

HB

211

#2



# Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-4801

BOROUGH ATTORNEY'S OFFICE

May 10, 1983

The Honorable Jalmar Kerttula  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

? Jones?  
what

Dear Senator Kerttula:

Subject: HB211: A BILL PROHIBITING COMPETITION IN ARCHITECTURAL/  
ENGINEERING CONTRACTS

I would like to bring to your attention a bill which proposes to prohibit competition in certain public contracts. House Bill 211, relating to contracts for architectural, engineering and land surveying services, prohibits state or local governments from either requesting or considering the fees of the architect or engineer until after the contractor is selected. If adopted, this would likely increase the cost of public construction in Alaska.

Professional groups, including attorneys, have attempted to get around the antitrust laws by having anti-competitive policies adopted as a regulation of a state created regulatory board. Attorneys' efforts to establish fixed prices for services through the policies of the State Bar Association were struck down in Goldfarb v. Virginia State Bar (U.S.S. Ct. 1975). I believe that it is unlikely at this time that the engineering profession could protect its members from price inquiries by self-serving regulations of its own board. Such an agreement within a profession has the effect of restraining trade and preventing competition among these professionals. The lack of competition inevitably drives up the cost of the services provided.

The U. S. Department of Justice has filed an antitrust lawsuit against the Alaska Board of Registration for Architects, Engineers and Land Surveyors. This case challenges the self-imposed rules of the A/E contractors not to release fees or estimates for work until the contract is awarded to them.

To avoid the requirements of the antitrust laws which prohibit restraints on competition, the A/E contractors are lobbying to have HB 211 adopted. The state's immunity from antitrust laws would thus be used to shield them from these laws.

The state can eliminate competition in its purchasing procedures if the Legislature chooses. It can also prohibit competition in local government contracts. House Bill 211 proposes to do exactly that. It specifically provides that "the state [or local government] 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...." After the government has selected the "best qualified" contractor, it may then negotiatate a "fair and reasonable price". Obviously, if the government is unable to even request estimates or make any other effort to compare, there is no method for determining whether the price is reasonable or whether the work could be done at a lower cost to the public.

This is blatent, special interest legislation. It is contrary to the general policies of the state to try to increase competition in public contracts.

In addition, it is unlikely to increase the quality of work obtained. The State of Maryland enacted a statute which, opposite of the proposed bill, requires the state to "consider" price as a part of awarding A/E contracts. After this law had been on the books for a time, studies were done on the effect of the increased competition in proposals. Quality was not reduced, but costs for public projects were lowered. The low bidder did not necessarily get the job, since the quality of the proposal was still the primary element in determining which professional to hire. I hope to have copies of the data from this study available shortly.

Present state law for obtaining professional services require safeguards to preserve "interest in competition". AS 36.98.030. It is unfortunate in this time of declining state funds that efforts are being made to enact legislation which is likely to increase the cost of public services and diminish the state policy in favor or competition for public contracts.

Sincerely,



Steven H. Morrisett  
Borough Attorney

er

cc: Borough Assembly  
Gary Thurlow, Borough Manager  
Ginny Chitwood, Executive Director, AML

# City of Soldotna

BOX 409

PHONE 262-9107

SOLDOTNA, ALASKA 99669



CITY OF OPPORTUNITY

February 14, 1984

Senator Dick Eliason  
Chairman  
Labor and Commerce Committee  
Alaska Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator:

The City of Soldotna has always been opposed to Bill HB211, that is being promoted by some architects, engineers and land surveyors. We have chosen firms by many methods and find that benefits or disadvantages attach to any method or system used.

We find it particularly discomforting and time consuming to find that after a firm has been chosen to furnish professional services that conditions and charges become inflexible and close to the point of intolerability. We just recently had this experience. A verbal agreement was made, a contract was drawn, and then disavowed by the architectural firm at the last moment. Since a time schedule had been carefully drawn, it was either accept the greater demands or postpone the project somehow.

The City finds it more convenient to contact qualified professionals, request resumes and fee schedules for a definitive project. In this manner a City Council is able to decide quickly and effectively a firm that could perform the required professional services.

We don't believe anyone furnishing professional services needs to be protected. Therefore, we consider this bill completely unnecessary.

Sincerely,

A handwritten signature in cursive script that reads "Justin G. Maile".

Justin G. Maile  
Mayor

JGM/pb



## THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT - 586-5242

May 26, 1983

Senate Labor & Commerce Committee  
Pouch V  
Juneau, Alaska 99811

File: Legislature 1983 - House Bill 211

Gentlemen:

We urge you not to pass out House Bill 211. It will merely set the stage for increased costs to the state and municipalities of architectural, engineering and surveying services and will not have any counterbalancing positive public benefits.

The bill would require the state and municipalities to award architectural, engineering and surveying services contracts "only on the basis of demonstrated competence and qualification for the type of professional services required" and that we must select the person or firm "best qualified to perform the desired work on the basis of demonstrated competence and professional qualifications." I think a fair reading of the bill leads one to the conclusion that the state and municipalities may not select architects and engineers based on a design competition or a proposed solution to an architectural or engineering problem or project. While one could certainly argue that submitting the best solution to a problem is a means of demonstrating competence, the selection of an architectural solution to a problem is often as much a matter of taste or aesthetics as it is a product of superior competence. Thus, it appears that the effect of the bill will be to channel the architectural, engineering and land surveying business of the state and municipalities to the larger firms with the most experienced staff. The larger firms generally charge a higher fee than a sole practitioner who has only been in the business for a couple of years but who may be fully qualified (but not best qualified) to provide the services required. This bill will only add to the already burgeoning costs of public projects. Neither the state nor municipalities need to engage in practices that will only dissipate even more rapidly the state's dwindling oil revenues.

This proposal appears to be little more than an attempt to partially resurrect a canon of ethics of the National Society of Professional Engineers that was struck by the United States Supreme Court as being in violation of federal antitrust laws. In that case (National Society of Professional Engineers v. U. S., 98 Sup. Ct. 1355 (1978)) the United States Supreme Court rejected out of hand the idea that a prohibition on bidding or the submission or discussion of fees prior to selection was necessary to assure public safety or to avoid engineers submitting deceptively low bids. Many professionals, including

Re: House Bill 211  
May 26, 1983  
Page Two

lawyers, have long maintained that bidding on services, advertising and other such competitive practices are unethical and their prohibition is required to protect the public and their clients. The shallowness of these arguments is being recognized by the courts and the anticompetitive practices of various professional organizations are being held to be violations of the antitrust laws. Of course, there is a recognized exception to anticompetitive practices; that is when the practice is commanded by the state legislature. This bill appears to be an effort to reestablish the outlawed anti-bidding canon when dealing with public bodies and to give engineers, architects and land surveyors immunity from the antitrust acts when refusing to compete for state and local contracts.

One of the arguments used to support this bill has been that unsophisticated REAA's and small communities occasionally chose architects and engineers based on price rather than professional qualifications because they are unable to evaluate professional qualifications or are unaware of their importance. If they are unable to evaluate qualifications, this bill will not help because it does not create a mechanism to assist the unsophisticated in evaluating proposals; it requires them to do what it is claimed they are incapable of doing.

If we are required to select the best qualified, one must question why we have a licensing system for engineers, architects and land surveyors that the users of those services take to be a certification by peers within the profession that the licensed person is qualified and competent in his field. Why must anyone, whether sophisticated or unsophisticated, chose the best qualified when we have a licensing system that assures us that those who are licensed are qualified.

Another argument used is that bidding causes engineers and architects to submit deceptively low bids. This argument implies that engineers and architects are unethical or can't estimate workload and fees. I am not willing to accept either implication and I presume that architects and engineers are not either.

Another argument used is that unsophisticated municipalities and REAA's either cannot or do not adequately scope out the work to be done prior to a request for proposals and a discussion of fees. There are two problems with this justification. First, it should be the ethical responsibility of the professional not to submit a fee quote until he or she is fully aware of the scope of the project unless an hourly or a percentage-of-construction cost fee is submitted. It should be the responsibility of the professional to insure that the client has a grasp of the work to be done. Second, if this is the justification for the bill, why is it being made applicable to the State of Alaska and to the larger, more sophisticated municipalities that are able to scope out the work?

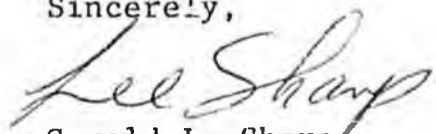
Some argue that in bidding, professionals will underbid and will then cut corners in their work and thus produce an unsafe, or perhaps

Re: House Bill 211  
May 20, 1983  
Page Three

more expensive building. Again, this is an ethical problem and not one which should be dealt with through a statute which might or might not have the salutary effect of encouraging architects and engineers to design safe or less expensive structures. Indeed, if this is a concern, perhaps there should be a prohibition against the use of percentage-of-construction cost design contracts as these contracts contain the very obvious inducement to design a more rather than less expensive project. When I have questioned architects and engineers about this effect in such contracts, I have always been reassured that professional ethics require them to bring the project in at the least cost for their client and that they are not influenced by the reduced fee. If they are not influenced by such factors, then it would seem that the architect or engineer would bring in the project at the lowest cost to the client whether he had bid for the design job or negotiated a fee. The argument that a design professional who has underbid a design project may cut corners and produce an inadequate or unsafe design is severely undercut by the fact that such a professional will be liable for injuries or loss that arise out of such work. If this doesn't provide the incentive to do safe and adequate work, changing the method by which fees are determined certainly won't.

We urge you to leave to municipalities the determination of the method by which they will select architects, engineers and land surveyors for local projects. Price and quality are both legitimate considerations in acquiring goods and services, but one should not be used to the exclusion of the other. We should be permitted to acquire adequate (not necessarily the best) quality services at the lowest possible price. This bill would not permit us to do that. We urge you to not pass the bill out, or, if it is to be passed out to do so with a do not pass recommendation. As a minimum, we ask that on page 2, lines 13 and 14 which make the bill applicable to municipalities, be deleted.

Sincerely,



Gerald L. Sharp  
City-Borough Attorney

GLS:jr

cc: Mayor and Assembly  
Manager  
Ginny Chitwood, AML

Suggested by: Administration

CITY OF KENAI .

RESOLUTION NO. 83-89

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, OPPOSING HOUSE BILL 211 AND SUPPORTING COMPETITION IN CONTRACTING PROCEDURES.

WHEREAS, the Council of the City of Kenai, Alaska, supports competition in procuring public contracts for services, goods and construction, and

WHEREAS, the Kenai Municipal Code presently provides for competitive proposals for City contracts for professional services, and a comprehensive scheme for obtaining those professional services which are most advantageous to the City, and

WHEREAS, the Kenai City Council further finds that the cost of the professional services is a paramount and relevant factor to be considered in selecting a contractor, and

WHEREAS, HB 211, which provides, in part:

"The state [or local government] 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 [before selecting the successful contractor.]"

would effectively eliminate the paramount relevant factor of costs of services in the selection of certain professionals, and

WHEREAS, the proposed legislation would decrease competition and increase costs for certain public construction projects.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, that the Kenai City Council strongly opposes passage of HB 211 or any other legislation which would decrease competition or increase costs of public construction projects or impinge on the discretionary powers of municipalities in the selection process of contractors;



Box 1210 602 Railroad Avenue  
Cordova, Alaska 99574  
Phone: (907) 424-3237  
or 424-3238

"The Friendly City"

May 27, 1983

James A. Poor  
Mayor

Perry D. Lovett,  
Manager

Donna M. Sherby,  
Clerk / Treasurer

Council Members  
Richard Groff  
R. J. Kopchak  
Garry Purvis  
Joe Gundersen  
Phyllis Day  
Oliver Osburn

Senator Richard Eliason  
Chairman, Labor & Commerce Committee  
Pouch V  
Juneau, Alaska 99811

RE. HB 211

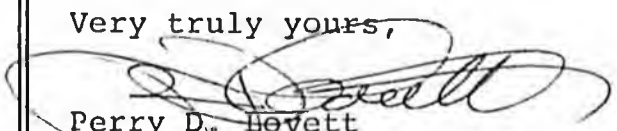
Dear Senator Eliason:

Please enter into the record our testimony on HB 211 which will be heard before your committee on Thursday, May 26th at 1:30 P.M.

We oppose the bill which prohibits the consideration of costs when selecting architects, engineers, and land surveyors. The reason we oppose this bill is that the state, by testing and the issuance of a professional license, assures us that the individual or corporation is competent to practice the profession in the State of Alaska. Granted, some may have more experience than others, but they all must be technically qualified to practice. Therefore, price is a very important consideration together with the reputation of the firm in this time of declining revenues and high inflation. We believe that we, the clients, have the ability to select qualified engineering firms to provide service to us at a fair and reasonable cost without the overview of "big brother."

Thank you on behalf of the City of Cordova for permitting us an opportunity to express our views on this important matter.

Very truly yours,



Perry D. Lovett  
City Manager

cc: Mayor Jim Poor



OFFICIAL BUSINESS

# ALASKA STATE LEGISLATURE - SENATE

## COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON  
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811  
(907) 465-3844

June 3, 1983

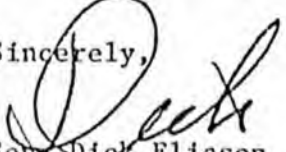
Perry D. Lovett, City Manager  
City of Cordova  
P. O. Box 1210  
Cordova, Alaska 99574

Dear Perry:

Thank you for your letter dated May 27 asking that your testimony opposing HB 211 be entered into the record at the hearing May 26. Unfortunately, we didn't receive your letter until several days after the hearing, and I have asked that Labor and Commerce Committee staff put your testimony in the files so that the next time the bill comes before the committee for consideration the City of Cordova's comments will be available for each member. As of this writing, the bill is not scheduled for a second hearing.

I appreciate your taking the time to write regarding this issue. If I can be of further assistance, please let me know.

Sincerely,

  
Sen. Dick Eliason

# CITY OF SKAGWAY

GATEWAY TO THE GOLD RUSH OF '98"

P. O. BOX 415 SKAGWAY, ALASKA 99840

907-983-2297

February 13, 1984

Senator Richard I. Eliason  
Pouch V  
Juneau, Alaska 99811

Dear Senator Eliason;

It is my understanding that HB211 regarding professional services contracts has been referred to your committee. I do not have a current copy of the bill before me but I do recall that the same or a similar bill was introduced last year wherein "cost of services" would be legally excluded from the selection criteria for employment of architects, engineers, and surveyors.

It is my feeling that passage of such a bill would result in inflation of already astronomical professional fees. While I certainly support the notion that emphasis on fee structure should be minimized during the professional selection process, I feel that the State and local governments need the ability to reduce fees by leveraging competing firm's pay schedules against each other. Current fee schedules are full of fat and such leveraging need not affect anyone's ability to earn a fair wage. After all, many, if not most, firms charge on an hourly basis with a "multiplier" of approximately 2.5 to 3.0. In other words, governments are charged \$65 to \$90 per hour for professional services. We need to retain the ability to pare down these "multipliers" or else consulting fees will get totally out of control.

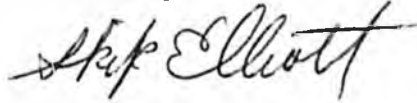
Furthermore, classifying survey work along with architectural design and engineering is truly arbitrary. Although many poor surveyors exist, the level of skill and technical expertise required to become a good surveyor does not at all come close to the requirements necessary to become an engineer or architect. I also find it ironic that the City of Skagway has in the past been forced to competitively bid survey work and may now be required not to bid this same work. I feel that your staff should investigate the bidding requirements of federal grant agencies prior to passing this bill out of committee. It might otherwise put the State and municipal governments in the position of being compelled to use staff surveyors only for federally funded projects.

I would urge you to table this bill until the financial impacts

Senator Richard I. Eliason  
Page 2

of it on State and local projects can more accurately be assessed.  
I thank you for the consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Skip Elliott". The signature is written in dark ink and is positioned above the typed name.

Skip Elliott  
City Manager

cc Alaska Municipal League



THE HEART OF THE MATANUSKA VALLEY

## CITY OF PALMER

COUNCIL-MANAGER GOVERNMENT  
P.O. BOX 1368 • PHONE (907) 745-3271  
PALMER, ALASKA 99645

February 16, 1984

The Honorable Richard Eliason  
Pouch V  
Juneau, Alaska 99811

RE: HB 211 - Professional Services Contracts

Dear Senator Eliason,

The City of Palmer is vehemently opposed to HB 211 Professional Services Contracts.

With declining State revenues, and the emphasis of more local involvement, and a larger local share, we as municipalities have to get the most bang for the buck.

When selecting a firm for professional services is not in the best interests of either party nor the state to tell us that we have to have the "dog and pony show". This is a waste of time and energy and money for all with these added expenses borne by projects that are awarded to the architect, engineer or surveyors.

