quality of work, and ability to meet schedules;

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

5 (5) the desirability of selecting the most highly qualified
6 firm; however, the volume of work previously awarded to the firm by
7 the state shall also be considered, with the object of effecting an
8 equitable distribution of contracts among qualified firms and of
9 assuring that the interest of the public in having available a sub-
10 stantial number of qualified firms is protected.

11 (f) After making this review and technical evaluation, the
12 committee may hold discussions with qualified firms regarding their
13 capability and methods of approach for furnishing the required services.
14 Professional compensation may not be considered in these discussions.

15 (g) The committee shall prepare a public report for submission
16 to the board, recommending, in order of highest qualification, no less
17 than two firms that are considered most highly qualified to perform
18 the required services. This report shall include a statement of the
19 extent of the evaluation and review and the considerations upon which
20 the recommendations were based. If the committee has found under (d)
21 of this section that less than three firms are qualified to perform
22 the services, it shall include in its report the reasons for qualify-
23 ing less than three. The report shall be made within 45 days after
24 the committee is appointed.

25 Sec. 35.30.060. NEGOTIATIONS. (a) The contracting agency shall
26 conduct negotiations on scope of work and professional compensation
27 initially with the highest ranked firm. If a mutually satisfactory
28 contract cannot be negotiated with that firm, the agency head shall
29 formally terminate the negotiations and notify the firm. Negotiations

1 then shall be initiated with the second-ranked firm and this procedure
2 shall be continued until a mutually satisfactory contract has been
3 negotiated. If negotiations fail with the listed firms, the names of
4 additional firms shall be selected and ranked by the committee and
5 negotiations shall continue in the manner described in this subsection.

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

10 Sec. 35.30.070. SUSPENSION OR REJECTION OF SELECTED FIRM. The
11 chief executive officer of the contracting agency shall make a public
12 announcement of the firm tentatively selected for each proposed project
13 and shall provide prompt notification to the board and to each recom-
14 mended firm. The board may reject or suspend the selection of any
15 firm for any project within 10 days after notification from the chief
16 executive officer of the contracting agency, if the selection committee
17 has failed to adhere to the criteria established under sec. 50(e) of
18 this chapter. Within 20 days after rejecting or suspending any selec-
19 tion, the board shall notify the chief executive officer of the con-
20 tracting agency of the reasons for its action and shall recommend any
21 action it considers necessary to assure conformance with the provisions
22 of this chapter. If the board fails to so notify the chief executive
23 officer of the contracting agency, that officer may proceed with
24 negotiations with the selected firm.

25 Sec. 35.30.075. ANNUAL REPORT. The board shall issue an annual
26 report summarizing the projects processed during the year and the
27 firms selected to design them. The annual report also shall list each
28 grievance received, give the board's recommendation on the grievance,
29 and state what action was taken in response to the board's recommenda-

1 tion.

2 Sec. 35.30.080. PROHIBITION AGAINST CONTINGENT FEES; MISDEMEANOR.

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

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

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

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

28 Sec. 35.30.100. EXEMPTIONS. (a) Contracts let in a project for
29 which the total of architectural and engineering services required

1 will be less than 500 hours are exempt from the requirements of this
2 chapter.

3 (b) Contracts let in a project for which the total of land
4 surveying services required will be less than 50 hours are exempt from
5 the requirements of this chapter.

6 (c) The board may, on a case-by-case basis, exempt emergency
7 projects from the selection process. A brief statement of the emer-
8 gency that caused the exemption of any project shall be included in
9 the board's annual report made under sec. 75 of this chapter.

10 (d) Contracts let in a project in which federal funds will be
11 used are exempt from any requirement of this chapter which conflicts
12 with federal law or regulation.

13 Sec. 35.30.110. DEFINITIONS. In this chapter, unless the context
14 requires otherwise

15 (1) "agency" means all officials, departments, and agencies
16 of the state government, including the University of Alaska and the
17 Alaska State Housing Authority;

18 (2) "architect, engineer, or land surveyor" means an archi-
19 tect, engineer, or land surveyor registered to practice under AS
20 08.48;

21 (3) "board" means the Architects, Engineers, and Land
22 Surveyors Selection Review Board established by sec. 10 of this chapter;

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

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

27 (6) "firm" means an architect, engineer, or land surveyor,
28 or a partnership, association, or corporation comprised primarily of
29 architects or engineers or land surveyors registered to practice under

1 AS 08.48;

2 (7) "professional service" means architectural, engineering,
3 or land surveying service;

4 (8) "project" means a construction project using profes-
5 sional services associated with design and construction, alteration,
6 or repair of real property, as well as services incidental to it,
7 including but not limited to studies, investigations, surveys, evalua-
8 tions, land appraisals, consultations, planning, programming, conceptual
9 designs, plans and specifications, cost estimates, inspections, shop
10 drawing reviews, sample recommendations, preparation of operating and
11 maintenance manuals, and other related services;

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

14 * Sec. 2. AS 43.40.010(g) is amended to read:

15 (g) The proceeds of the revenue from the tax on all motor fuels,
16 except as provided in (e), (f), and (j) of this section, shall be
17 deposited in a special highway fuel tax account in the state general
18 fund. The legislature may appropriate funds from it for expenditure
19 by the Department of Highways [PUBLIC WORKS] directly or as matched
20 with available federal-aid highway money for maintenance of highways,
21 construction of highway projects and ferries included in the program
22 provided for in AS 19.10.150, including approaches, appurtenances and
23 related facilities and acquisition of rights-of-way or easements, and
24 other highway costs including surveys, administration, and related
25 matters. [ALL DEPARTMENTS OF THE STATE GOVERNMENT AUTHORIZED TO SPEND
26 FUNDS COLLECTED FROM TAXES IMPOSED BY SECS. 10 - 100 OF THIS CHAPTER
27 SHALL PERFORM, WHEN FEASIBLE, ALL CONSTRUCTION OR RECONSTRUCTION
28 PROJECTS BY CONTRACT AFTER THE PROJECTS HAVE BEEN ADVERTISED FOR
29 COMPETITIVE BIDS, EXCEPT THAT, WHEN FEASIBLE, ARRANGEMENTS SHALL BE

1 MADE WITH POLITICAL SUBDIVISIONS TO CARRY OUT THE CONSTRUCTION OR
2 RECONSTRUCTION PROJECTS. IF IT IS NOT FEASIBLE FOR THE WORK TO BE
3 PERFORMED BY STATE ENGINEERING FORCES, THE COMMISSIONER OF PUBLIC
4 WORKS MAY CONTRACT ON A PROFESSIONAL BASIS WITH PRIVATE ENGINEERING
5 FIRMS FOR ROAD DESIGN, BRIDGE DESIGN, AND SERVICES IN CONNECTION WITH
6 SURVEYS. IF MORE THAN ONE PRIVATE ENGINEERING FIRM IS AVAILABLE FOR
7 THE WORK THE CONTRACTS SHALL BE ENTERED INTO ON A NEGOTIATED BASIS.]

8 * Sec. 3. AS 44.43.030 and AS 44.44.030 are repealed.

9 * Sec. 4. Nothing in this Act affects the validity or effect of any
10 contract in existence on January 1, 1978.

11 * Sec. 5. AS 35.30.030(2), (3), and (4), 35.30.040, and 35.30.050 -
12 35.30.070, enacted in sec. 1 of this Act, and secs. 2 and 3 of this Act,
13 take effect January 1, 1978. All other provisions of this Act take effect
14 immediately in accordance with AS 01.10.070(c).