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Original sponsor: State Affairs Committee
by request

Offered:
Referred: Judiciary

IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

CS FOR CS FOR HOUSE BILL NO. 546 (State Affairs)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to state contracts for professional services and establishing a penalty for violation of provisions of law relating to professional service contracts; and providing for an effective date."

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

* Section 1. AS 19.10.170(a) is amended to read:

(a) Except as provided in AS 36.98 and AS 44.33.300, it shall be the general policy of the department to require the construction of all highways under bid contract. However, subject to the provisions of (b) of this section, when the estimated cost of a construction project is less than \$100,000 or when it appears to be in the best interests of the state, the department may perform the work notwithstanding any other provisions of law.

* Sec. 2. AS 35.15.010(a) is amended to read:

(a) Except as provided in AS 36.98 and AS 44.33.300, it shall be the general policy of the department to require the construction of all public works under bid contract. However, when the estimated cost of a construction project is less than \$100,000, or when it appears to be in the best interests of the state, the department may perform the work,

notwithstanding any other provisions of law. A complete record shall be kept by the commissioner or his designee of all transactions entered into under this section including names of employees involved in the transactions.

* Sec. 3. AS 36 is amended by adding a new chapter to read:

CHAPTER 98. PROFESSIONAL SERVICES CONTRACTS.

Sec. 36.98.010. APPLICATION. (a) Except as provided in AS 36.96.080, this chapter applies to contracts for professional services provided to a state agency unless

- (1) the total amount of a contract does not exceed \$5,000;
- (2) the contract is an employment contract for services to be performed under direct supervision regardless of the existence of an employer-employee relationship and a written justification signed by the person responsible for awarding the contract is filed with the commissioner;
- (3) the contract is for construction, repair, or maintenance of a public work and the total amount of a contract does not exceed \$50,000;
- (4) the contract is awarded based on competitive bids obtained under the procedure provided in AS 37.05.230.

(b) The commissioner may by regulation adjust the dollar limitations set out in (a) of this section to reflect changes in the consumer price index for Anchorage since July 1, 1982. However, the commissioner may not make this adjustment more frequently than every other year.

Sec. 36.98.020. PROFESSIONAL SERVICES CONTRACTORS REGISTER. The commissioner shall establish and maintain a register of all persons or firms interested in providing professional services to the state.

Sec. 36.98.030. SOLICITATION OF SERVICES. (a) When a state agency proposes to enter into a contract for professional services estimated to

exceed \$5,000, the agency may give public notice by publication in a newspaper calculated to reach prospective contractors. The department shall also send notices by mail to all active prospective contractors on the Professional Services Contractors Register.

The notice shall include

(1) a general description of the proposed project for which the agency is seeking professional services; and

(2) the procedure by which a person or firm interested in the professional services contract may make its proposal to the agency for consideration for the contract.

(b) The notice of requests for proposals must be extended to a sufficient number of prospective providers of the required services to assure that public interest in competition is adequately served. Proposals from at least six persons or firms shall be solicited for contracts estimated to exceed \$5,000.

(c) The provisions of this section do not apply if

(1) the contracting agency demonstrates that there is a single source of the expertise or knowledge required or that one person or firm can clearly perform the required tasks more satisfactorily because of the person's or firm's prior work; however, this exemption applies only when the head of the state agency has submitted a written request to the commissioner that details the reasons for the exemption and the commissioner or his designee has authorized the state agency to enter contract negotiations with the single source;

(2) the commissioner determines that public necessity will not permit delay incident to the procedures otherwise required by this chapter; or

(3) the service is to be provided by another state agency, a federal agency, the University of Alaska, or a political subdivision of the state.

(e) A request for proposals must contain a description of the work to be performed under the contract and the terms under which the work is to be performed. A request for proposals must contain that information necessary for a prospective contractor to submit a response or contain references to any information that cannot reasonably be included with the request. The request for proposals must provide a description of the factors that will be considered by the state agency when it evaluates the proposals received.

(f) Nothing in this section limits the authority of an agency to use additional means that it may consider appropriate to notify prospective contractors that it proposes to enter into a contract for professional services.

Sec. 36.98.040. AWARD OF CONTRACT. (a) After the responses are submitted, the state agency shall evaluate them. The evaluation shall consist of assigning point values to factors considered by the agency in evaluating each proposal. All proposals received must be evaluated using the same factors as those set out in the request for proposal.

(b) The contract must be executed by the contractor and the project director for the contracting agency and be approved by the head of the contracting agency or his designee. If a contract is made by a board or commission, execution of the contract on behalf of the board or commission must be authorized by the board or commission.

(c) A contract subject to this chapter must be submitted to the commissioner for review and approval and, if approved, is effective from

the date of the approval. A state agency must clearly provide in the request for proposal that the state is not obligated to perform under the contract until the approval required by this subsection is granted.

(d) A contract awarded under this chapter shall contain:

- (1) the amount of the contract stated on its first page;
- (2) the date for the work to begin;
- (3) the date by which the work must be completed; and
- (4) a certification under penalty of perjury by the project director for the contracting agency, the head of the contracting agency, or his designee that sufficient funds are available in an appropriation to be encumbered for the amount of the contract.