As proposed, HB 211 leaves us at the mercy of the architects, engineers, and land surveyors, irregardless of price.

I am sure that if you owned and/or operated a business and could not seek the best price you would be up in arms. Your customers would go next door because they could get a better price.

This bill places another undue burden on the taxpayer and at the same time indirectly deprives them from the right to choose services based on price.

The State of Maryland (remember Spiro Agnew) has done away with similar legislation because of bribes and other gratuities that can and probably will result from this type of legislation.

From each session of the legislature, more and more special interest bills are introduced which only escalate the cost of doing business in the State.

We urge you to oppose this bill because of it being a special interest, placing a direct burden on the taxpayers, creating an atmosphere that could lead to unscrupulous dealings and finally being a waste of corporate time, money and energy.

Should you have any questions, please contact me.

Yours truly,

---

David L. Soulak  
City Manager, City of Palmer

cc: AML  
Senator Jalmar Kerttula

A & E PROPOSALS  
J. H. REMODEL

<u>FIRM</u>	<u>THEATRE CONS.</u>	<u>ACOUST. CONS.</u>	<u>EDUC. SPECS.</u>	<u>CONST. CONT. AWARD</u>	<u>PHASE 1 COST</u>	<u>PHASE 11 COST</u>	<u>TOTAL COST</u>
CTA	Jerit/Boys	Bolt Beranek & Newman	Bob Felberg	1 May 1983	837,541	495,820**	1,333,361
CSM/DLR	Knudson	Chaudiere	Merle Rambo	1 March 1983	743,108	285,479	1,028,587
Lane-Knorr Plunkett	Knudson	Chaudiere	N.W. Regional Educational Laboratory	12 March 1983	645,000	551,300	1,196,300
Sundberg Assoc.	Boulangier	Chaudiere	Boulangier	17 April 1983	405,000	223,644	628,644

\* Cost figures are for approximate comparison only as services offered vary slightly between firms.

\*\* Does not include Bid and Construction Services.

\*\*\* Does not include reproduction of documents.



THE HEART OF THE MATANUSKA VALLEY

## CITY OF PALMER

COUNCIL-MANAGER GOVERNMENT  
P.O. BOX 1368 • PHONE (907) 745-3271  
PALMER, ALASKA 99645

February 16, 1984

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Pouch V  
Juneau, Alaska 99811

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The State of Maryland (remember Spiro Agnew) has done away with similar legislation because of bribes and other gratuities that can and probably will result from this type of legislation.

From each session of the legislature, more and more special interest bills are introduced which only escalate the cost of doing business in the State.

We urge you to oppose this bill because of it being a special interest, placing a direct burden on the taxpayers, creating an atmosphere that could lead to unscrupulous dealings and finally being a waste of corporate time, money and energy.

Should you have any questions, please contact me.

Yours truly,

---

David L. Soulak  
City Manager, City of Palmer

cc: AML  
Senator Jalmar Kerttula



# *Kodiak Island Borough*

P.O. BOX 1246  
KODIAK, ALASKA 99615-1246  
PHONE (907) 486-5736

February 15, 1984

The Honorable Richard I. Eliason  
State Senate  
Pouch V  
Juneau, Alaska 99811

Re: House Bill 211

Dear Senator Eliason:

Enclosed please find a copy of a letter dated June 3, 1983 along with a copy of Kodiak Island Borough Resolution No. 83-68-R adopted June 2, 1983 opposing House Bill 211 and supporting competition in contracting regulations.

I believe you will find the letter and resolution self-explanatory. I would again reaffirm the Assembly's opposition to House Bill 211 which I understand prohibits consideration of cost in selecting architects, engineers and land surveyors until after the selection has been made.

As you can see from the June 3rd letter, we have used the Junior High Renovation project Phase I as an example of our reason for opposition to House Bill 211. This project was reviewed by several major architectural firms who submitted prices ranging from a low of \$405,000 to a high of \$837,541. The Borough successfully negotiated a contract utilizing price as one of the considerations and obtained a very satisfactory product while saving some \$432,541. The project was awarded last summer and will be completed this summer with minimum problems for a complex project of this size and scope.

This same negotiation process was utilized to select the design of the auditorium facility (Phase II) with proposals being received ranging from a high of \$51,300 to a low of \$223,644 again resulting in a savings of \$327,656 to the Borough. The architect is currently in final stages of design and the project is anticipated to go out to bid in May, 1984 with an eighteen month construction period.

I believe by the two above examples it is clearly indicated that the Kodiak Island Borough was able to effect a savings of \$760,197 by using price as part of the negotiation process. It is ludicrous to believe that we would be prohibited from doing this in the future.

Page 2

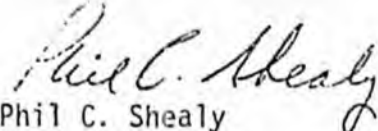
It is also interesting to note in the above examples that the highest price proposed was a firm which at that time was retained by the Borough to do other school projects. It is incomprehensible to me that with the range in prices indicated in these actual examples that the Borough would be in any position to negotiate a price once the A&E firm had been selected.

Consequently, it is imperative that this bill not proceed in any form which would restrict consideration of cost or fees as a factor in selecting any public contractor thereby reducing competition among professionals for public contracts.

If you have any further questions regarding this matter, I wish you would contact me at your convenience.

Sincerely,

KODIAK ISLAND BOROUGH

  
Phil C. Shealy  
Borough Manager

Enclosures (3)

CC Senator Bob Mulcahy  
Representative Fred F. Zharoff  
Alaska Municipal League  
David L. Soulak, City Manager, Palmer, Alaska  
Gary Thurlow, Borough Manager, Matanuska-Susitna Borough

mdd

KODIAK ISLAND BOROUGH  
RESOLUTION NO. 83-68-R

A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY OPPOSING HOUSE  
BILL 211 AND SUPPORTING COMPETITION IN CONTRACTING PROCEDURES.

WHEREAS, the Kodiak Island Borough Assembly has strongly and consistently supported maximum competition in procuring public contracts for services, goods and construction, and

WHEREAS, the Borough Code presently provides for competitive proposals for Borough contracts for professional services, and requires the contract to be awarded to the "best qualified" professional, and

WHEREAS, the Assembly finds that the Borough's purchasing procedures are adequate to assure that the Borough will seek and obtain competent and qualified professionals for performing professional services for the Borough, and

WHEREAS, the Assembly further finds that the cost of the professional services is also a relevant factor which should be considered in selecting the contractor, and

WHEREAS, House Bill 211, which provides, in part:

"The State (or local government) 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 (before selecting the successful contractor.)"

would effectively eliminate cost of services as a factor in selecting certain professionals, and

WHEREAS, the result of this proposed legislation would be the decrease of competition for certain public contracts and an increase in cost to the public for public construction projects.


HOW, THEREFORE, BE IT RESOLVED that the Kodiak Island Borough Assembly opposes passage of House Bill 211 in any form which would restrict consideration of cost or fees as a factor in selecting any public contractor or which would reduce competition among professionals for public contracts.


BE IT FURTHER RESOLVED that, if House Bill 211 is adopted in any form, municipalities should be excluded from its effect and permitted to establish their own contracting procedures, pursuant to the principles of maximum local self-government under Article X, Section 1 of the Alaska Constitution.

PASSED AND APPROVED this 2nd day of June, 1983.

KODIAK ISLAND BOROUGH

ATTEST:

By   
Borough Clerk, Secretary

By   
Borough Clerk

## J. II. REMODEL

<u>FIRM</u>	<u>THEATRE CONS.</u>	<u>ACOUST. CONS.</u>	<u>EDUC. SPECS.</u>	<u>CONST. CONT. AWARD</u>	<u>PHASE 1 COST</u>	<u>PHASE 11 COST</u>	<u>TOTAL COST</u>
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City of Soldotna  
BOX 409                      PHONE 262-9107  
SOLDOTNA, ALASKA 99669



February 14, 1984

Senator Dick Eliason  
Chairman  
Labor and Commerce Committee  
Alaska Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator:

The City of Soldotna has always been opposed to Bill HB211, that is being promoted by some architects, engineers and land surveyors. We have chosen firms by many methods and find that benefits or disadvantages attach to any method or system used.

We find it particularly discomfoting and time consuming to find that after a firm has been chosen to furnish professional services that conditions and charges become inflexible and close to the point of intolerability. We just recently had this experience. A verbal agreement was made, a contract was drawn, and then disallowed by the architectural firm at the last moment. Since a time schedule had been carefully drawn, it was either accept the greater demands or postpone the project somehow.

The City finds it more convenient to contact qualified professionals, request resumes and fee schedules for a definitive project. In this manner a City Council is able to decide quickly and effectively a firm that could perform the required professional services.

We don't believe anyone furnishing professional services needs to be protected. Therefore, we consider this bill completely unnecessary.

Sincerely,

A handwritten signature in cursive script that reads "Justin G. Maile".

Justin G. Maile  
Mayor

JGM/pb



# City and Borough of Sitka

~~XXXXXXXXXX~~ · SITKA, ALASKA · 99835  
304 Lake Street  
Room 104

February 14, 1984

Senator Richard Eliason  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Dick:

Please be advised that we oppose HB211, and I am surprised the A/E profession would push for such self-serving legislation. Over the years I have had the opportunity to listen to a good number of A/E firms, and they have failed to convince me that cost does not rank with competence and qualifications. Sitka has made it a practice to deal only with competent and qualified A/E firms, therefore price is of great importance to us.

Sincerely,

Fermin Gutierrez  
Administrator

cc: Alaska Municipal League

# CITY OF SKAGWAY

GATEWAY TO THE GOLD RUSH OF '98"

P. O. BOX 415 SKAGWAY, ALASKA 99840

907-983-2297

February 13, 1984

Senator Richard I. Eliason  
Pouch V  
Juneau, Alaska 99811

Dear Senator Eliason;

It is my understanding that HB211 regarding professional services contracts has been referred to your committee. I do not have a current copy of the bill before me but I do recall that the same or a similar bill was introduced last year wherein "cost of services" would be legally excluded from the selection criteria for employment of architects, engineers, and surveyors.

It is my feeling that passage of such a bill would result in inflation of already astronomical professional fees. While I certainly support the notion that emphasis on fee structure should be minimized during the professional selection process, I feel that the State and local governments need the ability to reduce fees by leveraging competing firm's pay schedules against each other. Current fee schedules are full of fat and such leveraging need not affect anyone's ability to earn a fair wage. After all, many, if not most, firms charge on an hourly basis with a "multiplier" of approximately 2.5 to 3.0. In other words, governments are charged \$65 to \$90 per hour for professional services. We need to retain the ability to pare down these "multipliers" or else consulting fees will get totally out of control.

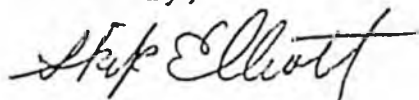
Furthermore, classifying survey work along with architectural design and engineering is truly arbitrary. Although many poor surveyors exist, the level of skill and technical expertise required to become a good surveyor does not at all come close to the requirements necessary to become an engineer or architect. I also find it ironic that the City of Skagway has in the past been forced to competitively bid survey work and may now be required not to bid this same work. I feel that your staff should investigate the bidding requirements of federal grant agencies prior to passing this bill out of committee. It might otherwise put the State and municipal governments in the position of being compelled to use staff surveyors only for federally funded projects.

I would urge you to table this bill until the financial impacts

Senator Richard I. Eliason  
Page 2

of it on State and local projects can more accurately be assessed.  
I thank you for the consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Skip Elliott". The signature is written in dark ink and is positioned above the typed name.

Skip Elliott  
City Manager

cc Alaska Municipal League



## THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT - 586-5242

May 26, 1983

Senate Labor & Commerce Committee  
Pouch V  
Juneau, Alaska 99811

File: Legislature 1983 - House Bill 211

Gentlemen:

We urge you not to pass out House Bill 211. It will merely set the stage for increased costs to the state and municipalities of architectural, engineering and surveying services and will not have any counterbalancing positive public benefits.

The bill would require the state and municipalities to award architectural, engineering and surveying services contracts "only on the basis of demonstrated competence and qualification for the type of professional services required" and that we must select the person or firm "best qualified to perform the desired work on the basis of demonstrated competence and professional qualifications." I think a fair reading of the bill leads one to the conclusion that the state and municipalities may not select architects and engineers based on a design competition or a proposed solution to an architectural or engineering problem or project. While one could certainly argue that submitting the best solution to a problem is a means of demonstrating competence, the selection of an architectural solution to a problem is often as much a matter of taste or aesthetics as it is a product of superior competence. Thus, it appears that the effect of the bill will be to channel the architectural, engineering and land surveying business of the state and municipalities to the larger firms with the most experienced staff. The larger firms generally charge a higher fee than a sole practitioner who has only been in the business for a couple of years but who may be fully qualified (but not best qualified) to provide the services required. This bill will only add to the already burgeoning costs of public projects. Neither the state nor municipalities need to engage in practices that will only dissipate even more rapidly the state's dwindling oil revenues.

This proposal appears to be little more than an attempt to partially resurrect a canon of ethics of the National Society of Professional Engineers that was struck by the United States Supreme Court as being in violation of federal antitrust laws. In that case (National Society of Professional Engineers v. U. S., 98 Sup. Ct. 1355 (1978)) the United States Supreme Court rejected out of hand the idea that a prohibition on bidding or the submission or discussion of fees prior to selection was necessary to assure public safety or to avoid engineers submitting deceptively low bids. Many professionals, including

Re: House Bill 211  
May 26, 1983  
Page Two

lawyers, have long maintained that bidding on services, advertising and other such competitive practices are unethical and their prohibition is required to protect the public and their clients. The shallowness of these arguments is being recognized by the courts and the anticompetitive practices of various professional organizations are being held to be violations of the antitrust laws. Of course, there is a recognized exception to anticompetitive practices; that is when the practice is commanded by the state legislature. This bill appears to be an effort to reestablish the outlawed anti-bidding canon when dealing with public bodies and to give engineers, architects and land surveyors immunity from the antitrust acts when refusing to compete for state and local contracts.

One of the arguments used to support this bill has been that unsophisticated REAA's and small communities occasionally chose architects and engineers based on price rather than professional qualifications because they are unable to evaluate professional qualifications or are unaware of their importance. If they are unable to evaluate qualifications, this bill will not help because it does not create a mechanism to assist the unsophisticated in evaluating proposals; it requires them to do what it is claimed they are incapable of doing.

If we are required to select the best qualified, one must question why we have a licensing system for engineers, architects and land surveyors that the users of those services take to be a certification by peers within the profession that the licensed person is qualified and competent in his field. Why must anyone, whether sophisticated or unsophisticated, choose the best qualified when we have a licensing system that assures us that those who are licensed are qualified.

Another argument used is that bidding causes engineers and architects to submit deceptively low bids. This argument implies that engineers and architects are unethical or can't estimate workload and fees. I am not willing to accept either implication and I presume that architects and engineers are not either.

Another argument used is that unsophisticated municipalities and REAA's either cannot or do not adequately scope out the work to be done prior to a request for proposals and a discussion of fees. There are two problems with this justification. First, it should be the ethical responsibility of the professional not to submit a fee quote until he or she is fully aware of the scope of the project unless an hourly or a percentage-of-construction cost fee is submitted. It should be the responsibility of the professional to insure that the client has a grasp of the work to be done. Second, if this is the justification for the bill, why is it being made applicable to the State of Alaska and to the larger, more sophisticated municipalities that are able to scope out the work?

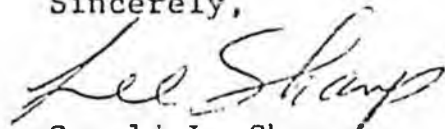
Some argue that in bidding, professionals will underbid and will then cut corners in their work and thus produce an unsafe, or perhaps

Re: House Bill 211  
May 26, 1983  
Page Three

more expensive building. Again, this is an ethical problem and not one which should be dealt with through a statute which might or might not have the salutary effect of encouraging architects and engineers to design safe or less expensive structures. Indeed, if this is a concern, perhaps there should be a prohibition against the use of percentage-of-construction cost design contracts as these contracts contain the very obvious inducement to design a more rather than less expensive project. When I have questioned architects and engineers about this effect in such contracts, I have always been reassured that professional ethics require them to bring the project in at the least cost for their client and that they are not influenced by the reduced fee. If they are not influenced by such factors, then it would seem that the architect or engineer would bring in the project at the lowest cost to the client whether he had bid for the design job or negotiated a fee. The argument that a design professional who has underbid a design project may cut corners and produce an inadequate or unsafe design is severely undercut by the fact that such a professional will be liable for injuries or loss that arise out of such work. If this doesn't provide the incentive to do safe and adequate work, changing the method by which fees are determined certainly won't.

