

1-18-82

HB 612

HOUSE LABOR & COMMERCE  
 STANDING COMMITTEE  
 January 18, 1982  
 1:20 p.m.

Members Present: Rep. Martin, Chairman  
 Rep. Bylsma, Vice Chairman  
 Rep. Randolph  
 Rep. Gardiner

Members Absent: Rep. Rogers

COMMITTEE CALENDAR

HB 612 An act relating to public contracts for architectural and engineering services.  
 HB 600 Re/Civil Liability/Architects/Engineers

WITNESS REGISTER

Tom Sofo  
 LAA Legal Services  
 Pouch Y  
 Juneau, Alaska 99811  
 465-3867

Position Statement: Compared committee substitute workdraft and discussion drafts.

Charles E. Torkko, President  
 Consulting Engineers Council of Alaska  
 1351 Virginia Court  
 Anchorage, Alaska 99501  
 278-2551

Position Statement: Supports legislation ensuring selection made on the basis of professional qualifications and competence, not price bids.

PREVIOUS ACTION

HB 600 No previous action to record.

Chairman Martin asked the committee to defer action on HB 600 indefinitely; committee agreed unanimously.

HB 612 No previous action to record.

Rep. Randolph moved to accept workdraft of committee substitute for HE 612. Rep. Gardiner seconded motion; motion passed

unanimously.

ACTION NARRATIVE

Tape #002  
Recording  
Number 000

Meeting was called to order by Chairman Martin at 1:20 p.m. Committee members present were Reps. Martin, Bylsma, Randolph, and Gardiner. Rep. Rogers was absent.

Number 0734

Chairman Martin gave a brief history of HB 612 and presented the final workdraft.

Number 0746

TOM SOFO, of Legislative Legal Services, compared the committee substitute workdraft and discussion drafts. He said the drafts share the goal of changing contracts criteria from considering only the lowest bidder. Recent drafts look at "best qualified...on the basis of professional competence." The difference lies in the words used to specify qualifying criteria. He felt there was room for argument over distinguishing criteria, as all applicants may be capable and qualified; agencies may always end up with the same pool of qualified contractors and may be forced to choose one who is "best". Sofo said the legislation may be left to a layman's interpretation of what the legislation means. He said the difference between capable and qualified and best qualified are the differences in the versions of the bill. Sofo said he would need more material if he was to review the bill further.

Number 0817

CHARLES E. TORKKO, president of Consulting Engineers Council of Alaska, said he supports legislation ensuring selection made on the basis of professional qualifications and competence, not price bids. (NOTE: Mr. Torkko left a copy of his prepared testimony with the committee; this is available for review.) He compared selection of an engineer or architect to selecting a doctor or lawyer by who gave the lowest bid. Torkko said that skill and experience must be considered before awarding a bid; then negotiate for a fair and reasonable price. He expanded on quality versus cost; premature bids often result in poorer quality or cost overruns. Torkko said the generally accepted method of bidding is to

select qualified bidders, then negotiate a price; as an example, he said the federal government uses this method. He said the State Board of Architects, Engineers and Land Surveyors prohibits architects and engineers from soliciting or giving fee bids. Torkko said this legislation would apply only to architects, engineers, and land surveyors. It would ensure highest quality of service while retaining flexibility.

Number 0924

There was committee discussion about how it is determined who is best qualified, questions about price negotiation, cost estimates, and rating firms, with Torkko responding.

Number 1038

There being no further testimony, Rep. Randolph moved to accept the workdraft of committee substitute for HB 612. Rep. Gardiner seconded the motion. Motion passed unanimously.

Number 1051

Chairman Martin said groups had requested deferrment of consideration of HB 600; the committee agreed, and HB 600 was deferred indefinitely.

Number 1055

As there were no further items to come before the committee at this time, the Chairman adjourned the meeting at 1:53 p.m.

COMMITTEE MINUTES

COMMITTEE HOUSE LABOR & COMMERCE

HEARING DATE January 18, 1982

TAPE NO. 2, Side A

The meeting was called to order by Chairman Martin at 1:20 p.m. in the Labor & Commerce Committee Room, Behrends Building, Juneau, Alaska. Committee members present in addition to the Chairman were Representatives Bylsma, Randolph, and Gardiner. Representative Rogers was absent. Committee staff in attendance were Mary Isaacs, Jeff Barry, and Joan Mathews.