(e) If the contract contains terms that are not provided in a state standard form contract or if the standard terms are deleted or modified by other terms that are not standard, the contract must be reviewed by the Department of Law and approved as to form. The review and approval required by this subsection must be completed before award of the contract to the successful contractor.

Sec. 36.98.050. CONTRACT ADMINISTRATION. (a) When a state agency has entered into a professional services contract, the agency is responsible for the diligent administration and monitoring of the performance of the provisions of the contract.

(b) When a professional services contract has been completed, the state agency shall evaluate the performance of the contractor under the contract and shall report on and evaluate the use of the final product of the professional services contract. A copy of the report and evaluation prepared under this subsection shall be transmitted to the commissioner

and shall be retained by the commissioner for as long as he is required to maintain copies of completed contracts.

Sec. 36.98.060. FILING. A copy of each contract and the response to the request for proposal in which the contract was awarded must be filed with both the department and the contracting agency and is open for public inspection. The request for proposal and the name and address of each person who submitted a response to it must also accompany the filed copies.

Sec. 36.98.070. CONTRACT PROCEDURES. The commissioner shall, by regulation adopted in accordance with the Administrative Procedure Act (AS 44.62), establish the manner and form by which state professional services contracts shall be prepared and processed, including, but not limited to, a review process for persons aggrieved under this chapter.

Sec. 36.98.080. CONTRACTS FOR ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES. (a) The state shall select persons or firms and award contracts for the performance of architectural, engineering, or land surveying services on the basis of competence and qualification for the type of professional services required. The amount of the contract shall be determined by negotiation for those services at fair and reasonable prices or by the competitive bidding procedures provided under AS 37.05.230. Before negotiations or competitive bidding procedures under this section, the state may not request or consider any statement, bid or estimate of fees or charges for architectural, engineering, or land surveying services for the proposed project or request any other submission or action that would violate AS 08.48 or a regulation adopted under AS 08.48.

(b) In awarding a contract by negotiation for the services of an architect, engineer, or land surveyor registered under AS 08.48, the

state shall negotiate with the three best qualified persons or firms to perform the desired work on the basis of competence and professional qualifications. The state may reject all or part of a proposal.

(c) The provisions of AS 36.98.040(a) do not apply to contracts awarded under this section.

(d) This section does not apply to a contract for the performance of architectural, engineering, or land surveying services if the commissioner determines that public necessity will not permit delay incident to the procedures otherwise required by this section.

Sec. 35.98.090. DEFINITIONS. In this chapter

(1) "commissioner" means the commissioner of administration; however, in the case of contracts issued by the Department of Transportation and Public Facilities, it means the commissioner of transportation and public facilities;

(2) "professional services contract" means a contract for professional, technical, or consultant's services that are predominantly intellectual in character and that

(A) include analysis, evaluation, prediction, planning, or recommendation; and

(B) result in the production of a report or the completion of a task;

(3) "public necessity" means an urgent public need that could not have been anticipated or foreseen; the term also includes emergency situations when work is necessary to protect life or property;

(4) "request for proposals" means a written solicitation for contract proposals by prospective contractors that sets out the nature of the services to be performed or product to be secured with sufficient

information for a qualified prospective contractor to prepare a contract proposal for consideration and evaluation by the state agency;

(5) "state agency" means a department, institution, board, commission, division, or other administrative unit of the executive branch of state government, and the University of Alaska.

* Sec. 4. AS 37.05.230 is amended by adding a new paragraph to read:

(9) requests for and acceptance of bids or other proposals for professional services shall comply with AS 36.98.

* Sec. 5. AS 37.05.240 is amended by adding a new subsection to read:

(b) A contract for professional services shall be awarded in accordance with AS 36.98.

* Sec. 6. This Act applies to requests for bids or proposals for professional services issued after the effective date of this Act.

* Sec. 7. This Act takes effect July 1, 1982.

Original sponsor: State Affairs Committee
by request

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 546 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to state contracts for professional
7 services; and providing for an effective date."

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

9 * Section 1. AS 19.10.170(a) is amended to read:

10 (a) Except as provided in AS 36.98 and AS 44.33.300, it shall be
11 the general policy of the department to require the construction of all
12 highways under bid contract. However, subject to the provisions of (b)
13 of this section, when the estimated cost of a construction project is
14 less than \$100,000 or when it appears to be in the best interests of the
15 state, the department may perform the work notwithstanding any other
16 provisions of law.

17 * Sec. 2. AS 35.15.010(a) is amended to read:

18 (a) Except as provided in AS 36.98 and AS 44.33.300, it shall be
19 the general policy of the department to require the construction of all
20 public works under bid contract. However, when the estimated cost of a
21 construction project is less than \$100,000, or when it appears to be in
22 the best interests of the state, the department may perform the work,
23 notwithstanding any other provisions of law. A complete record shall be
24 kept by the commissioner or his designee of all transactions entered
25 into under this section including names of employees involved in the
26 transactions.