We urge you to leave to municipalities the determination of the method by which they will select architects, engineers and land surveyors for local projects. Price and quality are both legitimate considerations in acquiring goods and services, but one should not be used to the exclusion of the other. We should be permitted to acquire adequate (not necessarily the best) quality services at the lowest possible price. This bill would not permit us to do that. We urge you to not pass the bill out, or, if it is to be passed out to do so with a do not pass recommendation. As a minimum, we ask that on page 2, lines 13 and 14 which make the bill applicable to municipalities, be deleted.

Sincerely,



Gerald L. Sharp  
City-Borough Attorney

GLS: jr

cc: Mayor and Assembly  
Manager  
Ginny Chitwood, AML



# Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-4801  
BOROUGH ATTORNEY'S OFFICE

May 10, 1983

The Honorable Jalmar Kerttula  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Kerttula:

Subject: HB211: A BILL PROHIBITING COMPETITION IN ARCHITECTURAL/  
ENGINEERING CONTRACTS

I would like to bring to your attention a bill which proposes to prohibit competition in certain public contracts. House Bill 211, relating to contracts for architectural, engineering and land surveying services, prohibits state or local governments from either requesting or considering the fees of the architect or engineer until after the contractor is selected. If adopted, this would likely increase the cost of public construction in Alaska.

Professional groups, including attorneys, have attempted to get around the antitrust laws by having anti-competitive policies adopted as a regulation of a state created regulatory board. Attorneys' efforts to establish fixed prices for services through the policies of the State Bar Association were struck down in Goldfarb v. Virginia State Bar (U.S.S. Ct. 1975). I believe that it is unlikely at this time that the engineering profession could protect its members from price inquiries by self-serving regulations of its own board. Such an agreement within a profession has the effect of restraining trade and preventing competition among these professionals. The lack of competition inevitably drives up the cost of the services provided.

The U. S. Department of Justice has filed an antitrust lawsuit against the Alaska Board of Registration for Architects, Engineers and Land Surveyors. This case challenges the self-imposed rules of the A/E contractors not to release fees or estimates for work until the contract is awarded to them.

To avoid the requirements of the antitrust laws which prohibit restraints on competition, the A/E contractors are lobbying to have HB 211 adopted. The state's immunity from antitrust laws would thus be used to shield them from these laws.

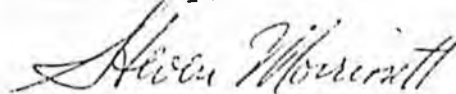
The state can eliminate competition in its purchasing procedures if the Legislature chooses. It can also prohibit competition in local government contracts. House Bill 211 proposes to do exactly that. It specifically provides that "the state [or local government] may not request or consider any statement, bid or estimate of fees or charges for architectural, engineering, or land surveying services for the proposed project...." After the government has selected the "best qualified" contractor, it may then negotiatate a "fair and reasonable price". Obviously, if the government is unable to even request estimates or make any other effort to compare, there is no method for determining whether the price is reasonable or whether the work could be done at a lower cost to the public.

This is blatent, special interest legislation. It is contrary to the general policies of the state to try to increase competition in public contracts.

In addition, it is unlikely to increase the quality of work obtained. The State of Maryland enacted a statute which, opposite of the proposed bill, requires the state to "consider" price as a part of awarding A/E contracts. After this law had been on the books for a time, studies were done on the effect of the increased competition in proposals. Quality was not reduced, but costs for public projects were lowered. The low bidder did not necessarily get the job, since the quality of the proposal was still the primary element in determining which professional to hire. I hope to have copies of the data from this study available shortly.

Present state law for obtaining professional services require safeguards to preserve "interest in competition". AS 36.98.030. It is unfortunate in this time of declining state funds that efforts are being made to enact legislation which is likely to increase the cost of public services and diminish the state policy in favor or competition for public contracts.

Sincerely,



Steven H. Morrisett  
Borough Attorney

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cc: Borough Assembly  
Gary Thurlow, Borough Manager  
Ginny Chitwood, Executive Director, AML



# Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-4801

BOROUGH ATTORNEY'S OFFICE

May 6, 1983

The Honorable Ronald L. Larson  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Ron:

Subject: HB211: A BILL PROHIBITING COMPETITION IN ARCHITECTURAL/  
ENGINEERING CONTRACTS

I would like to bring to your attention a bill which proposes to prohibit competition in certain public contracts. House Bill 211, relating to contracts for architectural, engineering and land surveying services, prohibits state or local governments from either requesting or considering the fees of the architect or engineer until after the contractor is selected. If adopted, this would likely increase the cost of public construction in Alaska.

Professional groups, including attorneys, have attempted to get around the antitrust laws by having anti-competitive policies adopted as a regulation of a state created regulatory board. Attorneys' efforts to establish fixed prices for services through the policies of the State Bar Association were struck down in Goldfarb v. Virginia State Bar (U.S.S.Ct. 1975). I believe that it is unlikely at this time that the engineering profession could protect its members from price inquiries by self-serving regulations of its own board. Such an agreement within a profession has the effect of restraining trade and preventing competition among these professionals. The lack of competition inevitably drives up the cost of the services provided.

The U. S. Department of Justice has filed an antitrust lawsuit against the Alaska Board of Registration for Architects, Engineers and Land Surveyors. This case challenges the self-imposed rules of the A/E contractors not to release fees or estimates for work until the contract is awarded to them.

To avoid the requirements of the antitrust laws which prohibit restraints on competition, the A/E contractors are lobbying to have HB 211 adopted. The state's immunity from antitrust laws would thus be used to shield them from these laws.

The state can eliminate competition in its purchasing procedures if the Legislature chooses. It can also prohibit competition in local government contracts. House Bill 211 proposes to do exactly that. It specifically provides that "the state [or local government] 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...." After the government has selected the "best qualified" contractor, it may then negotiate a "fair and reasonable price". Obviously, if the government is unable to even request estimates or make any other effort to compare, there is no method for determining whether the price is reasonable or whether the work could be done at a lower cost to the public.

This is blatant, special interest legislation. It is contrary to the general policies of the state to try to increase competition in public contracts.

In addition, it is unlikely to increase the quality of work obtained. The State of Maryland enacted a statute which, opposite of the proposed bill, requires the state to "consider" price as a part of awarding A/E contracts. After this law had been on the books for a time, studies were done on the effect of the increased competition in proposals. Quality was not reduced, but costs for public projects were lowered. The low bidder did not necessarily get the job, since the quality of the proposal was still the primary element in determining which professional to hire. I hope to have copies of the data from this study available shortly.

Present state law for obtaining professional services require safeguards to preserve "interest in competition". AS 36.98.030. It is unfortunate in this time of declining state funds that efforts are being made to enact legislation which is likely to increase the cost of public services and diminish the state policy in favor of competition for public contracts.

Sincerely,



Steven H. Morrisett  
Borough Attorney

er

cc: Borough Assembly  
Gary Thurlow, Borough Manager  
Ginny Chitwood, Executive Director Alaska Municipal League

Attachment: Copy HB211

# THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

April 27, 1983

House Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

File: Legislature - 1983 - House Bill 211  
(Prohibition on Competitive Bidding  
for Engineering, Architectural and  
Surveying Services)

Ladies and Gentlemen:

Committee substitute for HB 211 (L & C) would prohibit municipalities from discussing with engineers, architects and surveyors the cost of their services prior to selection of the person or firm to do the work. In addition, it would require the municipality to select the person or firm "best qualified to perform the desired work" based on considerations of competence and qualifications.

If adopted, this Bill would have the effect of requiring municipalities (and the State of Alaska) to use the larger and more prestigious architectural and engineering consulting firms. These are the same firms which, because of their prestige are able to command a higher fee. When a municipality seeks the professional services of an engineer for a simple engineering job that can be done by anyone with a license, it will still be required to select the person or firm best qualified. This will only insure that our projects cost more as we will be hiring more expensive talent than is required to accomplish the job.

The idea that professionals, whether they be physicians, lawyers, or engineers, should not be permitted to compete with each other, particularly on price, has been thoroughly discredited in recent years. Even the United States Supreme Court in National Society of Professional Engineers v. U. S., 98 S.Ct. 1355 (1978) rejected out of hand the idea that this scheme was necessary to assure public safety or to avoid engineers submitting deceptively low bids. The municipality and the state are both charged with protecting the public health, safety and welfare. The legislature should permit municipalities to determine for themselves, in each case, how best to protect the public health, safety and welfare when it selects engineering and architectural professionals. Indeed, one should be very suspicious when the industry itself proposes that its contracting procedures be regulated for public safety, especially when the proposed regulation would have the effect of raising the price of these services and limiting the number of firms and persons that could provide those services to the state and municipalities. Not only is the Bill unjustified as a matter of public policy, it will probably create unnecessary work for attorneys. For lucrative

House Judiciary Committee

Re: H.R. 211

April 27, 1983

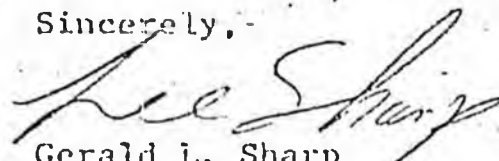
Page Two

contracts, there are likely to be challenges of determinations by the state and municipality as to which firm is the "best qualified." In addition, once the "best qualified" has been selected, there are likely to be challenges of what is a "fair and reasonable price" for the work. This will probably be rather difficult to prove because the municipality is not permitted to inquire what others would charge for the work in the process of selecting the firm or person. It appears that the municipality and the state will merely be at the mercy of the "best qualified" architectural and engineering firms in the state.

The specter of liability both for inadequate or unsafe design work hangs over every architect, engineer and surveyor when he provides professional services. This probably provides more incentive to do safe and adequate work than the amount of compensation being received or the method by which that compensation is determined. In addition, it would seem that if there isn't, there should be a canon of ethics for such professionals that requires them to produce designs which are safe and adequate. Also, it would seem that the licensing process (which is controlled by the profession) should be structured to insure that only those who are competent are licensed. Problems of adequate performance should be solved by the profession at the licensing level, not at the contracting level.

We urge you not to pass this Bill out of committee.

Sincerely,



Gerald L. Sharp  
City-Borough Attorney

CLS:jr

cc: Mayor and Assembly  
Manager

# UNITED STATES CODE ANNOTATED

Title 40  
Public Buildings, Property, and Works  
§ 301 to End

Cumulative Annual Pocket Part

*For Use In 1983*

Replacing prior pocket part in back of volume

Includes the Laws of the  
97th CONGRESS, SECOND SESSION (1982)

For close of Notes of Decisions  
See page III

CURRENT LAWS AND LEGISLATIVE HISTORY  
Consult

United States Code  
Congressional and Administrative News

ST. PAUL, MINN.  
WEST PUBLISHING CO.

commitments, and unexpended balances of appropriations, allocations, and other funds, available to be made available, as the Director of the Office of Management and Budget shall determine to relate to functions of such agency under this subchapter which have heretofore been administered by the Department of State.

(e) Redesignated (d).

(As amended Oct. 19, 1980, Pub.L. 96-470, Title I, § 101(a), 94 Stat. 2237.)

1980 Amendment. Subsec. (d), Pub.L. 96-470 redesignated former subsec. (e) as (d) and struck out subsec. (d), which provided that the head of each executive agency responsible for the disposal of foreign excess property under this subchapter submit a report to Congress in January of each year, or at such other desirable times, relative to its activities under this sub-

chapter, accompanied by appropriate recommendations.

Subsec. (e), Pub.L. 96-470 redesignated former subsec. (e) as (d).

Legislative History. For legislative history and purpose of Pub.L. 96-470, see 1980 U.S. Code Cong. and Adm. News, p. 4675.

#### SUBCHAPTER IV—RECONSTRUCTION FINANCE CORPORATION PROPERTY

§§ 521 to 524. Repealed. Pub.L. 91-466, § 2, Oct. 17, 1970, 84 Stat. 990

Section 521, Act June 30, 1949, c. 288, Title VII, § 701, as added Aug. 12, 1955, c. 874, § 3, 69 Stat. 722, stated congressional declaration of policy regarding Reconstruction Finance Corporation property.

Section 522, Act June 30, 1949, c. 288, Title VII, § 702, as added Aug. 12, 1955, c. 874, § 3, 69 Stat. 722, and amended June 25, 1959, Pub.L. 86-70, § 3(b), 73 Stat. 148; July 12, 1960, Pub.L. 86-624, § 27(d), 74 Stat. 418, defined the terms State, real property, local taxing authority, real property tax, Government department, transfer, and Reconstruction Finance Corporation as used in the subchapter.

Section 523, Act June 30, 1949, c. 288, Title VII, § 703, as added Aug. 12, 1955, c. 874, § 3, 69 Stat. 722, and amended Aug. 1, 1958, Pub.L. 85-579, § 1(a), 72 Stat. 456; June 8, 1960, Pub.L. 86-498, § 1(a), 74 Stat. 165; Oct. 10, 1962, Pub.L. 87-787, § 1(a), 76 Stat. 805; June 29, 1964, Pub.L. 88-330, § 1(a), 78 Stat. 226; July 7, 1967, Pub.L. 90-50, § 1(a), 81 Stat. 119; Oct. 17, 1970, Pub.L. 91-466, § 1(a), 84 Stat. 990, provided for payments by Government department which has custody of all property transferred to it on or after Jan. 1, 1946 from

the Reconstruction Finance Corporation, in lieu of taxes, to State and local taxing authorities.

Section 524, Act June 30, 1949, c. 288, Title VII, § 704, as added Aug. 12, 1955, c. 874, § 3, 69 Stat. 723, and amended Aug. 1, 1958, Pub.L. 85-579, § 1(b), 72 Stat. 456; June 8, 1960, Pub.L. 86-498, § 1(b), 74 Stat. 165; Oct. 10, 1962, Pub.L. 87-787, § 1(b), 76 Stat. 805; June 29, 1964, Pub.L. 88-330, § 1(b), 78 Stat. 226; July 7, 1967, Pub.L. 90-50, § 1(b), 81 Stat. 119; Oct. 17, 1970, Pub.L. 91-466, § 1(b), 84 Stat. 990, provided that failure of Government department to make payment authorized by former section 523 of this title would not give rise to any penalty or subject the property to any lien or foreclosure, exempted certain categories of real property from payments, and limited liability for any payment in lieu of taxes for any period before Jan. 1, 1955 or after Dec. 31, 1970.

Effective Date of Repeal. Section 2 of Pub.L. 91-466 provided that Title VII of the Federal Property and Administrative Services Act of 1949 [former sections 521 to 524 of this title] is repealed as of Jan. 1, 1971.

#### SUBCHAPTER VI—SELECTION OF ARCHITECTS AND ENGINEERS

##### § 541. Definitions

As used in this subchapter

(1) The term "firm" means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

(2) The term "agency head" means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government.

(3) The term "architectural and engineering services" includes those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(June 30, 1949, c. 288, Title IX, § 901, as added Oct. 27, 1972, Pub.L. 92-582, 86 Stat. 1278.)

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S. Code Cong. and Adm. News, p. 4767.

Library Reference  
United States  
C.J.S. United

##### § 542. Congressional declaration of policy

The Congress hereby declares it to be the policy of the United States to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services with firms of demonstrated competence and qualification for the type of project and at fair and reasonable prices.

(June 30, 1949, c. 288, Title IX, § 902, as added Oct. 27, 1972, Pub.L. 92-582, § 902.)

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S. Code Cong. and Adm. News, p. 4767.

##### Library References

United States

C.J.S. United States §§ 35, 37, 62 to 64.

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##### § 543. Requests for data on architectural and engineering services

In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit a statement of qualifications and performance data. For a proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that the firm regarding the proposed project, and shall conduct interviews with three firms regarding anticipated concepts and the methods of approach for furnishing the required services therefrom, in order of preference, based upon criteria established by the agency head, no less than three of the firms deemed to be the most qualified to perform the services required.

(June 30, 1949, c. 288, Title IX, § 903, as added Oct. 27, 1972, Pub.L. 92-582, § 903.)

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S. Code Cong. and Adm. News, p. 4767.

Library Reference  
United States  
C.J.S. United

##### § 544. Negotiation of contracts for architectural and engineering services

###### (a) Negotiation with highest qualified firm

The agency head shall negotiate a contract with the firm which is considered to be the most qualified, at a price he determines is fair and reasonable to the Government. If the agency head shall take into account the estimated cost of the services rendered, the scope, complexity, and professional nature of the services.

###### (b) Negotiation with second and third, etc., most qualified firm

Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines is fair and reasonable to the Government, negotiations with that firm should be discontinued. The agency head should then undertake negotiations with the second most qualified firm, the third most qualified firm, and so on, until a satisfactory contract is negotiated. Failing accord with the second most qualified firm, the agency head should then undertake negotiations with the third most qualified firm. The agency head should then undertake negotiations with the fourth most qualified firm.

expended balances of appropriations, allocations, and other funds made available, as the Director of the Office of Management and Budget is directed to relate to functions of such agency under this subchapter have been administered by the Department of State.