The committee schedule called for the consideration of the following items: House Bill 612 and House Bill 600. Testifying before the committee regarding HB 612 were Tom Sofo, counsel from Legislative Legal Services, and Charles E. Torkko, President, Consulting Engineers Council of Alaska.

Chairman Martin (meter no. 0734) gave a brief history of HB 612 and presented the final workdraft.

Tom Sofo of Legislative Legal Services (meter no. 0746) compared the committee substitute workdraft and discussion drafts. He said (meter no. 0759) the drafts share the goal of changing contracts criteria from considering only the lowest bidder. Recent drafts (meter no. 0766) look at "best qualified...on the basis of professional competence." The difference lies (meter no. 0722) in the words used to specify qualifying criteria. He felt there was room for argument (meter no. 0783) over distinguishing criteria, as all applicants may be capable and qualified; agencies may always end up with the same pool of qualified contractors and may be forced to choose one who is "best". Sofo said the legislation (meter no. 0800) may be left to a layman's interpretation of what the legislation means. He said (meter no. 805) the difference between capable and qualified and best qualified are the differences in the versions of the bill. Sofo said (meter no. 811) he would need more material if he was to review the bill further.

Charles E. Torkko, president of Consulting Engineers Council of Alaska (meter no. 0817) said he supports legislation ensuring selection made on the basis of professional qualifications and competence, not price bids. (Note: Mr. Torkko left a copy of his prepared testimony with the committee; this is available for review.) He compared selection of an engineer or architect to selecting a doctor or lawyer by who gave the lowest bid (meter no. 0846). Torkko said (meter no. 0850) that skill and experience must be considered before awarding a bid; then negotiate for a fair and reasonable price. He expanded on quality versus cost; premature bids (usually low) often result in poorer quality or cost overruns. Torkko said (meter no. 0884) the generally accepted method of bidding is to select qualified bidders, then negotiate a price; as an example, he said the federal government uses this method. He said (meter no. 0893) the State Board of Architects, Engineers and Land Surveyors prohibits architects and engineers from soliciting or giving fee bids.

House Labor & Commerce  
Committee Minutes  
Meeting of 1/18/82

Torkko said (meter no. 0914) this legislation would apply only to architects, engineers, and land surveyors. It would ensure highest quality of service while retaining flexibility.

Rep. Randolph (meter no. 0924) asked how it is determined who is best qualified, and whether this procedure would not create the opportunity for "less than proper determinations". Torkko responded (0929) that price competitions does not eliminate this, and that selection by qualification is traditional, competing with qualifications and skills on a fair basis rather than artificial procedures with sketchy data.

Rep. Bylsma (meter no. 0948) asked, if two or three firms appear equal, how is selection made. Torkko responded (meter no. 0950) that any number might do an adequate job; the process in analyzing "subject specificity" results in a "level of comfortability", and establishes trust and confidence. He said (meter no. 962) it is common to have equally qualified firms ranked differently due to different approaches, personalities, etc.

Rep. Bylsma asked (meter no. 0970), if price is negotiated after selection, would that have a bearing on the fee. Torkko (meter no. 0973) didn't think so. He said the development of a contract is a difficult project; some agencies have a budget, which may or may not be revealed; larger agencies do checks on workscope. The major difference is what is included in the contract. He added (meter no. 0989) that the owner has leverage--if the price is unsuitable, they can terminate the negotiations.

Chairman Martin (meter no. 0995) asked if this procedure could help state and municipal governments better estimate final costs. Torkko said (meter no. 1002) that, by hiring skilled people, estimates should be as skillful as humanly possible. Budgets are often made up with little information. That, and construction cycles beyond control, can distort figures.

Rep. Bylsma (meter no. 1021) asked if it would not help a firm's ratings if they were accurate in their estimates, and vice versa. Torkko said it would.