27 * Sec. 3. AS 36 is amended by adding a new chapter to read:

28 CHAPTER 98. PROFESSIONAL SERVICES CONTRACTS.

29 Sec. 36.98.010. APPLICATION. Except as provided in AS 36.98.080,

1 this chapter applies to contracts for professional services provided to
2 a state agency unless

3 (1) the total amount of a contract does not exceed \$ 5000 ;

4 (2) the contract is an employment contract for services to be
5 performed under direct supervision regardless of the existence of an
6 employer-employee relationship and a written justification signed by the
7 person responsible for awarding the contract is filed with the commis-
8 sioner;

9 (3) the contract is for construction, repair, or maintenance
10 of a public work and the total amount of a contract does not exceed
11 \$;

12 (4) the contract is awarded based on competitive bids ob-
13 tained under the procedure provided in AS 37.05.230.

14 Sec. 36.98.020. PROFESSIONAL SERVICES CONTRACTORS REGISTER. (a)
15 A person or firm who desires to provide professional services to a state
16 agency shall submit to the commissioner a statement of qualifications
17 and performance data, and any other information that the commissioner,
18 by regulation, may require.

19 (b) The commissioner may at any time require the person or firm to
20 revise the statement of qualifications and performance data or any other
21 information submitted by the person or firm if the commissioner believes
22 that the credentials or record of experience of the person have materi-
23 ally changed since the last filing by the person or firm.

24 Sec. 36.98.030. SOLICITATION OF SERVICES. (a) When a state
25 agency proposes to enter into a contract for professional services, the
26 agency shall give public notice soliciting proposals for the profes-
27 sional services contract by publication at least three times in one or
28 more newspapers in general circulation in the state. The first notice
29 shall be published not less than 30 days before the date on which the

1 agency expects to enter into the contract and each subsequent notice
2 shall be published at intervals of no more than three days thereafter.

3 The notice shall include

4 (1) a general description of the proposed project for which
5 the agency is seeking professional services; and

6 (2) the procedure by which a person or firm interested in the
7 professional services contract may make its proposal to the agency for
8 consideration for the contract.

9 (b) In addition to complying with the publication requirements of
10 (a) of this section, when a state agency proposes to enter into a con-
11 tract for professional services it shall

12 (1) review the register of professional services contractors
13 maintained by the commissioner under AS 36.98.020; and

14 (2) provide a request for proposals for the proposed profes-
15 sional services contract to each prospective contractor who, after
16 review of the register of professional services contractors under (1) of
17 this subsection, the agency finds is qualified for consideration for the
18 contract.

19 (c) A request for proposals must be extended to a sufficient
20 number of prospective providers of the required services to assure that
21 public interest in competition is adequately served. Proposals from at
22 least six persons or firms shall be solicited for contracts equal to or
23 greater than \$100,000 if the expertise required is available. Proposals
24 from at least three persons or firms shall be solicited for contracts of
25 less than \$100,000 if the expertise required is available. If the exper-
26 tise required is not available to enable an agency to solicit the number
27 of proposals otherwise required under this subsection, the agency shall

28 (1) solicit proposals from each person or firm listed on the
29 professional services contractors register maintained under AS 36.98.020

1 who appears to possess the required expertise;

2 (2) publish notice soliciting proposals as required under (a)
3 of this section; and

4 (3) solicit proposals from each other person or firm possess-
5 ing the required expertise of which the agency is aware.

6 (d) The provisions of this section do not apply if

7 (1) the contracting agency demonstrates that there is a
8 ^{Single-source} ~~single~~ source of the expertise or knowledge required or that one person
9 or firm can clearly perform the required tasks more satisfactorily
10 because of the person's [or firm's prior work] and the head of the state
11 agency submits a written request to the commissioner of administration
12 detailing the reasons for an exemption and the commissioner of adminis-
13 tration or his designee authorizes the state agency to enter contract
14 negotiations with the single source; ~~however, if a single source~~
15 ~~contract is to be with the Department of Administration, the commis-~~
16 ~~sioner of administration shall submit the detailed written request to~~
17 ~~_____ for authorization;]~~

18 (2) the commissioner determines that public necessity will
19 not permit delay incident to the procedures otherwise required by this
20 chapter; or

21 (3) the service is to be provided by another state agency, a
22 federal agency, the University of Alaska, or a political subdivision of
23 the state.

24 (e) A request for proposals must contain a description of the work
25 to be performed under the contract and the terms under which the work is
26 to be performed. A request for proposals must contain that information
27 necessary for a prospective contractor to submit a response or contain
28 references to any information that cannot reasonably be included with
29 the request. The request for proposals must provide a description of

1 the factors that will be considered by the state agency when it evaluates
2 the proposals received.

3 (f) Nothing in this section limits the authority of an agency to
4 use additional means that it may consider appropriate to notify prospec-
5 tive contractors that it proposes to enter into a contract for profes-
6 sional services.

7 Sec. 36.98.040. AWARD OF CONTRACT. (a) After the responses are
8 submitted, the state agency shall evaluate them. The evaluation shall
9 consist of assigning point values to factors considered by the agency in
10 evaluating each proposal. All proposals received must be evaluated
11 using the same factors as those set out in the request for proposal.

12 (b) The contract must be executed by the contractor and the pro-
13 ject director for the contracting agency and be approved by the head of
14 the contracting agency or his designee. If a contract is made by a
15 board or commission, execution of the contract on behalf of the board or
16 commission must be authorized by the board or commission.