Pub.L. 96-470, Title I, § 102(a), 54 Stat. 2237.)

Sec. (d). Pub.L. 96-470, subsec. (e) as (d) and as provided that the agency responsible for the property under report to Congress in such other desirable cases under this subchapter, accompanied by appropriate recommendations.

Subsec. (e). Pub.L. 96-470 redesignated former subsec. (e) as (d).

Legislative History. For legislative history and purpose of Pub.L. 96-470, see 1980 U.S. Code Cong. and Adm. News, p. 4675.

## V—RECONSTRUCTION FINANCE CORPORATION PROPERTY

Pub.L. 91-466, § 2, Oct. 17, 1970, 84 Stat. 990

1949, c. 288, Title IX, § 3, and June 25, 1959, Stat. 148; July 12, 1960, Pub.L. 86-498, § 1(b), 74 Stat. 165; Oct. 10, 1962, Pub.L. 87-787, § 1(b), 76 Stat. 805; June 29, 1964, Pub.L. 88-330, § 1(b), 78 Stat. 226; July 7, 1967, Pub.L. 90-50, § 1(b), 81 Stat. 119; Oct. 17, 1970, Pub.L. 91-466, § 1(b), 84 Stat. 990, provided that failure of Government department to make payment authorized by former section 523 of this title would not give rise to any penalty or subject the property to any lien or foreclosure, exempted certain categories of real property from payments, and limited liability for any payment in lieu of taxes for any period before Jan. 1, 1955 or after Dec. 31, 1970.

Section 524, Act June 30, 1949, c. 288, Title VII, § 704, as added Aug. 12, 1955, c. 874, § 3, 69 Stat. 723, and amended Aug. 1, 1958, Pub.L. 85-579, § 1(b), 72 Stat. 456; June 8, 1960, Pub.L. 86-498, § 1(b), 74 Stat. 165; Oct. 10, 1962, Pub.L. 87-787, § 1(b), 76 Stat. 805; June 29, 1964, Pub.L. 88-330, § 1(b), 78 Stat. 226; July 7, 1967, Pub.L. 90-50, § 1(b), 81 Stat. 119; Oct. 17, 1970, Pub.L. 91-466, § 1(b), 84 Stat. 990, provided that failure of Government department to make payment authorized by former section 523 of this title would not give rise to any penalty or subject the property to any lien or foreclosure, exempted certain categories of real property from payments, and limited liability for any payment in lieu of taxes for any period before Jan. 1, 1955 or after Dec. 31, 1970.

Effective Date of Repeal. Section 2 of Pub.L. 91-466 provided that Title VII of the Federal Property and Administrative Services Act of 1949 [former sections 521 to 524 of this title] is repealed as of Jan. 1, 1971.

## VI—SELECTION OF ARCHITECTS AND ENGINEERS

Chapter 1 means any individual, firm, partnership, corporation, association, or other entity permitted by law to practice the professions of architecture, engineering, or surveying.

"Agency head" means the Secretary, Administrator, or head of a bureau of the Federal Government.

"Architectural and engineering services" includes those professional architectural or engineering nature as well as incidental services that are incidental and those in their employ may logically or justifiably be considered as such.

§ 901, as added Oct. 27, 1972, Pub.L. 92-582, 86 Stat. 1278.)

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S. Code Cong. and Adm. News, p. 4767.

Library References  
United States ← 35.  
C.J.S. United States §§ 35, 37, 62 to 64.

### § 542. Congressional declaration of policy

The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

(June 30, 1949, c. 288, Title IX, § 902, as added Oct. 27, 1972, Pub.L. 92-582, 86 Stat. 1279.)

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S. Code Cong. and Adm. News, p. 4767.

Library References  
United States ← 35.  
C.J.S. United States §§ 35, 37, 62 to 64.

#### Notes of Decisions

1. Grant-funded procurements  
Architectural and engineering procurement procedures contained in sections 543 and 544 of this title, mandatory for federal procurements for such architectural and engineering services, were not per se applicable to procurements by the Licking County Regional Planning Commission, a grantee under a community development grant by the Department of Housing and Urban Development, 1980, 59 Comp.Gen. 251.

### § 543. Requests for data on architectural and engineering services

In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(June 30, 1949, c. 288, Title IX, § 903, as added Oct. 27, 1972, Pub.L. 92-582, 86 Stat. 1279.)

Legislative History. For legislative history and purpose of Pub.L. 92-582, see 1972 U.S. Code Cong. and Adm. News, p. 4767.

Library References  
United States ← 35.  
C.J.S. United States §§ 35, 37, 62 to 64.

### § 544. Negotiation of contracts for architectural and engineering services

#### (a) Negotiation with highest qualified firm

The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Government. In making such determination, the agency head shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

#### (b) Negotiation with second and, etc., most qualified firms

Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm.

(c) Selection of additional firms in event of failure of negotiation with selected firms

Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

(June 30, 1949, c. 288, Title IX, § 904, as added Oct. 27, 1972, Pub.L. 92-582, 86 Stat. 1279.)

**Legislative History.** For legislative history and purpose of Pub.L. 92-5, see 1972 U.S. Code Cong. and Adm. News, p. 4767.

**Library References**

United States — 35.

C.J.S. United States §§ 35, 37, 62 to 64.

**Notes of Decisions**

**L. Factors considered**

Factors which were used in fulfilling requirement to negotiate contracts for architectural

and engineering services on basis of demonstrated confidence and qualifications for type of professional services required and which included institutional maturity, organizational framework, management plans and approach, management group experience, and availability of disciplines were not violative of this chapter as unduly stressing those factors most likely to yield selection of a large, established firm than a small minority one with individual rather than institutional competence and qualifications. *Mikkilineni v. United Engineers & Constructors, Inc.*, D.C.Pa.1980, 485 F.Supp. 1292.

**CHAPTER 12—CONSTRUCTION, ALTERATION, AND ACQUISITION OF PUBLIC BUILDINGS**

**Sec.**

601a. Duties of Administrator; Federal agency accommodations; historical and architectural preservation of public buildings; consultation with Governors, agencies, and chief executive officers.

602a. Lease-purchase contracts.

(a) Authority of Administrator; terms; vesting of title; application of installment payments to purchase price; procedures; report of negotiations to congressional committees; solicitation of proposals.

(b) Contract provisions; limitations on amount of payments.

(c) Utilization of funds for payments.

(d) State and local taxes.

(e) Agreements to effectuate purposes; development and improvement of land; construction of projects previously approved; increase of estimated maximum cost.

(f) Submission and approval of prospectus as prerequisite; exceptions; procedure.

(g) Expiration of contracting authority.

(h) Prohibition on providing space until expiration of 30 days from notification of congressional committees by Administrator.

612a. Additional definitions.

616. Dwight D. Eisenhower Memorial Bicentennial Civic Center.

(a) Development, construction, operation, and maintenance of facilities for conventions, exhibitions, meetings, and other social, cultural, and business activities; location.

(b) Plan, design, and costs of civic center; administrative approval and review; filing plans showing opening, extension, widening, or closing of streets, roads, highways, and alleys.

(c) Land acquisition.

(d) Contract authority; leases; term, nominal rental; purchase contracts; payment term, vesting of title in the District of Columbia, application of installment payments to purchase price, provisions securing performance of obligations, amortization, interest rate, reimbursement of contractors for certain costs, and Congressional Committee approval of design, plans, and specifications.

(e) Full faith and credit of the District of Columbia.

(f) Gifts, services, securities, and other property; acceptance and administration; operation of civic center; District of Columbia or other entity; contractual operation; terms and conditions, employment of Federal, District of Columbia, and voluntary personnel.

§ 601. Prohibition on construction of buildings except by Administrator of General Services

Short Title of 1976 Amendment. Pub.L. 94-541, Title I, § 101, Oct. 18, 1976, 90 Stat. 2305, provided that: "This title [which enacted sec-

tions 601a and 612a of this title and amended sections 490, 606, and 611 of this title] may be cited as the 'Public Buildings Cooperative Use Act of 1976'."

§ 601a. Duties of Administrator; Federal agency accommodations; historical and architectural preservation of public buildings; consultation with Governors, agencies, and chief executive officers

(a) In order to carry out his duties under this title and with respect to constructing, operating, maintaining, altering or acquiring space necessary for the accommodation to accomplish the purposes of this title, the Administrator shall:

(1) acquire and utilize space in suitable buildings of cultural significance, unless use of such space would be imprudent compared with available alternatives;

(2) encourage the location of commercial, cultural, and recreational facilities and activities within public buildings;

(3) provide and maintain space, facilities, and activities, which encourage public access to and stimulate development around, into, and through public buildings, permitting to and uses of the area between the building and activities complement and supplement commercial, recreational resources in the neighborhood of public buildings;

(4) encourage the public use of public buildings for recreational activities.

(b) In carrying out his duties under subsection (a) of this section, the Administrator shall consult with Governors, area-wide agencies established under the Demonstration Cities and Metropolitan Development Act of 1966 (Pub.L. 89-289, 80 Stat. 1037, et seq.) and Title IV of the Intergovernmental Cooperation Act of 1968 (Pub.L. 90-249, 82 Stat. 123, et seq.), and chief executive officers of those units of government in each area served by an existing or proposed public building, and shall take into account the comments of such other community leaders and members of the public as he deems appropriate.

(Pub.L. 94-541, Title I, § 102, Oct. 18, 1976, 90 Stat. 2305.)

**References in Text.** "This title", referred to in Pub.L. 94-541, the Public Buildings Cooperative Use Act of 1976, which enacted sections 601a and 612a and amended sections 490 and 611 of this title.

Title II of the Demonstration Cities and Metropolitan Development Act of 1966, referred to in subsec. (b), is classified to section 3331 et seq. of Title 42.

Title IV of the Intergovernmental Cooperation Act of 1968, referred to in subsec. (b), is classified to section 4231 et seq. of Title 42.

Codification. Section was enacted as part of the Public Buildings Cooperative Use Act of 1976, and not as part of the Public Buildings Act of 1959, which comprises this chapter.

Legislative history and purpose of Code Cong. and Adm. News.

Library References: United States; C.J.S. United States.

1. Leases. This section of a building is for the use of the Federal Government for office space in the Ham Realty Center, D.C.A.

§ 602a. Lease purchase contracts

(a) Authority of Administrator; terms; vesting of title; application of installment payments to purchase price; procedures; report of negotiations to congressional committees; solicitation of proposals

Whenever the Administrator of General Services determines that it is in the interest of the United States to provide space by entering into purchase contracts, the term of which shall exceed more than thirty years and which shall provide in each contract that the title shall vest in the United States at or before the expiration of the term of the contract upon fulfillment of the terms and conditions stipulated in the contract. Such terms and conditions shall include provision for the payment of a purchase price agreed upon therein of installment payments. Any purchase contract authorized by this section shall be subject to the provisions of title III of the Federal Property and Administration Control Act of 1949, as amended [41 U.S.C.A. § 251 et seq.] If any s-

# Business

WEDNESDAY  
JONES

18.09  
7.23  
1.01  
6.44

NYSE  
-17 cents  
1.90-1.17  
1.52-1.42  
1.58-1.26  
1.47-0.34  
1.66-1.55

S&P  
55-2.48  
86-0.39  
65-0.40  
35-0.32  
70-2.14

## Contract bill riles Mat-Su attorney

by Al Campbell  
for The Times

Palmer — Matanuska-Susitna Borough Attorney Steve Morrisett says a bill to prohibit competition by engineers, architects and surveyors on state projects is "blatant special interest legislation."

The borough lawyer has asked the Mat-Su legislative delegation to fight House Bill 211 when it reaches the Senate or accept a law that will legalize restrictive trade and cost local governments "quite a bit of money" on statebacked construction projects.

The legislation would codify into state law what is already state policy: engineers, architects and land surveyors may not bid for public works jobs, nor offer to discuss prices with the hiring governments, either local or state.

That policy is established by the li-

censing boards for those professions, government-appointed boards which include members of the professions.

An example of the effect of the regulation: a borough, wishing a school designed, may contact architectural firms and seek proposals — no cash value may be discussed — then negotiate the cost of the professional services only after a firm is chosen.

While the government agency is not bound to hire that firm until the price is settled and the contract signed, Morrisett says by then the government must go through a costly and time-consuming process of re-contacting firms if a deal cannot be struck.

Other local officials have complained in the past that the system can force a government agency into a high-cost contract, at the risk of

missing an entire building season.

The bill has passed the House, and now rests in the state Senate. Morrisett says the bill, which failed last year, moved easily through the House this year, with the support of key legislators, including Speaker Joe Hayes, R—Anchorage, an engineer.

"If it becomes law this year, it would be bad for the boroughs and bad for the state," Morrisett says.

Morrisett says his inquiries to the State of Maryland show that when that state passed opposite legislation — mandating competitive bidding in those professions — public works contracts were let at considerably lower prices, and led to notable savings to the taxpayers.

Morrisett speculates that the professions involved want the licensing regulations imbedded into law to

head off a U.S. Department of Justice investigation into the matter within Alaska.

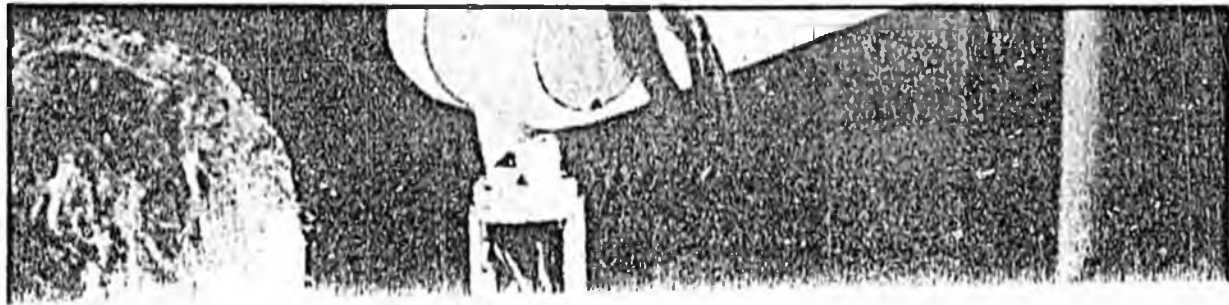
The borough lawyer says the federal government considers the regulation restrictive trade, and clearly illegal.

However he says the federal statutes allow exemptions for state governments-if they pass a law forbidding competition.

Morrisett has asked Senate President Jay Kerttula, D—Palmer to fight the proposed legislation in that chamber.

The Mat-Su attorney, who has made something of a crusade of the issue, has also contacted other local governments in Alaska, seeking support in defeating the legislation.

He says he does not know yet if they will join in the fight to kill the bill.



## Forum views current global competition



AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS

*of the National Association of Realtors*



May 24, 1983

Mr. Richard I. Eliason, Chairman  
Labor and Commerce Committee  
Pouch V (MS-3100)  
Juneau, AK 99811

RE: House Bill 211 Professional Services Contracts

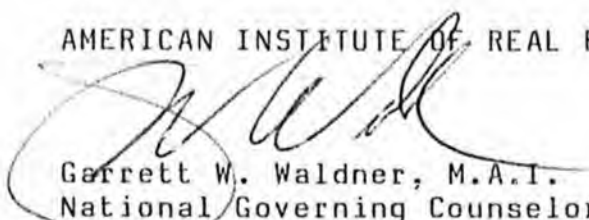
Dear Senator Eliason:

I would ask your consideration for adding real estate appraisers to the categories of professionals included under this bill. Although not licensed by the State of Alaska, the bulk of the senior real estate appraisers in the state hold the M.A.I. designation awarded by the American Institute of Real Estate Appraisers. To qualify for this designation, an individual must be of good moral character and integrity and receive a positive recommendation from the local business community. In addition, approximately one and three-quarters years of post-graduate work is required beyond a college degree. Included in this are a series of ten examinations together with an eight-hour comprehensive examination upon completion of all other requirements. A minimum of five years experience is required and is reviewed according to national guidelines on both a qualitative and quantitative basis. M.A.I.'s and candidates are required to observe a strict code of ethics and the national organization maintains and enforces strict disciplinary measures. In addition, all M.A.I.'s are required to complete 20 hours of continuing education per year in order to maintain a certified status.

Certainly M.A.I.'s have equivalent educational and experience requirements to both architects and engineers, and greatly superior to that of surveyors. The quality of work and public interest rationale that justified the inclusion of the three mentioned categories of professionals in this bill applies equally to those members of the real estate appraisal profession (23 at last count) who have qualified for professional appraisal designations.