There being no further testimony, Rep. Randolph (meter no. 1038) moved to accept the workdraft of committee substitute for HB 612. Rep. Gardiner (meter no. 1042) questioned exactly which draft was being referred to, and then seconded the motion. Motion passed unanimously (meter no. 1047).

Chairman Martin (meter no. 1051) said groups had requested deferral of consideration of HB 600; the committee agreed, and HB 600 was deferred indefinitely.

As there were no further items to come before the committee at this time, the Chairman adjourned the meeting at 1:53 p.m.

MINUTES REVIEWED AND APPROVED:

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Representative Terry Martin, Chairman  
House Labor & Commerce Committee





LABOR & COMMERCE COMMITTEE  
DAILY COMMITTEE HEARING

Date: 1/18/82

Place: Committee Room

<u>Members</u>	<u>Present</u>	<u>Absent</u>	<u>Time Arrived</u>	<u>Time Left</u>
Rep. B. Bylsma, V. Chair	✓		1:10	1:53
Rep. D. Randolph	✓		1:13	1:53
Rep. B. Rogers		✓		
Rep. T. Cardiner	✓		1:33	1:53
Rep. T. Martin, Chair	✓		1:05	1:53

Subject Matter:

House Bill No. 612<sup>600</sup> 600 \_\_\_\_\_

Senate Bill No. \_\_\_\_\_

Special Orders

612 - CS accepted unanimously  
600 - hearing deferred

Sofa  
9/16/81

*precedent*

Original sponsor: Labor and Commerce  
Committee by request

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 612 (L&C)  
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 public contracts for architectural  
7 and engineering services."

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

9 \* Section 1. AS 35.15 is amended by adding a new section to read:

10 Sec. 35.15.055. CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SER-  
11 VICES. (a) The department may award a contract for architectural or  
12 engineering services only to a person or firm that the department deter-  
13 mines is capable and qualified. Notwithstanding AS 35.15.050, after  
14 selecting a capable and qualified contractor for architectural or engi-  
15 neering services the department shall establish a reasonable fee for the  
16 services through negotiations with the contractor. The fee shall be  
17 based on the scope and complexity of the services required.

18 (b) A person or firm that <sup>(submit)</sup> provides architectural or engineering  
19 services may annually submit to the department a statement of qualifica-  
20 tions and performance data. Before awarding a contract under (a) of  
21 this section, the department shall review the statements of qualifica-  
22 tions and performance data on file with the department together with  
23 statements of qualifications and performance data submitted by others in  
24 response to an advertisement or request for bids under AS 35.15.030.

*for proposals*







1/15/82

TESTIMONY OF MR. CHARLES E. TORKKO  
President, Consulting Engineers Council of Alaska

Mr. Chairman and members of the Committee, my name is Charles E. Torkko. I am the President of the Consulting Engineers Council of Alaska. The Council is an association of active engineering firms dedicated to advancing the quality of engineering in Alaska. I would like to speak today in support of legislation ensuring that the selection of registered professional architects, engineers, and land surveyors for public projects will be made on the basis of professional qualifications and competence and not on premature fee or price bids. To assist the Committee, I have prepared copies of my remarks which I would like to leave with you, Mr. Chairman, at the conclusion of my testimony.

Traditionally, the selection of architects, engineers, and land surveyors--like many other learned professions--has been conducted through an evaluation process based on demonstrated competence and professional qualifications to perform the specific work that is desired. In this regard the selection of an engineer differs from the selection of a vendor for parts or supplies and from selection of construction contractors in that the choice of a vendor or contractor is generally based on detailed specifications and a quoted price, and contracts are generally awarded on a "low-bid" basis. The reason for this difference lies in the fact that the

professional architect or engineer offers a service that calls for applying state-of-the-art techniques to problems which are invariably unique and result in procurement specifications for vendors and construction contractors. I have been a professional engineer for over 20 years, and I can represent to this Committee that in those years I cannot remember solving the same design problem twice. Given these circumstances, the sole consideration in selecting an architect or engineer for a project must be whether the education, skills, and experience represented are best suited to the specific design problems of a proposed project.