17 (c) A contract subject to this chapter must be submitted to the
18 commissioner for review and approval and, if approved, is effective from
19 the date of the approval. A state agency must clearly provide in the
20 request for proposal that the state is not obligated to perform under
21 the contract until the approval required by this subsection is granted.

22 (d) A contract awarded under this chapter shall contain:
23 (1) the amount of the contract stated on its first page;
24 (2) the date for the work to begin;
25 (3) the date by which the work must be completed; and
26 (4) a certification under penalty of perjury by the project
27 director for the contracting agency, the head of the contracting agency,
28 or his designee that sufficient funds are available in an appropriation
29 to be encumbered for the amount of the contract.

1 (e) If the contract contains terms that are not provided in a
2 state standard form contract or if the standard terms are deleted or
3 modified by other terms that are not standard, the contract must be
4 reviewed by the Department of Law and approved as to form. The review
5 and approval required by this subsection must be completed before award
6 of the contract to the successful contractor.

7 Sec. 36.98.050. CONTRACT ADMINISTRATION. (a) When a state agency
8 has entered into a professional services contract, the agency is respon-
9 sible for the diligent administration and monitoring of the performance
10 of the provisions of the contract.

11 (b) When a professional services contract has been completed, the
12 state agency shall evaluate the performance of the contractor under the
13 contract and shall report on and evaluate the use of the final product
14 of the professional services contract. A copy of the report and evalua-
15 tion prepared under this subsection shall be transmitted to the commis-
16 sioner and shall be retained by the commissioner for as long as he is
17 required to maintain copies of completed contracts.

18 Sec. 36.98.060. FILING. A copy of each contract and the response
19 to the request for proposal upon which the contract was awarded must be
20 filed with both the Department of Administration and the contracting
21 agency and is open for public inspection. The request for proposal and
22 the name and address of each person who submitted a response to it must
23 also accompany the filed copies.

24 *Needs Review Process Change* Sec. 36.98.070. CONTRACT PROCEDURES. The commissioner shall, by
25 regulation adopted in accordance with the Administrative Procedure Act
26 (AS 44.62), establish the manner and form by which state professional
27 services contracts shall be prepared and processed, including, but not
28 limited to, a review process for persons aggrieved under this chapter.

29 Sec. 36.98.080. CONTRACTS FOR ARCHITECTURAL, ENGINEERING, AND LAND

1 SURVEYING SERVICES. (a) A state agency or local government shall
2 select persons or firms for the performance of architectural, engineer-
3 ing, or land ^{Registered} surveying services and award contracts for those services
4 on the basis of competence and qualification for the type of professional
5 services required.

6 (b) The state agency or local government shall attempt to nego-
7 tiate a contract for the services with the best qualified person or firm
8 at a price that is fair and reasonable.

9 (c) Before selection of and negotiation with the best qualified
10 person or firm, a state agency or local government may not request or
11 consider a statement, bid, or estimate of fees, hourly charges, estimated
12 hours of professional time, or other estimate of charges for archi-
13 tectural, engineering, or land surveying services for the proposed
14 project or request any other submission or action that would constitute
15 a violation of AS 08.48 or a regulation adopted under AS 08.48. A
16 request for proposals or other solicitation for services of an architect,
17 engineer, or land surveyor issued by a state agency or local government
18 may not contain a requirement or request for a statement, bid, estimate,
19 or other information concerning fees or charges prohibited under this
20 section.

21 (d) This section does not require a particular procedure for the
22 selection of architects, engineers, or land surveyors or for the award
23 of contracts except as provided in (b) and (c) of this section. A state
24 agency or local government may rank proposals or offers received.

25 (e) The provisions of AS 36.98.040(a) do not apply to contracts
26 awarded under this section.

27 (f) This section does not apply to a contract for the performance
28 of architectural, engineering, or land surveying services if the commis-
29 sioner determines that public necessity will not permit delay incident

1 to the procedures otherwise required by this section.

2 Sec. 36.98.090. DEFINITIONS. In this chapter

3 (1) "architectural, engineering, or land surveying services"
4 means professional services involving the practice of architecture,
5 engineering, or land surveying as defined under AS 08.48.341;

6 (2) "commissioner" means the commissioner of administration,
7 however, in the case of contracts issued by the Department of Transpor-
8 tation and Public Facilities, it means the commissioner of transporta-
9 tion and public facilities;

10 (3) "local government" means a department, institution,
11 board, commission, division, or other unit of a borough, city, unified
12 municipality, or school district;

13 (4) "professional services contract" means a contract for
14 professional, technical, or consultant's services that are predominantly
15 intellectual in character and that

16 (A) include analysis, evaluation, prediction, planning,
17 or recommendation; and

18 (B) result in the production of a report or the comple-
19 tion of a task;

20 (5) "public necessity" means an urgent public need that could
21 not have been anticipated or foreseen; the term also includes emergency
22 situations when work is necessary to protect life or property;

23 (6) "request for proposals" means a written solicitation for
24 contract proposals by prospective contractors that sets out the nature
25 of the services to be performed or product to be secured with sufficient
26 information for a qualified prospective contractor to prepare a contract
27 proposal for consideration and evaluation by the state agency;

28 (7) "state agency" means a department, institution, board,
29 commission, division, or other administrative unit of the executive or

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1 judicial branch of state government, and the University of Alaska.