Sincerely,

AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS



Garrett W. Waldner, M.A.I.  
National Governing Counselor

GW2/B24/tb



DOUGLAS A. STARK and ASSOCIATES, CONSULTANTS

957 Westbury Drive • Anchorage, Alaska 99503 • Phone: ~~277-4300~~

May 27, 1983

561-2332

Senator Jalmar Kerttula  
Pouch V  
Juneau, Alaska 99811

JUN 1 1983

Dear Jay:

I urge your opposition to HB211, which would prohibit price competition in state and local government selection of architects, engineers, and land surveyors.

The principal argument in favor of the bill is that a cheaper contractor would do less competent work. This is an invalid argument for several reasons. First - the user would take this into consideration in evaluating the firm's total qualifications. Second - the professional is licensed and is presumably both competent and, if not, would not undertake work he could not do.

The timing of this 'priority' legislation is interesting, inasmuch as the Justice Department is suing the State to negate the State's anti-competitive rule, and the Attorney General states that the rule is indefensible.

At the time that the Board of Registration considered the rule ten years ago, I wrote in objection, since the American Society of Civil Engineers had recently removed the bidding ban from its Code of Ethics. I pointed out to the Board also that such a rule would make it harder for new firms to establish themselves. There are many reasons why a fully competent firm would be able to do work at a lower cost than another firm, but the primary ones are current workload, better management, lower overhead, and less desire for an excessive profit.

The reality is that in large firms with high overhead the work is done by unlicensed people. Presumably it is supervised by competent personnel, but this is not always the case, as I have testified to in a current court case where I am appearing as an expert witness.

The bidding ban has no positive effect; its only effect is the negative one of lessening competition. The beneficiaries are the established firms; the losers are the newer firms and the public.

My position is not affected by the ban, since I do not do contract work for the state or local government. My interest is more a public interest focus. In fact, my position is harmful to me because those in favor of the bill will not be enamored by my opposition. But, as in so many matters, there comes a time to speak out.

I appreciate your careful consideration of this matter. I would be glad to answer any questions you may have.

Sincerely,

Doug Stark

# Alaska State Legislature

REPRESENTATIVE  
ADELHEID HERRMANN

P O. BOX 63  
NAKNEK, ALASKA 99633  
(907) 246 4495

While in Juneau  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4942, 465-4943



CHAIRMAN  
SPECIAL COMMITTEE  
ON FISHERIES

MEMBER  
TRANSPORTATION  
COMMITTEE

## House of Representatives

### MEMORANDUM

#### DISTRICT 26

ADAK  
AKUTAN  
ALEKNAGIK  
ATKA  
BELKOFSKI  
CLARK'S POINT  
COLD BAY  
DILLINGHAM  
DUTCH HARBOR  
EGEGIK  
EKUK  
EKWOK  
FALSE PASS  
IGIUGIG  
ILIAMNA  
KING COVE  
KING SALMON  
KOKHANOK  
KOLIGANEK  
LEVELOCK  
MANOKOTAK  
NAKNEK  
NELSON LAGOON  
NEWHALEN  
NEW STUYAHOK  
NIKOLSKI  
NONDALTON  
PEDRO BAY  
PILOT POINT  
PORT ALSWORTH  
PORT HEIDEM  
PORT MOLLER  
PORTAGE CREEK  
SAND POINT  
SOUTH NAKNEK  
SOJAW HARBOR  
ST. GEORGE  
ST. PAUL  
TOGIAK  
TWIN HILLS  
UGASHIK  
UNALASKA

TO: Senator Richard Eliason  
FROM: Representative Adelheid Herrmann  
DATE: March 28, 1984  
SUBJECT: City of Dillingham's Views on Pending Legislation

Enclosed please find the City of Dillingham's comments concerning House Bill 211.

They have asked that I forward these comments to you for your consideration on this legislation.

Thank you for your attention.

AH/r/ml  
Enclosure



# CITY OF DILLINGHAM

P.O. BOX 191

DILLINGHAM, ALASKA 99576

TELEPHONE (907) 842-5211 or 842-5212

March 1, 1984

TO: Legislative Affairs  
(For transmission to the State Legislative Delegation as indicated)

SUBJECT: PENDING LEGISLATION BEFORE HOUSE AND SENATE

✓ ATTENTION: SENATORS FAHRENKAMP, MULCAHY AND REP. HERRMANN

Subject: SB 375, Land Disposal and Management

The City of Dillingham supports your legislation, particularly that portion that requires the State to comply with local subdivision ordinances in connection with its land disposal program.

ATTENTION: SENATORS KERTTULA, MOSS & MULCAHY AND REP. HERRMANN

Subject: SB 361, Impact Payments

The City of Dillingham supports SB 361 regarding impact payments to municipalities. State owned land that requires services by the municipalities should be recognized and municipalities compensated accordingly.

✓ ATTENTION: SENATOR MULCAHY, REPRESENTATIVES COWDERY, FURNACE, RINGSTAD, UELING, WENDTE, PESTINGER, HERMANN

Subject: SB 67

The City of Dillingham is opposed to SB 67. We are concerned that the impacts that could be transferred from either the State and/or the utility to the municipality in the future are potentially very costly and could occur without the municipality having control over the design and engineering aspects which in turn relate to the costs that the municipality would have to bear concerning relocations. This appears to be very significant in smaller rural communities such as Dillingham that are facing rapid growth and will experience a number of major utility relocations over the next few years. Further complicating the problem in our own city is that Main Street, the major street into the City center, is a State route. Additional information on this bill and its impacts on various communities should be carefully studied before action taken.

TO: Legislative Affairs  
SUBJECT: PENDING LEGISLATION BEFORE HOUSE AND SENATE  
Page two

ATTENTION: SENATOR MULCAHY AND REPRESENTATIVE HERRMANN

Subject: SB 255, Payment of Attorney

The City of Dillingham is opposed to the municipality being burdened with attorney and legal costs associated with indigents charged with municipal offenses. It appears that the effect of such a law, particularly in small communities such as Dillingham that have large numbers of visitors from surrounding villages could be saddled with such extreme legal costs that the end effect would be a complete breakdown in the ability for local police to enforce municipal codes. We feel the system currently in effect to be the best for law and order in small and rural Alaskan communities.

ATTENTION: SENATOR MULCAHY AND REPRESENTATIVE HERRMANN

Subject: HB 474, Use of Grant Money Interest

The City of Dillingham is opposed to this bill, which completely eliminates discretionary authority of the grant recipient concerning interest on money earned from its investment policies on grant monies.

ATTENTION: SENATORS ELIASON AND MULCAHY AND REP. HERRMANN

Subject: HB 211, Professional Services Contracts

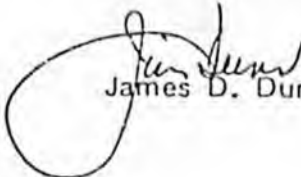
The City of Dillingham is opposed to HB 211. Any legislation which prohibits common sense judgments and discretion as it relates to project costs is not in the best interest of either the State or local government. This bill smacks of an effort by some professional architects, engineers and land surveyors to provide through legislation a system that would legally allow their costs to rapidly escalate and force a municipality to make a selection without benefit of cost information. The consequence seems obvious; more, bigger and better will prevail within the selection process, but can it be afforded. This is especially true in rural Alaska where often you have minimal competition for small projects that can't afford excessive project percentages to be spent on design and engineering. When you combine this bill and its effects with the already overly-strict interpretation and enforcement of the Little Davis Bacon Act by the Dept. of Labor, the return on contract dollars will be less and less.

ATTENTION: SENATOR MULCAHY AND REPRESENTATIVE HERRMANN

Subject: HB 581, Senior Citizen Program Supplementals

The City of Dillingham supports the passage of this bill.

FOR THE CITY OF DILLINGHAM

  
James D. Dunn, City Manager

IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 211 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to contracts for architectural, engineering, and land surveying services; and providing for an effective date."

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

\* Section 1. AS 36.98.040 is amended to read:

Sec. 36.98.040. EVALUATION OF PROPOSALS AND AWARD OF CONTRACTS.


(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. Each proposal received must be evaluated using the same factors as those set out in the request for proposal. In evaluating proposals including architectural, engineering, or land surveying professional services, the agency may not assign more than one half of the total possible point values for factors related to cost or price of the services.



## Dept. of Transportation & Public Facilities

# Position Paper

**BILL NO:** SCSCSHB211(L&C)

**APPROVED:**   
R. G. Knapp  
Commissioner

**TITLE:** "An Act relating to contracts for architectural engineering, and land surveying services; and providing for an effective date."

**DATE:** May 21, 1984

This Committee substitute for the HB 211 requires the Department of Transportation and Public Facilities (DOT&PF) to select Architects, Engineers, and Land Surveyors, based upon criteria currently utilized by the Department. The Department has no specific problem with the contract selection procedures proposed. Likewise, there will be little impact on the Department's current contracting procedures with passage of this bill.

The Department's main concern relates to the loss of Departmental flexibility once our present procedure has been written into law (as opposed to the Department policy and procedure manuals). The wording in the bill could allow for a broad range of interpretations. The less than specific wording of the bill could increase the number of objections and appeals leveled against the Department as a result of its personal services selection process. Project delays, costs for legal involvement, and more complicated contracting procedures may result.

The Department recommends one change on the draft SCSCSHB211(L&C). On page one, line 17, delete..."after consideration of the estimated value of the services to be rendered, and the scope, complexity, and professional nature of the services."



## Dept. of Transportation & Public Facilities

# Position Paper

BILL NO:CS for HB 211

APPROVED:

*R. S. Knapp*  
R. S. Knapp  
Commissioner

TITLE: An Act relating to contracts for architectural, engineering, and land surveying services; and providing for and effective date.

---

DATE:

5/9/84

The Department of Transportation and Public Facilities acknowledges the merits of the argument that low bid selection for professional design services could lead to undesirable cost and operating efficiency problems with the facilities constructed as a result of these designs. In certain cases, the practice of bidding could put the public in a position of paying for facilities which are not in the best interest of the public even though substantial sums appear to have been "saved" during the design phase. The Department supports the concept of flexible selection criteria enabling the Department to adjust the number and weighting of various factors for selection, including cost to design. There remain numerous classes of design professional contracts wherein price consideration can continue to be of value to the state (architectural reviews for code compliance, projects which have a well defined design and construction scope, and various sorts of consulting services).

The Department believes that the major intent of the proposed legislation could be accomplished, and our concerns alleviated, if the language of the bill included a limitation on the extent to which price could be considered for design oriented contracts. The State wishes to include price as a factor in selecting AE&LS' services when, in the judgement of the State, the scope, nature, and amount of services required are sufficiently defined so as to reasonably enable proposing firms or individuals to compete with a substantially equal understanding and/or interpretation of the services required.

Suggested language change by DOT&PF

CS

\* in/HB 211

(e) Notwithstanding any other provisions of this section, the State may include price as a factor in selecting AE&LS' services when, in the judgement of the State, the scope, nature, and amount of services required are sufficiently defined so as to reasonably enable proposing firms or individuals to compete with a substantially equal understanding and/or interpretation of the services required.

In order to include price as a factor in selection, the State must have at least one person involved in the evaluation of proposals who is registered in the State of Alaska in the primary Architectural, Engineering or Land Surveying discipline of the contract.



## Dept. of Transportation & Public Facilities

# Position Paper

**BILL NO:** CS for HB 211

**APPROVED:**

*R. J. Knapp*  
R. J. Knapp  
Commissioner  
4/27/84

**TITLE:** An Act relating to contracts for architectural, engineering, and land surveying services; and providing for and effective date.

---

**DATE:**

The Department of Transportation and Public Facilities acknowledges the merits of the argument that low bid selection for professional design services could lead to undesirable cost and operating efficiency problems with the facilities constructed as a result of these designs. In certain cases, the practice of bidding could put the public in a position of paying for facilities which are not in the best interest of the public even though substantial sums appear to have been "saved" during the design phase. The Department supports the concept of flexible selection criteria enabling the Department to adjust the number and weighting of various factors for selection, including cost to design. There remain numerous classes of design professional contracts wherein price consideration can continue to be of value to the state (architectural reviews for code compliance, projects which have a well defined design and construction scope, and various sorts of consulting services).

The Department believes that the major intent of the proposed legislation could be accomplished, and our concerns alleviated, if the language of the bill included a limitation on the extent to which price could be considered for design oriented contracts. For example, the bill could state that "the consideration of price for design services may not exceed x% of the scoring formula used in evaluating proposals."

contractor that it proposes to enter into a contract for professional services. (§ 5 ch 144 SLA 1982)

*Editor's notes.* — As enacted, this section contained subsections (g) and (h). These provisions however, were renumbered as AS 36.98.035(a) and (b) by the revisor of statutes pursuant to AS 01.05.031(b).

**Sec. 36.98.035. Standard overhead rate.** (a) If a state agency has established a standard overhead rate applicable to contracts for services from the state agency, the standard overhead rate shall be included in a proposal for a contract submitted under AS 36.98.030(a).

(b) As used in this section, "standard overhead rate" means a charge established for services from a state agency that is designed to compensate the state agency for administration and support services incidentally provided with the professional services. (AS 36.98.030(g), (h); § 5 ch 144 SLA 1982)

*Editor's notes.* — This section was enacted as AS 36.98.030(g) and (h) but was renumbered by the revisor of statutes pursuant to AS 01.05.031(b).

**Sec. 36.98.040. Evaluation of proposals and 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. Each proposal received must be evaluated using the same factors as those set out in the request for proposal.

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

(c) A contract subject to this chapter shall 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 award 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;  
 (4) a description of the services to be performed under the contract;

and  
 (5) a certificate 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. (§ 5 ch 144 SLA 1982)

*added wording would be inserted here*

*Editor's notes.* — As enacted, this section contained a subsection (e). The provisions of that subsection, however, were renumbered as AS 36.98.045 by the revisor of statutes pursuant to AS 01.05.031(b).

**Sec. 36.98.045. Review and approval by Department of Law.** If a 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 section must be completed before approval of the award of the contract by the commissioner under AS 36.98.040(c). (AS 36.98.040(e); § 5 ch 144 SLA 1982)

*Editor's notes.* — This section was enacted as AS 36.98.040(e) but was renumbered by the revisor of statutes pursuant to AS 01.05.031(b).

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

(b) When a professional services contract is completed, the contracting 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 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 the commissioner is required to maintain copies of completed contracts. (§ 5 ch 144 SLA 1982)

**Sec. 36.98.060. Filing of proposal and contract.** A copy of each contract and the response to the request for proposal upon which the contract was awarded must be filed with both the commissioner and the contracting state 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. (§ 5 ch 144 SLA 1982)

**Sec. 36.98.070. Regulations governing contract procedures.** The commission 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. (§ 5 ch 144 SLA 1982)

**Sec. 36.98.080. Definitions.** In this chapter

(1) "commissioner" means the commissioner of administration; except that for contracts entered into by the Department of Transportation and Public Facilities, "commissioner" means the commissioner of transportation and public facilities;

Offered: 4/14/83  
Referred: Judiciary

Original sponsors: Furnace, Abood,  
Barnes, et al

*Recommend Changes -*

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE HOUSE

*by John Scribner*

2 CS FOR HOUSE BILL NO. 211 (L&C) am

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to contracts for architectural,  
7 engineering, and land surveying services; and provid-  
8 ing for an effective date."

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

10 \* Section 1. AS 36.98 is amended by adding a new section to read:

11 *This is the way it should be*  
12 *John Scribner*  
13 Sec. 36.98.041. ARCHITECTURAL ENGINEERING AND LAND SURVEYING  
14 CONTRACTS. (a) Notwithstanding the provisions of AS 36.98.010(3) and  
15 AS 36.98.040, the state shall select persons or firms for the perfor-  
16 mance of architectural, engineering, or land surveying services and  
17 award contracts for these services at fair and reasonable prices only  
18 on the basis of demonstrated competence and qualification for the type  
19 of professional services required.

20 (b) In awarding a contract for the services of an architect,  
21 engineer, or land surveyor registered under AS 08.48 the state shall  
22 select the person or firm best qualified to perform the desired work  
23 on the basis of demonstrated competence and professional qualifica-  
24 tions. An attempt shall be made to negotiate a contract with the  
25 person or firm selected at a price that is fair and reasonable.  
26 (Before selection and negotiaticn) the state may not request or con-  
27 sider any statement, bid or estimate of fees or charges for architec-  
28 tural, engineering, or land surveying services for the proposed proj-  
29 ect or request any other submission or action that would violate  
AS 08.48 or a regulation adopted under AS 08.48.

(c) Subject to the criteria in (b) of this section, a particular

1 procedure for the selection of architects, eng<sup>g</sup> rs, or land survey-  
2 ors or for the award of contracts is not required The state may  
3 publicly rank proposals or offers received in response to a request  
4 for services. The state may attempt to negotiate a fair and reason-  
5 able price with the contractor best qualified to perform the desired  
6 work and to negotiate a fair and reasonable price with other contrac-  
7 tors, in order of ranking, if negotiations with the first-ranked  
8 contractor are not successful. The state may reject all or part of a  
9 proposal.