No one in this room today--if he or she were here--would think of asking for bids from physicians and expecting the low bidder to cure a person's illness while restricting the physician's resources. Nor would anyone with a particular complex legal problem--let's say an antitrust matter--ask for bids from the entire legal profession hoping that the most qualified attorney will just happen to submit the cheapest price. Similarly, in the design of a building or other public project, the first and foremost consideration must be the relative skill and experience of persons proposing to do the work. Only after a person or firm has been selected as the best qualified, and after the full requirements of the job have been assessed, should an attempt be made to negotiate a fair and reasonable price for the desired work. I stress the terms "fair" and "reasonable" because I do not mean to suggest that the cost of professional services should be ignored. It must always be the duty of the state or local official responsible for a public project to ensure that fees for professional

architectural or engineering services are amply justified. However, the only time that such a determination can properly be made is after the full scope and complexity of the project are understood, through negotiation. The selected firm must often be given clarifying assistance in the development of the project's objectives.

Many of you might ask what is wrong with requesting preliminary fee bids or estimates of charges for architectural and engineering services. Who loses if a contract is awarded based on, or substantially influenced by, such fee bids?

First and foremost--it is the public who loses--as the ultimate consumer for the proposed project. The public loses in that a few dollars saved at the critical design stage through shortcuts or unimaginative design solutions will result in increased construction costs and--more importantly--in increased operating, maintenance, and other life-cycle costs for the project over the many years of its useful life.

The public loses again in terms of receiving less than maximum value or utility from the project. A "bargain" price is no bargain if the item purchased does not do the job or does it at reduced efficiency.

Second, the professions of architecture and engineering suffer. Human nature being what it is, if fee bids or price estimates are injected prematurely into a competition process, the temptation to "lowball" the bid

will often be irresistible. A job obtained through a "bare bones" bid will produce one of two results. Either the client, and in this case the public, gets a less than optimal project and pays manyfold for the few dollars saved in design costs, or the design costs are later escalated upward through change orders as the client discovers the true cost of quality, professional work. This is, of course, unfair to others in the competitive process who may have refused to sacrifice professional quality for price.

The concept that I have outlined for you today, and which is represented in the legislation before this Committee, is neither new nor radical. As I mentioned at the beginning of my remarks, the generally accepted method for selecting architects and engineers has been to defer negotiation of fee until after a selection has been made based on qualifications. The federal government recognized the need to ensure that this concept is protected by passage of the Brooks Act in 1972. Many other states have followed this precedent and have enacted similar legislation. I have attached a list of these jurisdictions to my written remarks for the information of the Committee. Also, the American Bar Association, after years of effort, has adopted its Model Procurement Code, which calls for competitions to be based on qualifications and for the best qualified person or firm to be selected before fee or price is negotiated. Finally, the Alaska State Board of Registration for Architects, Engineers and Land Surveyors, established under Title 8 of the Alaska Statutes, has adopted, as a regulation with the force of law, 12 AAC 36.230, which prohibits registered professional architects and engineers from soliciting

or submitting proposals for services based on fee or price bids.

Although the substantial majority of public contracts for architectural and engineering services in Alaska are presently being advertised and awarded in accordance with the concept I have described, there have, unfortunately, been cases in which, either intentionally or inadvertently, registered professionals have been requested to submit fee bids. When a registered architect or engineer is faced with such a request, he or she must either decline to submit a proposal for the public job or be placed in a situation which violates the code of professional conduct established by regulation. The legislation which the Consulting Engineers Council of Alaska supports would specify that for contracts with registered architects or engineers issued by the state or a political subdivision, the initial selection of a person or firm must be made on the basis of professional qualifications and demonstrated competence to perform the desired work. I would, however, like to stress that the state or local official would, under this proposal, be free to establish whatever procedures or criteria they deem best in selecting a qualified person or firm. The only requirement under the proposed bill is that an attempt be made to negotiate a fair and reasonable fee with a person or firm selected as best qualified to perform the needed work. If negotiations with that person or firm are unsuccessful, state or local officials remain free to negotiate with other qualified applicants or to reject all or part of the remaining proposals. The recommended legislation would only apply to contracts with registered professional architects, engineers, and land

surveyors and would not affect bids for construction or other types of services or supplies by the state or its local governments. Also, contracts awarded in response to an emergency condition would be exempt from provisions of the bill.