2 * Sec. 4. AS 37.05.230 is amended by adding a new paragraph to read:

3 (9) requests for and acceptance of bids or other proposals
4 for professional services shall comply with AS 36.98.

5 * Sec. 5. AS 37.05.240 is amended by adding a new subsection to read:

6 (b) A contract for professional services shall be awarded in
7 accordance with AS 36.98.

8 * Sec. 6. This Act applies to requests for bids or proposals for profes-
9 sional services issued after the effective date of this Act.

10 * Sec. 7. This Act takes effect July 1, 1982.

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Original sponsor: State Affairs Committee
by request

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 546 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TWELFTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to state contracts for professional
7 services and establishing a ^{Non-punalty law} penalty for violation of
8 provisions of law relating to professional service
9 contracts; and providing for an effective date."

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

11 * Section 1. AS 19.10.170(a) is amended to read:

12 (a) Except as provided in AS 36.98 and AS 44.33.300, it shall be
13 the general policy of the department to require the construction of all
14 highways under bid contract. However, subject to the provisions of (b)
15 of this section, when the estimated cost of a construction project is
16 less than ~~\$100,000~~ or when it appears to be in the best interests of the
17 state, the department may perform the work notwithstanding any other
18 provisions of law.

19 * Sec. 2. AS 35.15.010(a) is amended to read:

20 (a) Except as provided in AS 36.98 and AS 44.33.300, it shall be
21 the general policy of the department to require the construction of all
22 public works under bid contract. However, when the estimated cost of a
23 construction project is less than \$100,000, or when it appears to be in
24 the best interests of the state, the department may perform the work,
25 notwithstanding any other provisions of law. A complete record shall be
26 kept by the commissioner or his designee of all transactions entered
27 into under this section including names of employees involved in the
28 transactions.

29 * Sec. 3. AS 36 is amended by adding a new chapter to read:

- 1. Residency Requirements
- 2. Minority Business
- 3. How many jobs with state.
- 4. Price as a factor.

1 CHAPTER 98. PROFESSIONAL SERVICES CONTRACTS.

2 Sec. 36.98.010. APPLICATION. (a) Except as provided in AS 36.98.-
3 080, this chapter applies to contracts for professional services provided
4 to a state agency unless

5 (1) the total amount of a contract does not exceed \$25,000;

6 (2) the contract is an employment contract for services to be
7 performed under direct supervision regardless of the existence of an
8 employer-employee relationship and a written justification signed by the
9 person responsible for awarding the contract is filed with the commis-
10 sioner;

11 (3) the contract is for construction, repair, or maintenance
12 of a public work and the total amount of a contract does not exceed
13 \$50,000;

14 (4) the contract is awarded based on competitive bids ob-
15 tained under the procedure provided in AS 37.05.230.

16 Legislation? (b) The commissioner may by regulation adjust the dollar limita-
17 Function tions set out in (a) of this section to reflect changes in the consumer
18 price index for Anchorage since July 1, 1982. However, the commissioner
19 may not make this adjustment more frequently than every other year.

20 Sec. 36.98.020. PROFESSIONAL SERVICES CONTRACTORS REGISTER. (a)
21 A person or firm who desires to provide professional services to a state
22 (may) -> AS's office agency shall submit to the commissioner a statement of qualifications
23 and performance data, and any other information that the commissioner,
24 by regulation, may require.

25 (b) The commissioner may at any time require the person or firm to
26 revise the statement of qualifications and performance data or any other
27 information submitted by the person or firm if the commissioner believes
28 that the credentials or record of experience of the person have materi-
29 ally changed since the last filing by the person or firm.

1 Sec. 36.98.030. SOLICITATION OF SERVICES. (a) When a state
2 agency proposes to enter into a contract for professional services, the
3 agency shall give public notice soliciting proposals for the profes-
4 sional services contract by publication at least three times in one or
5 more newspapers in general circulation in the state. The first notice
6 shall be published not less than 30 days before the date on which the
7 agency expects to enter into the contract and each subsequent notice
8 shall be published at intervals of no more than three days thereafter.
9 The notice shall include

10 (1) a general description of the proposed project for which
11 the agency is seeking professional services; and

12 (2) the procedure by which a person or firm interested in the
13 professional services contract may make its proposal to the agency for
14 consideration for the contract.

15 (b) In addition to complying with the publication requirements of
16 (a) of this section, when a state agency proposes to enter into a con-
17 tract for professional services it shall

18 (1) review the register of professional services contractors
19 maintained by the commissioner under AS 36.98.020; and

20 (2) provide a request for proposals for the proposed profes-
21 sional services contract to each prospective contractor who, after
22 review of the register of professional services contractors under (1) of
23 this subsection, the agency finds is qualified for consideration for the
24 contract.