10 (d) This section does not apply to contracts awarded in an emer-  
11 gency if the person responsible for execution of the contract on  
12 behalf of the state certifies in writing that an emergency exists.

13 (e) In this section "state" includes political subdivisions of  
14 the state and agencies of the state and its political subdivisions.

15 \* Sec. 2. AS 36.98.080 is amended by adding a new paragraph to read:

16 (6) "emergency" means a condition of imminent danger to the  
17 public health, safety or welfare or a condition that requires immedi-  
18 ate action to prevent harm to a person or property.

19 \* Sec. 3. AS 37.05.240 is amended by adding a new subsection to read:

20 (c) A contract for architectural, engineering, or land surveying  
21 services shall be awarded in accordance with AS 36.98.041.

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

23 (1) requests for and acceptance of bids or other proposals  
24 for architectural, engineering, or land surveying services shall  
25 comply with AS 36.98.041.

26 \* Sec. 5. This Act applies to requests for bids or proposals for archi-  
27 tectural, engineering, and land surveying services issued after the effec-  
28 tive date of this Act.

29 \* Sec. 6. This Act takes effect immediately in accordance with

1 AS 01.-10.070(c).

2

Introduced: 2/11/83  
Referred: Labor & Commerce  
and Judiciary

Phil Holdsworth

as  
proposed  
by

BY FURNACE, ABOOD, BARNES,  
COWDERY, FLOOD, HURLBERT,  
MARTIN, PHILLIPS, RINGSTAD,  
UEHLING AND HAYES

1 IN THE HOUSE

2

HOUSE BILL NO. 211

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to contracts for architectural,

7

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

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Sec. 36.98.041. ARCHITECTURAL ENGINEERING AND LAND SURVEYING

12

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13

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14

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15

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basis of demonstrated competence and qualification for the type of

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professional services required.

18

(b) In awarding a contract for the services of an architect,

19

engineer, or land surveyor registered under AS 08.48 the state shall

20

select the person or firm best qualified to perform the desired work

21

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23

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24

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sider any statement, bid or estimate of fees or charges for architec-

26

tural, engineering, or land surveying services for the proposed proj-

27

ect or request any other submission or action that would violate

28

AS 08.48 or a regulation adopted under AS 08.48.

29

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1 procedure for the selection of architects, engineers, or land survey-  
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3 publicly rank proposals or offers received in response to a request  
4 for services. The state may attempt to negotiate a fair and reason-  
5 able price with the contractor best qualified to perform the desired  
6 work and to negotiate a fair and reasonable price with other contrac-  
7 tors, in order of ranking, if negotiations with the first-ranked  
8 contractor are not successful. The state may reject all or part of a  
9 proposal.

10 (d) This section does not apply to contracts awarded in an emer-  
11 gency if the person responsible for execution of the contract on  
12 behalf of the state certifies in writing that an emergency exists.

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18 ate action to prevent harm to a person or property.

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21 services shall be awarded in accordance with AS 36.98.041.

22 \* Sec. 4. AS 37.98.080 is amended by adding a new paragraph to read:

23 (11) requests for and acceptance of [bids or other] proposals  
24 for architectural, engineering, or land surveying services shall  
25 comply with AS 36.98.041.

26 \* Sec. 5. This Act applies to requests for [bids or] proposals for archi-  
27 tectural, engineering, and land surveying services issued after the effec-  
28 tive date of this Act.

29 \* Sec. 6. This Act takes effect immediately in accordance with AS 01.-

1 10.070(c).

tion Trades Council, vows that the trades "will be as vociferous as last year" in trying to defeat the bill.

Meanwhile, open-shop contractors elsewhere are challenging other little Davis-Bacon laws, spurred on by court approval of changes in the federal law. They successfully supported an amendment to the prevailing wage law in Colorado, and are involved in two lawsuits

to be heard soon in Illinois' supreme court challenging that state's law.

And in Florida, which repealed its little Davis-Bacon law in 1979, the Dade County Commission wrecked a proposed plan to pay prevailing wages to workers on county construction projects when it learned that the change would have increased construction costs by \$60 million over the next six years. ■

## Appeals court rejects worker wage-law suit

Although there is a split among federal appeals courts, another decision has been added to the growing number that say workers cannot sue employers that allegedly fail to pay prevailing wages required under the Davis-Bacon Act.

The U.S. Court of Appeals in Philadelphia recently ruled that the statute—which covers all federally-funded or assisted construction—does not give individuals a right to sue privately. The court explained that only the federal government can enforce the law.

The ruling involved a dispute between an insulator worker and Heat Control Co. over the prevailing-wage rate for work at a Veterans' Administration hospital in Lyons, N.J.

While the U.S. Court of Appeals in Chicago okayed such suits in a 1977 ruling, its reasoning was not followed by the Philadelphia court nor those in other circuits. In a 1980 ruling, the New Orleans appeals court affirmed a lower court decision dismissing a suit brought by two workers on a federally-funded project. It also held that Congress intended violations of the Davis-Bacon Act to be enforced through administrative action, not private lawsuits. ■

## Duval to replace Raftery as painters' union head

S. Frank Raftery, who headed the International Brotherhood of Painters and Allied Trades for two decades, is leaving that position June 3 for health reasons. Raftery will be succeeded by William A. Duval, a union vice president for 12 years who is not expected to bring dramatic changes to the union's management.

Raftery put strong emphasis on occupational health and safety during his presidency. He helped set up a national committee on such issues in the early 1970s and pressed a number of battles on toxic materials. In 1975, for example, the painters fought successfully for removal of asbestos from drywall taping compounds and later convinced states to require special training for painters working with toxic substances.

Raftery also will be remembered as a powerful advocate for wage increases and more extensive pension benefits.

Despite his efforts, the painters, like other building trade unions, have lost ground to the open shop. According to Duval, this problem will be a first priority in future bargaining, but he says the painters will also resist wage concessions. ■

## Electrical rules irk industry

The Occupational Safety and Health Administration held hearings last week on proposed changes to its safety standards for electrical construction, only to hear unhappy industry critics call for a major rewrite.

OSHA first proposed the changes last October in an effort to simplify its safety rules, which now incorporate by reference the entire National Electrical Code. However, the current rules are based on the 1971 version of the code, even though it has been updated several times since then, most recently this year. According to OSHA, the proposed rules are written in performance terms so that they would not include what it calls "superfluous detailed specifications" contained in the code.

"We feel that the current electrical standards, adopting as they do by reference a national consensus electrical code which is over 10 years old, do not provide adequate safety guidance to ei-

ther employers or employees," said OSHA safety standards director Barry J. White at the hearing. White pointed out that periodic rulemaking by OSHA to adopt code updates is not practical, while defending the agency's use of general standards that would allow for changes in technology.

OSHA has received some written public comment supporting its position, but industry representatives at the hearings were mostly critical. Some, including the International Brotherhood of Electrical Workers, suggested that the agency's entire approach is wrong and that the well-known code should remain the standard, with some additions. IBEW claimed that OSHA has exaggerated its problems in adopting updated codes.

While the hearing record will remain open for about six more weeks, OSHA officials say they have already begun work on a final electrical standard and hope to issue it by the end of the year. ■

## State gets mini-Brooks Law

From now on, Georgia agencies procuring engineering and architectural services must select design professionals initially on the basis of their qualifications, rather than price.

A new procurement law mandates the procedure for selection of architects, professional engineers, surveyors and landscape architect. The law "fills a critical void," says Robert H. Sparks, president of the Consulting Engineers Council of Georgia. Sparks points out that there are more than 15 state agencies and that they previously had purchased professional services differently.

The law applies to projects costing more than \$250,000 or having a professional fee of more than \$15,000. It requires contracting agencies to give public notice describing the projects, select "not less than three nor more than eight persons deemed to be the most highly qualified," and then "select a person to provide the professional ser-

vices based upon additional factors such as the cost."

Alternatively, agencies may choose professionals through negotiations. In that case, talks must begin with the firm ranked most qualified and proceed to the second most qualified if there is a failure to reach an agreement.

Ronald S. Edmondson, contract administrator for the Georgia Department of Transportation, says the department currently awards design contracts to the lowest bidder from a list of qualified bidders. He claims the law essentially codifies that practice.

Sparks says area consulting engineers are "pleased" with the law, but would have preferred professionals being selected totally on qualifications. "It's half good, half bad," adds Milton F. Lanch, general counsel of the National Society of Professional Engineers. He notes that Georgia is the 34th state to legislate selection standards. ■

HB 211 TITLE & SPONSOR SUMMARY

14:42 5/22/84 PAGE 1 OF 3

AMENDED TITLE: CS HB 211(L&C)AM

AN ACT RELATING TO CONTRACTS FOR ARCHITECTURAL, ENGINEERING,  
AND LAND SURVEYING SERVICES,  
AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: FURNACE.

CO-SPONSORS: ABOOD, BARNES, COWDERY, FLOOD, HURLBERT, MARTIN, PHILLIPS,  
RINGSTAD, UEHLING, HAYES.

CURRENT STATUS: 5/12/83 IN (S) LABOR & COM REFERRAL: FINANCE

HB 211 HOUSE ACTION

14:42 5/22/84 PAGE 2 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/17/83	01	0206	FIRST READING -- COMMITTEE REPORTS
04/14/83	02	0860	L&C -- CS04
04/14/83	03	0860	L&C F/NOTE EQUALS ZERO
04/29/83	04	1104	JUD - L&C CS(AM)04, NR00
05/10/83	05	1257	SECOND READING
05/10/83	06	1257	L&C CS ADOPTED BY UNAN CONSENT
05/10/83	07	1257	AM01 ADOPTED BY UNAN CONSENT
05/10/83	08	1257	AM02 ADOPTED BY UNAN CONSENT
05/10/83	09	1258	AM03 NOT ADOPTED BY DIV 10-21-01
05/10/83	10	1258	ADVANCED TO 3RD READING BY UNAN CONSENT
05/10/83	11	1258	THIRD READING
05/10/83	12	1259	PASSED BY DIV 26-13-01
05/10/83	13	1259	EFFECTIVE DATE PASSED BY DIV 39-00-01
05/10/83	14	1260	NOTICE OF RECONSIDERATION GIVEN
05/11/83	15	1260	RECONSIDERATION NOT TAKEN UP

HB 211 SENATE ACTION

14:43 5/22/84 PAGE 3 OF 3

DATE	SEQ	PAGE	LEGISLATIVE ACTION
05/12/83	16	0963	FIRST READING -- COMMITTEE REPORTS LABOR & COMMERCE FINANCE RULES





STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 21, 1984

SUBJECT: Sectional Analysis of SCS CSHB 211 (L&C)

TO: Senator Richard I. Eliason  
Chairman of Senate Labor and Commerce

FROM: Billy G. Berrier *BGB*  
Director  
Division of Legal Services

You have requested a sectional analysis of the May 21 draft committee substitute for SCS CSHB 211 (L&C).

Section 1 of the bill adds a new section to AS 36.98. The state shall award a contract to the most qualified person for architectural, engineering and land surveying purposes regardless of the competitive bid requirements of AS 36.98.010(3) or the evaluation and award requirements of AS 36.98.040. The state shall consider the estimated value of the services in light of their scope, complexity and professional nature in arriving at fair and reasonable compensation.

The state may rank persons and shall negotiate a contract with persons in order of ranking. It may reject all or any part of a proposal.

This section does not apply to contracts awarded in an emergency if the person responsible for awarding the contract certifies that an emergency exists. It also does not apply to services which are repetitive and have been described in specific detail.

The term state includes state agency but does not include political subdivisions of the state.

Section 2 defines emergency.

Section 3 takes contracts included within this Act out of the provisions of AS 37.05.240 governing awards of contracts for which there are competitive bids.

Senator Richard I. Eliason  
Page 2  
May 21, 1984

Section 4 takes contracts included within this act out of the competitive bid requirements of AS 37.05.230.

Section 5 provides the Act applies to all requests bids or proposals for architectural, engineering and land surveying services issued after the effective date of this Act.

Section 6 provides an immediate effective date.

BGB:ojb  
J7/077  
Attachment



OFFICIAL BUSINESS

# ALASKA STATE LEGISLATURE - SENATE

## COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON  
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811  
(907) 465-3844

### MEMORANDUM

TO: All Members of the Senate

FROM: Sen. Dick Eliason, Chair  
Senate Labor and Commerce *Dick Eliason*

RE: HB 211 - "An Act relating to contracts for architectural,  
engineering, and land surveying services

DATE: March 12, 1984

Recently many of you have received communications from your constituents and other Alaskans expressing concern that HB 211 is being "held up" in the Senate Labor and Commerce Committee and urging this committee to schedule a hearing on HB 211.

This legislation would amend laws governing professional services contracts let by the state or municipalities for architectural, engineering, and land surveying contracts. These professional services would be exempt from the competitive bidding requirements, AS 37.05.230. HB 211 states "Before selection and negotiation, the state may not request or consider any statement, bid or estimate of fees ...".

On May 26, 1983, the Senate Labor and Commerce Committee heard testimony from a DOT/PF representative, a municipality representative, and several architects on this bill. At the time of the hearing, a law suit had been filed by the U.S. Department of Justice against the Board of Registration for Architects, Engineers, and Land Surveyors challenging the validity of a regulation prohibiting a professional to "knowingly bid" on a project. As HB 211 had the appearance of being "special interest legislation", it was tabled until this issue was resolved.

In January, 1984, the regulation in question was deleted from the Alaska Administrative Code according to the settlement negotiated between the Board and the Department of Justice.

Even though the issue over this regulation has been resolved, opposition to HB 211 has not diminished. Many municipalities, as well as DOT/PF, strongly feel that information on both pricing and qualifications is

necessary in order to make an objective decision. A proposal based solely on one or the other of these components would be inadequate.

In order to reach an equitable solution to these problems, the Senate Labor and Commerce Committee is encouraging talks between the architect community and DOT/PF officials. If a meaningful compromise can be worked out, a committee substitute will be drafted and a formal hearing will be scheduled.

I hope this above information will be helpful to you.



# City and Borough of Sitka

~~XXXXXX~~ · SITKA, ALASKA · 99835  
304 Lake Street  
Room 104

February 14, 1984

Senator Richard Eliason  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Dick:

Please be advised that we oppose HB211, and I am surprised the A/E profession would push for such self-serving legislation. Over the years I have had the opportunity to listen to a good number of A/E firms, and they have failed to convince me that cost does not rank with competence and qualifications. Sitka has made it a practice to deal only with competent and qualified A/E firms, therefore price is of great importance to us.

Sincerely,

Fermin Gutierrez  
Administrator

cc: Alaska Municipal League

Letters of Opposition to original bill



# *Kodiak Island Borough*

P.O. BOX 1246  
KODIAK, ALASKA 99615-1246  
PHONE (907) 486-5736

February 15, 1984

The Honorable Richard I. Eliason  
State Senate  
Pouch V  
Juneau, Alaska 99811

Re: House Bill 211

Dear Senator Eliason:

Enclosed please find a copy of a letter dated June 3, 1983 along with a copy of Kodiak Island Borough Resolution No. 83-68-R adopted June 2, 1983 opposing House Bill 211 and supporting competition in contracting regulations.

I believe you will find the letter and resolution self-explanatory. I would again reaffirm the Assembly's opposition to House Bill 211 which I understand prohibits consideration of cost in selecting architects, engineers and land surveyors until after the selection has been made.

As you can see from the June 3rd letter, we have used the Junior High Renovation project Phase I as an example of our reason for opposition to House Bill 211. This project was reviewed by several major architectural firms who submitted prices ranging from a low of \$405,000 to a high of \$837,541. The Borough successfully negotiated a contract utilizing price as one of the considerations and obtained a very satisfactory product while saving some \$432,541. The project was awarded last summer and will be completed this summer with minimum problems for a complex project of this size and scope.

This same negotiation process was utilized to select the design of the auditorium facility (Phase II) with proposals being received ranging from a high of \$551,300 to a low of \$223,644 again resulting in a savings of \$327,656 to the Borough. The architect is currently in final stages of design and the project is anticipated to go out to bid in May, 1984 with an eighteen month construction period.

I believe by the two above examples it is clearly indicated that the Kodiak Island Borough was able to effect a savings of \$760,197 by using price as part of the negotiation process. It is ludicrous to believe that we would be prohibited from doing this in the future.

Page 2

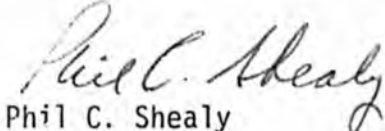
It is also interesting to note in the above examples that the highest price proposed was a firm which at that time was retained by the Borough to do other school projects. It is incomprehensible to me that with the range in prices indicated in these actual examples that the Borough would be in any position to negotiate a price once the A&E firm had been selected.