By adopting the proposed bill, Alaska will join with many other states in ensuring that the public receives the highest possible quality of architectural and engineering services while preserving flexibility for state and local officials. I urge this Committee to act favorably on the proposed bill, and I will be happy to attempt to answer any questions. Thank you for the opportunity of testifying before the Committee today, and I thank you for your consideration of the proposed bill.

1/18/82

(0734) Ch. M. explained history of bill; presented final work draft

(0746) <sup>CS</sup> Sojo - compared ~~workdraft~~ <sup>chang</sup> & discussion drafts.

(759) drafts share goal of taking contracts criteria from only lowest bidder (inc. other criteria).

(766) recent drafts look at "best qualified... on basis of professional competence." (772) difference is words used to specify qualifying criteria. Most recent drafts look at "best" qualified - distinguished 2 drafts. (781) ~~I~~ went over items Burns had in his draft that we did not include. (783) - room for argument over distinguishing criteria - all applicants may be capable & qualified; may end up with same pool of qualified contractors, & may be forced to choose 1 who is "best." (800) left to layman's interpretation of what bills mean. <sup>(805)</sup> ~~A diff~~ bet cap + qual & best qual are diff in bill. (811) Need more mat'l to row further.

Charles

(817) ~~From~~ E. Torco Pres Consulting Engrs Council of AK. Supports legis ensuring selection made on basis of prof't qualifications & competence, not price bids (left copy of prep prepared testimony)

(846) Compared to selecting doctor or lawyer by lowest bidder.

(850) skill & experience must be considered, then negotiate fair & reasonable price. Expanded on quality v. cost; prematurely pricing bids (low) w/ resulting poorer quality or higher-than-bid cost. Unfair to qualified bidders.

(884) generally accepted method of bidding is to select qualified bidders, ~~then~~ ~~for~~ ~~the~~ negotiate price. Federal govt does this. (893) State Board of Archs & Engrs prohibits archs & engs from soliciting or giving <sup>fee</sup> ~~price~~ bids.

~~The World Today~~

(914) wd only apply to arch's, engs & LS's. ~~at~~  
wd ensure highest quality of service while retaining  
flexibility (encl 0723)

924 Randolph - how do you determine best qualified?  
(don't this open up "less than proper determinations"?)

927 Torko - price competition does not eliminate this; this  
type of selection (by quality) is traditional;  
competing w/ quality & skills on fair basis rather  
than artificial procedure w/ sketchy data.

~~944 R~~

948 Bysma - if 2 or 3 firms equal - what is procedure?

950 Torko - Any # might do adequate job; process in analyzing  
"subject specificity" results in "level of comfortability" -  
establishes trust & confidence. 960 - common to have  
equally qualified firms ranked differently due to  
different approaches, personalities, etc.

970 B - if firms equal, pick one firm, then negotiate -  
wd that have bearing on fees?

973 T - ~~no~~ doesn't think so; depth of contract different  
project; some agencies have budget, which is or isn't  
revealed; larger agencies do checks on workscope.  
major diff of what is inc. in contract. <sup>989</sup> ~~How~~ owner has  
leverage - if price is unsustainable, they can terminate again.

995 Ch. M - <sup>for</sup> can state & muni govt - can procedure like  
this help better estimate costs?

1002 T - by hiring skilled people, estimates shd be as skillful  
as humanly possible. Budgets often made up w/ little info.  
That a cost cycle ~~that~~ beyond control can distort  
figures.

101<sup>st</sup> Randolph

1021 Bycome - What if put firm closer to top of accounts in estimates, + vice versa.

1025 T - yes.

1034 - no further test.

<sup>38</sup>  
1045 - Randolph moved to ~~pass~~ accept committee <sup>substitute</sup> draft  
HB 612

~~1042~~  
1042 qstn by Gardner as to which draft; second by Gardner

1047 passed unanimously

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2:53

HB 600

1051 Ch. M. said qps had requested deferment of consideration

2:53 adjourned