25 (c) A request for proposals must be extended to a sufficient
26 number of prospective providers of the required services to assure that
27 public interest in competition is adequately served. Proposals from at
28 least six persons or firms shall be solicited for contracts equal to or
29 greater than \$100,000 if the expertise required is available. Proposals

1 from at least three persons or firms shall be solicited for contracts of
2 less than \$100,000 if the expertise required is available. If the exper-
3 tise required is not available to enable an agency to solicit the number
4 of proposals otherwise required under this subsection, the agency shall

5 (1) solicit proposals from each person or firm listed on the
6 professional services contractors register maintained under AS 36.98.020
7 who appears to possess the required expertise;

8 (2) publish notice soliciting proposals as required under (a)
9 of this section; and

10 (3) solicit proposals from each other person or firm possess-
11 ing the required expertise of which the agency is aware.

12 (d) The provisions of this section do not apply if

13 *Single source or sole source* (1) the contracting agency demonstrates that there is a
14 single source of the expertise or knowledge ^{required} *Frank Flaw* or that one person
15 or firm can clearly perform the required tasks more satisfactorily
16 because of the person's ^{Frank Flaw} ~~or firm's prior work;~~ however, this exemption
17 applies only when the head of the state agency has submitted a written
18 request to the commissioner that details the reasons for the exemption
19 and the commissioner or his designee has authorized the state agency to
20 enter contract negotiations with the single source;

21 (2) the commissioner determines that public necessity will
22 not permit delay incident to the procedures otherwise required by this
23 chapter; or

24 (3) the service is to be provided by another state agency, a
25 federal agency, the University of Alaska, or a political subdivision of
26 the state.

27 (e) A request for proposals must contain a description of the work
28 to be performed under the contract and the terms under which the work is
29 to be performed. A request for proposals must contain that information

1 necessary for a prospective contractor to submit a response or contain
2 references to any information that cannot reasonably be included with
3 the request. The request for proposals must provide a description of
4 the factors that will be considered by the state agency when it evaluates
5 the proposals received.

6 (f) Nothing in this section limits the authority of an agency to
7 use additional means that it may consider appropriate to notify prospec-
8 tive contractors that it proposes to enter into a contract for profes-
9 sional services.

10 Sec. 36.98.040. AWARD OF CONTRACT. (a) After the responses are
11 submitted, the state agency shall evaluate them. The evaluation shall
12 consist of assigning point values to factors considered by the agency in
13 evaluating each proposal. All proposals received must be evaluated
14 using the same factors as those set out in the request for proposal.

15 (b) The contract must be executed by the contractor and the pro-
16 ject director for the contracting agency and be approved by the head of
17 the contracting agency, or his designee. If a contract is made by a
18 board or commission, execution of the contract on behalf of the board or
19 commission must be authorized by the board or commission.

20 (c) A contract subject to this chapter must be submitted to the
21 commissioner for review and approval and, if approved, is effective from
22 the date of the approval. A state agency must clearly provide in the
23 request for proposal that the state is not obligated to perform under
24 the contract until the approval required by this subsection is granted.

25 (d) A contract awarded under this chapter shall contain:

- 26 (1) the amount of the contract stated on its first page;
27 (2) the date for the work to begin;
28 (3) the date by which the work must be completed; and
29 (4) a certification under penalty of perjury by the project

1 director for the contracting agency, the head of the contracting agency,
2 or his designee that sufficient funds are available in an appropriation
3 to be encumbered for the amount of the contract.

4 (e) If the contract contains terms that are not provided in a
5 state standard form contract or if the standard terms are deleted or
6 modified by other terms that are not standard, the contract must be
7 reviewed by the Department of Law and approved as to form. The review
8 and approval required by this subsection must be completed before award
9 of the contract to the successful contractor.

10 Sec. 36.98.050. CONTRACT ADMINISTRATION. (a) When a state agency
11 has entered into a professional services contract, the agency is respon-
12 sible for the diligent administration and monitoring of the performance
13 of the provisions of the contract.

14 (b) When a professional services contract has been completed, the
15 state agency shall evaluate the performance of the contractor under the
16 contract and shall report on and evaluate the use of the final product
17 of the professional services contract. A copy of the report and evalua-
18 tion prepared under this subsection shall be transmitted to the commis-
19 sioner and shall be retained by the commissioner for as long as he is
20 required to maintain copies of completed contracts.

21 Sec. 36.98.060. FILING. A copy of each contract and the response
22 to the request for proposal upon which the contract was awarded must be
23 filed with both the Department of Administration and the contracting
24 agency and is open for public inspection. The request for proposal and
25 the name and address of each person who submitted a response to it must
26 also accompany the filed copies.

27 *Needs reviews process Jack Chenswell*
28 Sec. 36.98.070. CONTRACT PROCEDURES. The commissioner shall, by
29 regulation adopted in accordance with the Administrative Procedure Act
(AS 44.62), establish the manner and form by which state professional

CPA
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Lawyer's

1 services contracts shall be prepared and processed, including, but not
2 limited to, a review process for persons aggrieved under this chapter.

Concern →

3 Sec. 36.98.080. CONTRACTS FOR ARCHITECTURAL, ENGINEERING, AND LAND
4 SURVEYING SERVICES. (a) A state agency shall select persons or firms

5 for the performanc of architectural, engineering, or land surveying

6 services and award contracts for those services only on the basis of

7 demonstrated competence and qualification for the type of professional

8 services required.

9 (b) The state agency shall attempt to negotiate a contract for the
10 services with the best qualified person or firm at a price that is fair
11 and reasonable.