Consequently, it is imperative that this bill not proceed in any form which would restrict consideration of cost or fees as a factor in selecting any public contractor thereby reducing competition among professionals for public contracts.

If you have any further questions regarding this matter, I wish you would contact me at your convenience.

Sincerely,

KODIAK ISLAND BOROUGH



Phil C. Shealy  
Borough Manager

Enclosures (3)

CC Senator Bob Mulcahy  
Representative Fred F. Zharoff  
Alaska Municipal League  
David L. Soulak, City Manager, Palmer, Alaska  
Gary Thurlow, Borough Manager, Matanuska-Susitna Borough

mdd

# KODIAK ISLAND BOROUGH

Telephones 486-5736 - 486-5737 — Box 1246

KODIAK, ALASKA 99615

June 3, 1983

The Honorable Bob Mulcahy  
State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Bob:

Enclosed please find a copy of Kodiak Island Borough Resolution No. 83-68-R opposing House Bill 211 and supporting competition in contracting procedures. This resolution was unanimously adopted at the regular meeting on June 2, 1983.

The Kodiak Island Borough Assembly has taken a position in opposition to House Bill 211, which proposes to restrict inquiries into prices or fees of architects and engineering firms prior to actual selection of the successful contract. This bill would apply to both state and local government proposals for architectural and engineering contracts.

It is my understanding that this bill has passed the house and is currently being considered by the senate. I am further advised that it is receiving a strong lobbying effort from architectural, engineering and land surveying professional groups. The Borough's position is that if House Bill 211 is enacted and applies to local government that the cost of projects will skyrocket dramatically.

An example of the increase in cost can best be illustrated by the Junior High renovation project currently underway in Kodiak. This project was recently designed and the Borough received proposals from several architectural firms with prices ranging from a low of \$600,000 to a high of 1.3 million dollars. The Borough successfully negotiated a contract utilizing price as one of the considerations and obtained a very satisfactory product while saving \$700,000. The project has now been advertised and awarded with work planned to start June 15, 1983.

It is interesting to note in the above example of the price range that the highest price proposed was by a firm which at that time was retained to do other school projects for the Borough. It is incomprehensible to me that with a range in price as indicated by this actual example that the Borough would be in any position to negotiate a price once the A&E firm is selected.

I am further advised that the State of Maryland requires architectural and engineering services to be awarded on a competitive basis. Proposals must be evaluated both on technical and price considerations. Maryland officials have indicated that the system has saved money and maintained

KODIAK ISLAND BOROUGH  
RESOLUTION NO. 83-68-R

A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY OPPOSING HOUSE  
BILL 211 AND SUPPORTING COMPETITION IN CONTRACTING PROCEDURES.

WHEREAS, the Kodiak Island Borough Assembly has strongly and consistently supported maximum competition in procuring public contracts for services, goods and construction, and

WHEREAS, the Borough Code presently provides for competitive proposals for Borough contracts for professional services, and requires the contract to be awarded to the "best qualified" professional, and

WHEREAS, the Assembly finds that the Borough's purchasing procedures are adequate to assure that the Borough will seek and obtain competent and qualified professionals for performing professional services for the Borough, and

WHEREAS, the Assembly further finds that the cost of the professional services is also a relevant factor which should be considered in selecting the contractor, and

WHEREAS, House Bill 211, which provides, in part:

"The State (or local government) 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 (before selecting the successful contractor.)"

would effectively eliminate cost of services as a factor in selecting certain professionals, and

WHEREAS, the result of this proposed legislation would be the decrease of competition for certain public contracts and an increase in cost to the public for public construction projects.

NOW, THEREFORE, BE IT RESOLVED that the Kodiak Island Borough Assembly opposes passage of House Bill 211 in any form which would restrict consideration of cost or fees as a factor in selecting any public contractor or which would reduce competition among professionals for public contracts.

BE IT FURTHER RESOLVED that, if House Bill 211 is adopted in any form, municipalities should be excluded from its effect and permitted to establish their own contracting procedures, pursuant to the principles of maximum local self-government under Article X, Section 1 of the Alaska Constitution.

PASSED AND APPROVED this 2nd day of June, 1983.

KODIAK ISLAND BOROUGH.

ATTEST:

By [Signature]  
Borough Mayor, Deputy

By [Signature]  
Borough Clerk

# Municipality of Anchorage



POUCH 6-650  
ANCHORAGE, ALASKA 99502-0650  
(907) 264-4111

TONY KNOWLES,  
MAYOR

OFFICE OF PROGRAM PLANNING & BUDGETING

March 9, 1984

Senator Dick Eliason  
Alaska State Senate  
Attn: Ms. Sheila Peterson, Legislative Aid  
Pouch V, Capitol Bldg., Room 417  
Juneau, AK 99811

Dear Sheila;

We wanted to make sure that you and Senator Eliason received our comments on CSHB 211 prior to any further action. I have also attached some letters from other communities concerning this bill.

As you can see, we are opposed to CSHB 211. Please pass our comments along to the Senator.

Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. R. Cowden", with a long horizontal line extending to the right.

Daniel R. Cowden  
Programs and Projects Officer

# Municipality of Anchorage

## MEMORANDUM

DATE: March 9, 1984

TO: Daniel Cowden, Program Planning and Budgeting Office

FROM: Purchasing Officer

SUBJECT: Comments on CS for HB 211

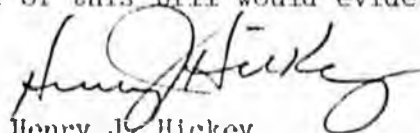
There are at least two areas of concern in CS for HB 211 from the Purchasing Division's perspective.

The first is under 36.98.041 (b) beginning at line 24 "Before selection and negotiation the State may not request or consider any statement, bid, or estimate of fees or charges for architectural, engineering, or land surveying services." This would be construed to prevent this 'political subdivision' or any 'political subdivision' from getting an estimate from any source to assist them in establishing 'fair and reasonable prices.'

It is obvious if we were prevented by law from requesting or considering competitive information on fees we would be at the mercy of the A/E community to establish the fee level. It is patently ridiculous to enter into fee negotiations and not be able to know current market conditions. Moreover, this act would put smaller political subdivisions at a major disadvantage. Smaller subdivisions only occasionally retain A/E consultants so they would not even possess the experience gained from their own negotiations - and could not seek pricing assistance even from other political subdivisions.

Although it is religiously resisted by the A/E community, there is an increasing propensity to receive unpriced proposals and, through negotiation discussions, define the work scope with several qualified consultants. When the scope is defined then competitive prices are solicited and the contract is awarded to the low priced offer. This process insures the best efforts of the consulting firms with regard to both work scope and price.

The second problem under 36.98 Section I, as proposed, is that it appears no consideration is given to small design and land surveying contracts. There are many small jobs where minimum technical effort is required. In other words, any professional of that particular design discipline should be able to equally perform. Price, then, is the only separating criterion. Passage of this bill would evidently prevent proceeding in this manner.

  
Henry J. Hickey  
Purchasing Officer

Copy to: Barbara Steckel, Municipal Manager  
Robert M. Nelson, Chief Fiscal Officer

Introduced by: Borough Manager  
Prepared by: Borough Attorney

MATANUSKA-SUSITNA BOROUGH

RESOLUTION SERIAL NO. 83-53

A RESOLUTION OF THE ASSEMBLY OF THE MATANUSKA-SUSITNA BOROUGH  
OPPOSING HOUSE BILL 211 AND SUPPORTING COMPETITION IN CONTRACTING  
PROCEDURES.

---

WHEREAS, the Assembly of the Matanuska-Susitna Borough has strongly and consistently supported maximum competition in procuring public contracts for services, goods and construction, and

WHEREAS, the Borough Code presently provides for competitive proposals for Borough contracts for professional services, and requires the contract to be awarded to the "best qualified" professional, and

WHEREAS, the Assembly finds that the Borough's purchasing procedures are adequate to assure that the Borough will seek and obtain competent and qualified professionals for performing professional services to the Borough, and

WHEREAS, the Assembly further finds that the cost of the professional services is also a relevant factor which should be considered in selecting the contractor, and

WHEREAS, House Bill 211, which provides, in part:

"The state [or local government] 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 [before selecting the successful contractor.]"

would effectively eliminate cost of services as a factor in selecting certain professionals; and

WHEREAS, the result of this proposed legislation would be the decrease of competition for certain public contracts and an increase in cost to the public for public construction projects;

THEREFORE BE IT RESOLVED, that the Assembly of the Matanuska-Susitna Borough strongly opposes passage of House Bill 211 in any form which would restrict consideration of cost or fees as a factor in selecting any public contractor or which would reduce competition among professionals for public contracts;

BE IT FURTHER RESOLVED, that, if House Bill 211 is adopted in any form, that municipalities should be excluded from its effect and permitted to establish their own contracting procedures, pursuant to the principles of maximum local self-government under Article X, Section 1 of the Alaska Constitution.

PASSED AND APPROVED by the Assembly of the Matanuska-Susitna Borough, this 17<sup>th</sup> day of May, 1983.

Edna Armstrong  
Edna Armstrong, Mayor

ATTEST:

REVIEWED AND APPROVED:

Evelyn Thompson  
Evelyn Thompson, Borough Clerk

Gary Thurlow  
for Gary Thurlow, Borough Manager

(SEAL)

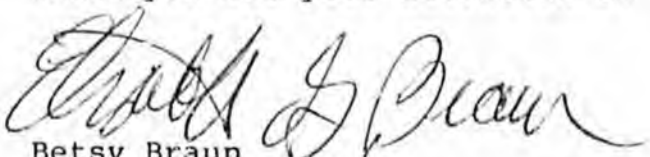
1736-A W. 11th Ave.  
Anchorage, Alaska 99501

Dear Senator Eliason,

I am writing you once again to continue my plea for HB 211. I can well understand your reluctance to support this bill. I have certain reservations about the intent of this legislation myself. However, I cannot help but think that the best interests of our built environment would be served by such legislation. Unfortunately, (or maybe fortunately) no two buildings are ever alike. Each one demands its own approach and unique solution. Each building is built to serve a community with its own unique problems. If we try to start doing "pret-de porter" buildings, the results could be disastrous. Even if we ignore the varied public needs, we cannot ignore the tremendous climactic diversity this state contains. A building that is perfect for Seward would be absurd in Prudhoe Bay. It is this need for individual attention that is at the heart of this bill. This individual attention is directly equivalent to a professional designers' time. If we start to competitively bid against each other for our hours of thought, the result will, of course, be less well thought out buildings.

I understand and admire your desire to obtain the best possible buildings for this state. I also understand the need to achieve this goal as economically as possible. As a libertarian, I also would be the last person to attempt to worm in legislation that was against free trade. But Architects DO compete against each other. The firms that have projects that consistently go over budget soon go out of business. I just cannot emphasize however how critical I see the distinction between a service and a product. The design of a building is NOT A PRODUCT. Please do not force us to treat it as such.

Thank you for your attention on this issue.



Betsy Braun  
Intern Architect, CCC Architects

Letters of Support (Received approx 90)

*The Alaska Society of  
Professional Engineers*



Address Reply To:

P. O. Box 80148  
Fairbanks, Alaska 99708  
April 4, 1984

The Honorable Richard I. Eliason  
Chairman, Senate Labor and  
Commerce Committee  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Eliason:

The Fairbanks Branch of the Alaska Society of Professional Engineers urges you to consider the merits of CS for HB 211, "An Act relating to contracts for architectural, engineering and land surveying services." Overall, this Bill is supported by the five thousand registered architects, engineers and land surveyors licensed to practice in the State of Alaska. We ask that this Bill be considered by your committee and presented to the House for their study and hopefully passage.

This legislation is, in part, an effort by Alaska Professionals to overcome the effects of a consent decree now before the United States District Court for the District of Alaska brought by the United States Department of Justice and agreed to by the Attorney General for the State of Alaska over the vehement objections of the members of the Board of Architects, Engineers and Land Surveyors and the members of these Professions. The regulation which the decree attacks, as an invalid restraint of trade under the Sherman Act, was codified in 1972 as AS AAC 36.230 (b) and states in part:

"Each architect, engineer or land surveyor shall seek professional employment on the basis of qualifications for the proper accomplishment of the work. He may not knowingly solicit or submit proposals for professional services on the basis of competitive bidding."

We believe the decree is based upon a flawed understanding of the meaning of the regulation and of the way in which competition operates in our professions.

Professionals believe that CS for HB 211 explains in detail the procedures by which the State and other government entities can obtain the best professional services. Services which will result in the most economic overall cost in a competitive manner. It is modeled after the "Brook Act" P.L. 92-582-- a Federal law providing for procurement of professional services by Federal Agencies and therefore should not conflict with Federal regulations.

*The Alaska Society of  
Professional Engineers*



Address Reply To:

The Honorable R. I. Eliason  
Page two  
April 4, 1984

To believe that the lowest cost for professional services will result from a competitive bid is a misunderstanding of the process. The cost for services of an architect, engineer or land surveyor is only a small percentage of the total project cost. The professional architect, engineer or land surveyor offers his client his knowledge, experience, education and ingenuity. These qualities, properly applied to the clients' problems, will produce the most economical and efficient result.

There is but one State which has passed legislation requiring the bidding for professional services. The inefficiencies, the excessive costs and the administrative problems that have resulted from the legislation are so serious that the State, Maryland, is considering repeal.

We ask again that CS for HB 211 be considered by your committee and brought out on the floor of the Senate for review, comments and hopefully passage.

Sincerely,

THE ALASKA SOCIETY OF PROFESSIONAL ENGINEERS  
FAIRBANKS CHAPTER

*Earl H. Beistline*  
Earl H. Beistline  
President

ElB/jc

cc: Jan Hansen, State President, A.S.P.E.  
Bob Shary, President, Anchorage Chapter, A.S.O.E.  
Ben Haight, President, Juneau Chapter, A.S.P.E.  
Senator Bob Mulcahy  
Senator Fritz Pettyjohn  
Senator Patrick Rodey  
Senator John C. Sackett  
Senator Don Bennett  
Senator Bettye Fahrenkamp  
Representative Robert Bettisworth  
Representative Mike Davis  
Representative Niilo Koponen  
Representative Mike Miller  
Representative John Ringstad

2357 Hialeah Drive  
Anchorage, Alaska 99503

March 29, 1984

Senator Richard I. Eliason  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Dear Senator Eliason,

HB 211 pertaining to State selection procedures for obtaining architectural and engineering services is currently being considered by the Senate Labor and Commerce Committee. In essence, HB 211 would preclude the State from selecting architects and engineers on the basis of price alone.

Clients who are accustomed to procuring commodities believe that competitive bidding offers the advantage of safely obtaining design services at the lowest possible cost. While there is the advantage of potential savings in the cost of design services, the problems with bidding present the State with potential disadvantages that are very real:

1. A solicitation for design services that exactly describes the scope and quality of those services is difficult if not impossible to prepare. This would be analogous to the plans and specifications an architect or engineer would provide to a contractor that wished to prepare a bid for the construction of a new structure. Inasmuch as the scope and quality issues will be less specific and more ambiguous than plans and specifications, the architect will have to make assumptions on the kind and scope of services to provide. This situation can produce an adversarial relationship between the owner and the low bidder due to a lack of clarity in the scope documents. Defining a basic scope of work for a project would require that the owner-client conduct an extensive and knowledgeable in-house consultation process to develop this information prior to releasing scope documents to be used as the basis of consultant bidding.
2. All other things being equal, the low bidder will obtain the design commission due to his ability to produce the job in less time. By necessity, he will be required to limit the time he can allot for the development of his design solution. A structure that is economical to construct and economical to operate takes time and effort to design. Bidding may not allow the designer the flexibility to explore alternative solutions to design problems. Life-cycle maintenance and operating cost savings resulting from a thoughtful and deliberative

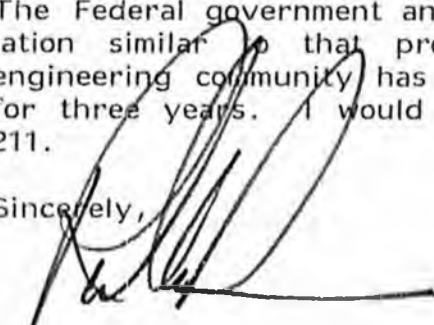
Senator Richard I. Eliason  
March 29, 1984  
Page 2

design process will be many times greater than the potential fee reduction resulting from bidding design services. The percentage of a project's total construction cost that is utilized for architectural and engineering fees is very small. In fact, total construction cost appears small when compared with a project's life-cycle cost.

