

Original sponsor: Rules Committee by request  
of the Governor

Offered: 4/21/77  
Referred: Rules

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 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 an  
8 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 Transportation and Public Facilities an Architects, Engi-  
15 neers, and Land Surveyors 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 the  
22 governor from names submitted by the Alaska Society of Professional  
23 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 a  
26 land surveyor; the public members must possess, due to their education,  
27 experience, or vocation, an understanding of and sensitivity to project  
28 design or construction;

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

1 governor from names submitted by the Alaska Society of Professional Land  
2 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 staggering  
6 of terms within each classification. If a vacancy occurs on the board,  
7 the governor shall appoint a person qualified under the applicable  
8 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 be  
11 barred, because of his board membership, from contracting to serve as an  
12 architect, engineer, or land surveyor for a project or from otherwise  
13 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 he  
16 is associated or in which he has a financial interest.

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

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

27 (1) adopt regulations under the Administrative Procedure Act  
28 (AS 44.62) that it finds appropriate to supplement the procedure estab-  
29 lished by this chapter for architect, engineer, and land surveyor

1 selection;

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (3) past record of performance on contracts with government  
29 agencies and private industry with respect to such factors as control of

1 costs, quality of work, and ability to meet schedules;

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Sec. 35.30.090. OFFICE, STAFF, AND RECORDS. The Department of  
20 Transportation and Public Facilities shall provide the board a suitable  
21 place to hold meetings and keep records. The commissioner of transpor-  
22 tation and public facilities shall designate an employee of the depart-  
23 ment to serve as executive secretary to the board. He shall devote the  
24 time necessary to promote the expeditious conduct of the board's duties  
25 and responsibilities.

26 Sec. 35.30.100. EXEMPTIONS. (a) Contracts let in a project for  
27 which the total of architectural and engineering services required will  
28 be less than 250 man-hours are exempt from the requirements of this  
29 chapter.

1 (b) Contracts let in a project for which the total of land sur-  
2 veying services required will be less than 100 man-hours are exempt from  
3 the requirements of this chapter.

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

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

11 Sec. 35.30.110. DEFINITIONS. In this chapter, unless the context  
12 requires otherwise

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

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

18 (3) "board" means the Architects, Engineers, and Land Sur-  
19 veyors Selection Review Board established by sec. 10 of this chapter;

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

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

24 (6) "firm" means an architect, engineer, or land surveyor, or  
25 a partnership, association, or corporation comprised primarily of  
26 architects or engineers or land surveyors registered to practice under  
27 AS 08.48;

28 (7) "professional service" means architectural, engineering,  
29 or land surveying service;

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

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

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

12 (g) The proceeds of the revenue from the tax on all motor fuels,  
13 except as provided in (e), (f), and (j) of this section, shall be  
14 deposited in a special highway fuel tax account in the state general  
15 fund. The legislature may appropriate funds from it for expenditure by  
16 the Department of Transportation and Public Facilities [PUBLIC WORKS]  
17 directly or as matched with available federal-aid highway money for  
18 maintenance of highways, construction of highway projects and ferries  
19 included in the program provided for in AS 19.10.150, including ap-  
20 proaches, appurtenances and related facilities and acquisition of  
21 rights-of-way or easements, and other highway costs including surveys,  
22 administration, and related matters. [ALL DEPARTMENTS OF THE STATE  
23 GOVERNMENT AUTHORIZED TO SPEND FUNDS COLLECTED FROM TAXES IMPOSED BY  
24 SECS. 10 - 100 OF THIS CHAPTER SHALL PERFORM, WHEN FEASIBLE, ALL CON-  
25 STRUCTION OR RECONSTRUCTION PROJECTS BY CONTRACT AFTER THE PROJECTS HAVE  
26 BEEN ADVERTISED FOR COMPETITIVE BIDS, EXCEPT THAT, WHEN FEASIBLE,  
27 ARRANGEMENTS SHALL BE MADE WITH POLITICAL SUBDIVISIONS TO CARRY OUT THE  
28 CONSTRUCTION OR RECONSTRUCTION PROJECTS. IF IT IS NOT FEASIBLE FOR THE  
29 WORK TO BE PERFORMED BY STATE ENGINEERING FORCES, THE COMMISSIONER OF

1 PUBLIC WORKS MAY CONTRACT ON A PROFESSIONAL BASIS WITH PRIVATE ENGI-  
2 NEERING FIRMS FOR ROAD DESIGN, BRIDGE DESIGN, AND SERVICES IN CONNECTION  
3 WITH SURVEYS. IF MORE THAN ONE PRIVATE ENGINEERING FIRM IS AVAILABLE  
4 FOR THE WORK THE CONTRACTS SHALL BE ENTERED INTO ON A NEGOTIATED BASIS.]

5 \* Sec. 3. AS 44.43.030 and AS 44.44.030 are repealed.

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

8 \* Sec. 5. AS 35.30.030(2), (3), and (4), 35.30.040, and 35.30.050 -  
9 35.30.070, enacted in sec. 1 of this Act, and secs. 2 and 3 of this Act, take  
10 effect January 1, 1978. All other provisions of this Act take effect July 1,  
11 1977.