12 (c) Before selection of and negotiation with the best qualified
13 person or firm, a state agency may not request or consider a statement,
14 bid, or estimate of fees, hourly charges, estimated hours of professional
15 time, or other estimate of charges for architectural, engineering, or
16 land surveying services for the proposed project or request any other
17 submission or action that would constitute a violation of AS 08.48 or a
18 regulation adopted under AS 08.48. A request for proposals or other
19 solicitation for services of an architect, engineer, or land surveyor
20 issued by a state agency may not contain a requirement or request for a
21 statement, bid, estimate, or other information concerning fees or charges
22 prohibited under this section.

23 (d) This section does not require a particular procedure for the
24 selection of architects, engineers, or land surveyors or for the award
25 of contracts except as provided in (b) and (c) of this section. A state
26 agency may rank proposals or offers received.

27 (e) The provisions of AS 36.98.040(a) do not apply to contracts
28 awarded under this section.

29 (f) This section does not apply to a contract for the performance

1 of architectural, engineering, or land surveying services if the commis-
2 sioner determines that public necessity will not permit delay incident
3 to the procedures otherwise required by this section.

4 Sec. 36.98.090. DEFINITIONS. In this chapter

5 (1) "architectural, engineering, or land surveying services"
6 means professional services involving the practice of architecture,
7 engineering, or land surveying as defined under AS 08.48.341;

8 (2) "commissioner" means the commissioner of administration;
9 however, in the case of contracts issued by the Department of Transpor-
10 tation and Public Facilities, it means the commissioner of transporta-
11 tion and public facilities;

12 (3) "professional services contract" means a contract for
13 professional, technical, or consultant's services that are predominantly
14 intellectual in character and that

15 (A) include analysis, evaluation, prediction, planning,
16 or recommendation; and

17 (B) result in the production of a report or the comple-
18 tion of a task;

19 (4) "public necessity" means an urgent public need that could
20 not have been anticipated or foreseen; the term also includes emergency
21 situations when work is necessary to protect life or property;

22 (5) "request for proposals" means a written solicitation for
23 contract proposals by prospective contractors that sets out the nature
24 of the services to be performed or product to be secured with sufficient
25 information for a qualified prospective contractor to prepare a contract
26 proposal for consideration and evaluation by the state agency;

27 (6) "state agency" means a department, institution, board,
28 commission, division, or other administrative unit of the state, or of a
29 borough, city, unified municipality or school district, and the Univer-

*executive branch
left out*

4 JA. REAA

*copy
Dady*

1 sity of Alaska.

2 * Sec. 4. AS 37.05.230 is amended by adding a new paragraph to read:

3 (9) requests for and acceptance of bids or other proposals
4 for professional services shall comply with AS 36.98.

5 * Sec. 5. AS 37.05.240 is amended by adding a new subsection to read:

6 (b) A contract for professional services shall be awarded in
7 accordance with AS 36.98.

8 * Sec. 6. This Act applies to requests for bids or proposals for profes-
9 sional services issued after the effective date of this Act.

10 * Sec. 7. This Act takes effect July 1, 1982.



THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT (907) 586-3300

April 2, 1982

House Judiciary Committee
Capitol Building, Room 122
Juneau, Alaska 99811

FILE: House Bill 546

Ladies and Gentlemen:

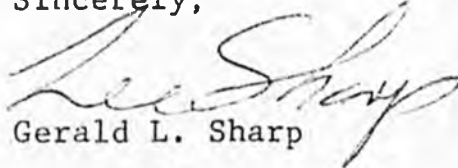
I have just reviewed the 4-1-82 proposed House Judiciary Committee Substitute for CSHB 546. One of the proposed changes is to include local government units under the new restrictive procedures for awarding certain professional services contracts. These procedures appear on page 7 of the proposed judiciary substitute. Under the procedure outlined, contracts for architectural, engineering, and land surveying services would be awarded solely on the basis of competence and the qualifications of the person rendering the service. The cost of the services may not be considered. This will put the State and municipalities at the mercy of the above group of professionals. Having selected the best qualified professional, the municipality is in little position to negotiate over fees. The professional retained may name his or her price, as price is not a consideration in awarding the contract. It appears that the public interest in spending the fewest dollars necessary to accomplish a public project has been totally overlooked in this procedure. In fact, the procedure will undoubtedly result in insuring that, on the average, a higher price than necessary will be paid. Contracts under this procedure will be awarded to those with the best qualifications and greatest experience. More often than not, people with the greatest experience and qualifications command a higher price than others who are qualified to do the work but lack the years of experience or extensive background of others. If six architects or engineers request to be considered for a project, and all are qualified both by experience, education, and licensing to accomplish a project, why must the municipality award the contract to the one who is best qualified who probably charges the highest price? Having found six professionals who can accomplish the project, why may a municipality not then sit down and determine which of the six can accomplish the project for the least cost to the public? Why may we not negotiate with the professional who has submitted the proposal containing the best solution for the project? The procedure proposed

House Judiciary Committee
April 2, 1982
Page Two

appears to be one which works more to the benefit of architects and engineers than it does to the benefit of the public.

While there seems to be a very legitimate question as to why the State should adopt such a policy for itself, it is certainly one which we must oppose if it is to be applied to municipalities. We urge you to delete all references to local government in the proposed Judiciary Committee substitute.