3. Quantification of the architect's or engineer's experience, creativity, past performance, financial strength, and professional skill may not be possible in bidding, whereas the success of the project is, to a large part, dependent on these factors.
4. A great deal more money could be spent correcting construction or operational problems if the design or construction documents for a facility are reduced in quality as a result of the bidding process. The effect of bidding on liability insurance claims and costs is not documented at this time but is an issue of increasing concern to design consultants and their E&O insurers. It is felt that those firms successfully bidding for design commissions will be the ones who will feel comfortable treading that fine line between a set of minimumly coordinated and detailed project documents and ones potentially containing errors and omissions caused by extremely tight production cost constraints.

The Federal government and twenty-nine other states have enacted legislation similar to that proposed by HB 211. The architectural and engineering community has been working toward the passage of this bill for three years. I would recommend and appreciate your support of HB 211.

Sincerely,



Richard B. Riegels, AIA  
Principal  
CCC Architects and Planners

RBR/nnl

cc: All legislators



ALASKA CHAPTER  
THE AMERICAN INSTITUTE OF ARCHITECTS

Honorable Dick Eliason  
Chairman Labor & Commerce  
Alaska State Legislature  
Pouch V-Capitol Bldg., Rm. 417  
Juneau, Alaska 99811

November 11, 1983

RE: H.B. 211

Dear Senator Eliason:

On behalf of the American Institute of Architects - Alaska State Chapter, enclosed please find the following:

- 1) H.B. 211 as past by the House in 1983 for procurement of Architectural and Engineering Services through a qualification process.
- 2) Recent Article depicting that the State of Maryland is not bidding work when costs and time is critical.
- 3) U. S. Public Law 92-582; 92nd Congress, H. R. 12807; October 27, 1972 An Act amend the Federal Procurement for Architectural and Engineering Services through a qualification process.
- 4) Excerpt from 1974 General Service Administration supporting the 1972 Procurement Act.
- 5) Letter from Insurance Company that covers Liability, Errors & Omission Policies for Architects & Engineers questioning their ability to offer coverage to those firms engaged in a low bid award procurement process.
- 6) 5-501 Part E Model Procurement Code by American Bar Association for Architects and Engineers recommending a qualification process.
- 7) A Summary For Selecting Architects For Public Projects.
- 8) Table summary of State Laws that govern procurement processes.

The controversy of whether to procure Architects & Engineers contracts by bidding or by qualifications has prompted the introduction and subsequent overwhelming House passage of H.B. 211 (Attachment 1). Arguments opposing H.B. 211, propose the bidding of professional services, which in theory reduces the costs of Architects & Engineers fees and mimimizes the chance for corruption by favortism.

Several recent court cases dealing with price fixing on highways, power plants and other bid type work is evidence enough that bidding will not eliminate or reduce the chances for corruption.

Concerns re: competitive bidding

PLEASE REPLY TO: 369 South Franklin Street, Juneau, Alaska 99801

Lowering the Architects & Engineers fees is possible and this is proving out to be the case in Maryland; however, overall costs of a project are sky rocketing resulting in loss of revenues buying power. If, for example the State expects to spend \$10,000,000 on construction of a project under the present system, one can expect the following total costs:

State Agency Administration	20%	\$2,000,000
Architects & Engineers Fees	10%	1,000,000
Construction Cost	100%	10,000,000
Life cycle cost of O & M	300%	<u>30,000,000</u>
Total Cost of Project		\$43,000,000

In Maryland certain trends are establishing themselves. A savings of over 25% is being experienced in regards to Architects & Engineering firms, however, administrative costs are up 20% to 100%. Architects & Engineers spending less time on alternative construction methods may have increased costs by 5% or more. Life cycle costs that increase only 1% add tremendous costs.

State Agency	24.0%	+ 20%	\$2,400,000
Architects & Engineers	7.5%	- 25%	750,000
Construction	100.0%	+ 5%	10,500,000
Life Cycle Costs	303.0%	+ 1% per yr.	<u>30,300,000</u>
Low Bid	Total Cost of Project		43,950,000
Negotiated Fee	Total Cost of Project		<u>43,000,000</u>
Increase because of Low Bidding			950,000

The figures used are conservative and any one increase off sets any possible savings. What appeared as a \$250,000 savings really cost the State \$950,000.

"Since the fee paid the Architects & Engineers is related to their time spent on the project, a reduction in the fee means a reduction of efforts on their part which could very well result in a more expensive construction and loss in the quality of the design and contract documents." Ralph D. Culbertson, Chief of Engineering Services, State of Wisconsin.

These concerns that are beginning to appear in Maryland; poorer quality of designs, higher construction costs and more costly operation and maintenance expenses caused Maryland to recently use the Negotiation Procurement Process. When a project is of significant importance to control the total cost and timely completion. The low bid procedure was not used. (Attachment 2)

Representing the procurement procedure by qualifications includes the Federal Government. In 1972, they passed a law (Attachment 3) requiring procurement of Design Professionals on a qualification selection for all federally funded projects. The arguments against this process was studied by the federally funded GSA in 1974 (Attachment 4). The results were clearly outlined in favor of procurement of Architects & Engineers firms by qualification process - not through bidding.

Page 3

To further emphasize the pitfalls of bidding design contracts, a letter presented by an insurance company stating that they would "seriously consider not covering those policyholders of ours who operate in this fashion (low bid)...."(Attachment 5)

Covering the legal ramifications in addition to what the Federal Government has presented, we have included the American Bar Association recommendations stating that the Procurement of Architects & Engineers contracts should be based on qualification with the fee negotiated after selection (Attachment 6). Considering their comments under commentary, items 2 & 3 in particular point out why price negotiations should be handled after selection. We have included a booklet summarizing the whys & what fors in selecting Architects & Engineers Firms (Attachment 7).

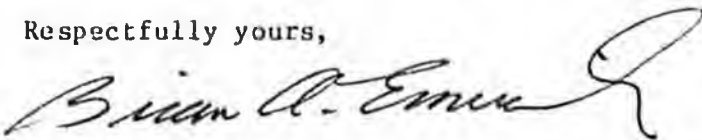
Enclosure #8 shows which states have laws governing Architects & Engineers Procurements. Note that out of 31 states, only two use low bidding in their evaluations.

Finally, the bidding process inherently creates an adversary position between the Consultant and the hiring agency. Consultants are forced to adhere strictly to the provisions of the contractual agreements, thus stalemating innovative and creative solutions. Anything not in the contract becomes an extra for additional fees. Bidding therefore becomes the implement of conversation so that the client's other interest are often lost. This lack of open exchange of information and legal inflexibility to alter tasks midstream creates a less than optimum design solution.

In conclusion there is an overwhelming amount of supporting evidence for the Procurement of Architects & Engineers contracts through selection by qualifications not through a bidding procedure. The recent U. S. Court decision imposed on the State of Alaska Architects & Engineers Board of Registration overturning the policy banning the bidding of work. It is even more important than ever that this H.B. 211 be inacted as soon as possible to forestall State agencies and related public groups from reformulating the present selection processes.

We urge you to pass on H.B. 211 from your committee with a unanimous approval as written.

Respectfully yours,



Brian A. Emerich, AIA  
Vice President Elect  
Chairman Legislative Affairs Committee

Originals to Senators: Dick Eliason, Chairman  
Bob Mulcahy, V-Chairman  
John Sackett  
Fritz Pettyjohn  
Pat Rodey

POUCH V (MS-3100)

JUNEAU AK 99811

REGARDING HOUSE BILL 211 PROFESSIONAL SERVICES CONTRACT

DEAR SENATOR ELIASON,

I WOULD ASK YOUR CONSIDERATION FOR ADDING REAL ESTATE APPRAISERS TO THE CATERGORIES OF PROFESSIONALS INCLUDED UNDER THIS BILL. ALTHOUGH NOT LICENSED BY THE STATE OF ALASKA, THE BULK OF THE SENIOR REAL ESTATE APPRAISERS IN THE STATE HOLD THE M.A.I. DESIGNATION AWARDED BY THE AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS. TO QUALIFY FOR THIS DESIGNATION, AN INDIVIDUAL MUST BE OF GOOD MORAL CHARACTER AND INTEGRITY AND RECEIVE A POSITIVE RECOMMENDATION FROM THE LOCAL BUSINESS COMMUNITY. IN ADDITION, APPROXIMATELY 1-3/4 YEARS OF POST GRADUATE WORK IS REQUIRED BEYOND A COLLEGE DEGREE. INCLUDED IN THIS ARE A SERIES OF 10 EXAMINATIONS TOGETHER WITH AN 8 HOUR COMPREHENSIVE EXAMINATION UPON COMPLETION OF ALL OTHER REQUIREMENTS. A MINIMUM OF FIVE YEARS EXPERIENCE IS REQUIRED AND IS REVIEWED ACCORDING TO NATIONAL GUIDELINES ON BOTH A QUALITATIVE AND QUANITATIVE BASIS. M.A.I.(S) AND CANDIDATES ARE REQUIRED TO OBSERVE A STRICT CODE OF ETHICS IN THE NATIONAL ORGANIZATION MAINTAINS AND ENFORCES STRICT DISCIPLINARY MEASURES. IN ADDITION, ALL M.A.I.(S) ARE REQUIRED TO COMPLETE 20 HOURS OF CONTINUING EDUCATION PER YEAR IN ORDER TO MAINTAIN A CERTIFIED STATUS. CERTAINLY M.A.I.(S) HAVE EQUIVALENT EDUCATIONAL AND EXPERIENCE REQUIREMENTS TO BOTH ARCHITECTS AND ENGINEERS, AND GREATLY SUPERIOR TO THAT OF SURVEYORS. THE QUALITY OF WORK AND PUBLIC INTEREST RATIONALE THAT JUSTIFIED THE INCLUSION OF THE THREE MENTIONED CATEGORY OF PROFESSIONALS IN THIS BILL APPLIES EQUALLY TO THOSE MEMBERS OF THE REAL ESTATE APPRAISAL PROFESSION (23 AT LAST COUNT) WHO HAVE QUALIFIED FOR PROFESSIONAL APPRAISAL DESIGNATION.

SINCERELY,

AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS,

ALASKA CHAPTER NBR 57

GARRETT W. WALDNER, M.A.I. NATIONAL GOVERNING COUNSELOR

*Real Estate  
Appraisers want  
to be included*

“(c) Provisions of this section shall be effective only in the cases of members who, on or before June 30, 1975, execute the required written agreement to remain in active service.”; and

(4) by inserting the following new item in the analysis:

“312a. Special pay: nuclear-trained and qualified enlisted members.”.

Sec. 2. The provisions of section 7545(c) of title 10, United States Code, shall not apply with respect to any gift made after the date of enactment of this Act and prior to January 1, 1973, by the Department of the Navy to the city of Clifton Forge, Virginia, of a Baldwin steam locomotive (No. 606) which is no longer needed by the Navy and which has certain historical significance for the city of Clifton Forge, Virginia.

Approved October 27, 1972.

## PUBLIC BUILDINGS—SELECTION OF ARCHITECTS AND ENGINEERS

*For Legislative History of Act, see p. 4767*

PUBLIC LAW 92-582; 86 STAT. 1278

[H. R. 12807]

An Act to amend the Federal Property and Administrative Services Act of 1949 in order to establish Federal policy concerning the selection of firms and individuals to perform architectural, engineering, and related services for the Federal Government.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:*

The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.)<sup>64</sup> is amended by adding at the end thereof the following new title:

### “TITLE IX—SELECTION OF ARCHITECTS AND ENGINEERS

#### “DEFINITIONS

“Sec. 901. As used in this title—

“(1) The term ‘firm’ means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

“(2) The term ‘agency head’ means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government.

“(3) The term ‘architectural and engineering services’ includes those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

#### “POLICY

“Sec. 902. The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for archi-

64. 40 U.S.C.A. § 471 et seq.

Oct. 27

Oct. 27

PUBLIC BUILDINGS

P.L. 92-582

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tectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

"REQUESTS FOR DATA ON ARCHITECTURAL AND ENGINEERING SERVICES

"Sec. 903. In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

HITECTS

"NEGOTIATION OF CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES

"Sec. 904. (a) The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Government. In making such determination, the agency head shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

"(b) Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm.

"(c) Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached."

Approved October 27, 1972.

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Editor's notes. — Section 11, ch. 144, SLA 1982, provides: "This Act applies to requests for bids or proposals for profes- sional services issued after the effective date of this Act (July 22, 1982)."

**Sec. 36.98.010. Application of chapter.** This chapter applies to contracts for professional services provided to a state agency unless

- (1) the total amount of the contract does not exceed \$25,000;
- (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 awarded based on competitive bids obtained under the procedure provided in AS 37.05.230. (§ 5 ch 144 SLA 1982)

**Sec. 36.98.020. Professional services contractors register.** (a) The commissioner shall establish and maintain a professional services contractors register.

(b) A person or firm that desires to provide professional services to a state agency may submit to the commissioner a statement of qualifications and performance data, and any other information that the commissioner, by regulation, may require.

(c) The commissioner may at any time require the person or firm to revise the statement of qualifications and performance data or any other information submitted by the person or firm if the commissioner believes that the credentials or record of experience of the person have materially changed since the last filing by the person or firm. (§ 5 ch 144 SLA 1982)

**Sec. 36.98.030. Solicitation of proposals.** (a) When a state agency proposes to enter into a contract for professional services, the agency shall give public notice soliciting proposals for the professional services contract by publication at least three times in one or more newspapers in general circulation in the state and, when appropriate, in a newspaper in local circulation where the work is to be performed. The first notice shall be published not less than 30 days before the date on which the agency expects to enter into the contract and each subsequent notice shall be published at intervals of no more than three days thereafter. 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) In addition to complying with the publication requirements of (a) of this section, when a state agency proposes to enter into a contract for professional services it shall

- (1) review the register of professional services contractors maintained by the commissioner under AS 36.98.020; and
- (2) provide a request for proposals for the proposed professional services contract to each prospective contractor who, after review of the register of professional services contractors under (1) of this subsection, the agency finds is qualified for consideration for the contract.

(c) A request 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 with the required expertise shall be solicited for contracts equal to or greater than \$100,000. Proposals from at least three persons or firms with the required expertise shall be solicited for contracts of less than \$100,000 if the expertise required is available. If the expertise required is not available to enable an agency to solicit the number of proposals otherwise required under this subsection, the agency shall solicit proposals

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

(2) from each person or firm responding to the public notice given under (a) of this section who appears to possess the required expertise.

(d) 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 if 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 deputy commissioner has authorized in writing the state agency to enter contract negotiations with the single source;

(2) the commissioner makes a written determination 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, 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

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contractors that it proposes to enter into a contract for professional services. (§ 5 ch 144 SLA 1982)

**Editor's notes.** — As enacted, this section contained subsections (g) and (h). These provisions, however, were renumbered as AS 36.98.035(a) and (b) by the revisor of statutes pursuant to AS 01.05.031(b).

**Sec. 36.98.035. Standard overhead rate.** (a) If a state agency has established a standard overhead rate applicable to contracts for services from the state agency, the standard overhead rate shall be included in a proposal for a contract submitted under AS 36.98.030(a).

(b) As used in this section, "standard overhead rate" means a charge established for services from a state agency that is designed to compensate the state agency for administration and support services incidentally provided with the professional services. (AS 36.98.030(g), (h); § 5 ch 144 SLA 1982)

**Editor's notes.** — This section was enacted as AS 36.98.030(g) and (h) but was renumbered by the revisor of statutes pursuant to AS 01.05.031(b).

**Sec. 36.98.040. Evaluation of proposals and 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. Each proposal received must be evaluated using the same factors as those set out in the request for proposal.

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

(c) A contract subject to this chapter shall 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 award 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;
- (4) a description of the services to be performed under the contract;

and

- (5) a certificate 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. (§ 5 ch 144 SLA 1982)

**Editor's notes.** — As enacted, this section contained a subsection (e). The provisions of that subsection, however, were renumbered as AS 36.98.045 by the revisor of statutes pursuant to AS 01.05.031(b).

**Sec. 36.98.045. Review and approval by Department of Law.** If a 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 section must be completed before approval of the award of the contract by the commissioner under AS 36.98.040(c). (AS 36.98.040(e); § 5 ch 144 SLA 1982)

**Editor's notes.** — This section was enacted as AS 36.98.040(e) but was renumbered by the revisor of statutes pursuant to AS 01.05.031(b).

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

(b) When a professional services contract is completed, the contracting 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 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 the commissioner is required to maintain copies of completed contracts. (§ 5 ch 144 SLA 1982)

**Sec. 36.98.060. Filing of proposal and contract.** A copy of each contract and the response to the request for proposal upon which the contract was awarded must be filed with both the commissioner and the contracting state 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. (§ 5 ch 144 SLA 1982)

**Sec. 36.98.070. Regulations governing contract procedures.** The commission 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. (§ 5 ch 144 SLA 1982)

**Sec. 36.98.080. Definitions.** In this chapter

(1) "commissioner" means the commissioner of administration; except that for contracts entered into by the Department of Transportation and Public Facilities, "commissioner" means the commissioner of transportation and public facilities;