Sincerely,



Gerald L. Sharp

GLS:phl

cc: Ginny Chitwood
Executive Director, AML
Mayor W. D. Overstreet
Assemblyman Wakefield
Assemblyman Aase

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSHB 546

Title "An Act relating to state contracts for professional services and

Requested by Repr. Barnes, House Judiciary Date March 21, 1982

establishing penalties....and providing for an effective date."

II. FISCAL DETAIL

Agency Affected Department of Law

Program Category Affected General Government

BRU, Program, Or Subprogram(s) Affected Legal Services

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This clarifies and improves the state's procurement practices for professional services. The current bill (offered 3/5/82) provides departments with the flexibility to meet exigent circumstances while, at the same time, assuring that the public interest in competition is properly served. Although some slight expense will be incurred in complying with the bill, no additional resources will be required to carryout its provisions.

Richard I. Pegues

IV. DATE March 24, 1982

PREPARED BY Richard I. Pegues, Director, Admin. Svcs.

AGENCY Department of Law

Original: Legislative Finance

PHONE 465-3672

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS HB 546
 Title An Act Relating to State Contracts for Professional Services
 Requested by House State Affairs Date 3/5/82

II. FISCAL DETAIL

Agency Affected Administration
 Program Category Affected Centralized Administration
 BRU, Program, Or Subprogram(s) Affected Accounting
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	67.5	72.9	78.7	84.9	91.6	98.9
200 TRAVEL	-					
300 CONTRACTUAL	238.4	257.4	277.9	300.1	324.1	350.0
400 COMMODITIES	1.5	1.6	1.7	1.3	1.9	2.0
500 EQUIPMENT	12.6	13.6	14.6	15.7	16.9	18.2
600 LANL & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	320.0	345.5	372.9	402.5	434.5	469.1

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	320.0	345.5	372.9	402.5	434.5	469.1
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	2	2	2	2	2	2
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Contractual

Computer Program Development:

Register Development
 Evaluation System/Form/Tracking System
 Application form
 On-line Capabilities 160.0
 Printing of Labels 4.0
 Printing of Applications 1.0

IV. DATE March 26, 1982 PREPARED BY George Elgee *RE Smith*
 AGENCY Administration

Original: Legislative Finance PHONE 465-2250

cc: Budget and Management
 Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS HB 546
 Title An Act Relating to State Contracts for Professional Services
 Requested by House State Affairs Date 3/5/82

II. FISCAL DETAIL

Agency Affected All
 Program Category Affected All
 BRU, Program, Or Subprogram(s) Affected All
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	250.0	270.0	291.6	314.9	340.1	367.3
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	250.0	270.0	291.6	314.9	340.1	367.3

FUNDING (Thousands of Dollars)

	250.0	270.0	291.6	314.9	340.1	367.3
GENERAL FUND	250.0	270.0	291.6	314.9	340.1	367.3
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS

	0	0	0	0	0	0
FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Advertisements:

\$50 per ad) x (3 ads) x (3 papers--Juneau, Anchorage,
 Fairbanks) x 700 contracts less (\$100,000 spent in FY 81) \$215,000

RFP Printing and Mailing
 EST based on Multi-page RFP 35,000

\$250,000

IV. DATE March 26, 1982 PREPARED BY George Elgee *Elgee*
 AGENCY Administration
 Original: Legislative Finance PHONE 465-2250
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

Contractual

Procedures:

Training in procuring contracts and operating
within new regulations

Re-write of Existing Procedures

Administration Code Drafts

Administration Code Public Hearings 60.0

Advertising:

Professional Listing 5.4

Services associated with required positions --
phone, office space, computer terminal rental, etc. 8.0

\$238.4



Members

Rep. Barnes, Chairman
Rep. Anderson, Vice-Chairman
Rep. Phillips
Rep. O'Connell
Rep. Freeman
Rep. Meekins
Rep. Buchholdt

POUCH V
JUNEAU, ALASKA 99811

House of Representatives

Committee on Judiciary

P.O. Box 3382
Anchorage, AK 99510
(907) 274-1432
(907) 274-1441
POUCH V
JUNEAU, ALASKA 99811

HOUSE
COMMITTEE MEETING SCHEDULES
prepared by the Chief Clerk's Office
FOR THE WEEK OF March 29 - April 2, 1982

HOUSE JUDICIARY COMMITTEE

Meets: Capitol 124, 1:15-3:00 p.m.
Daily.

Monday, March 29

** SB89 Child Abuse.

HB553 Relating to the criminal laws of state.

Tuesday, March 30

SB545 An Act relating to release after conviction of an offense.

** HB591 Making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes.

Wednesday, March 31

** HJR48 Proposing an amendment to the Constitution of the State of Alaska increasing the size of the legislature.

** HB848 An Act reamending the law relating to the marital deduction in testamentary transfers; and providing for an effective date.

** HB8 An Act providing for the management and control of certain land in the state; and providing for an effective date.

Bills carried over

Thursday, April 1

Hearing Confirmation of Susan Knowles to A.P.U.C.

Friday, April 2

Hearing on Confirmation of Diana Snowden and Carolyn Guess to the A.P.U.C.