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STATE OF ALASKA
THE LEGISLATURE

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary

2-10-86

1:30 pm

Offered: 4/19/85
Referred: Labor and Commerce

Original sponsors: Sturgulewski and Rodey

1 IN THE SENATE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

2

CS FOR SENATE BILL NO. 204 (C&RA)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH 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 36.90 is amended by adding a new section to read:

11 Sec. 36.90.100. COMPLIANCE OF CONTRACTS WITH PROFESSIONAL REGIS-
12 TRATION REQUIREMENTS. The state or a political subdivision of the
13 state may not award a contract for architectural, engineering, or land
14 surveying services to

15 (1) an individual who is not registered under AS 08.44 to
16 perform the architectural, engineering, or land surveying services
17 required by the contract;

18 (2) a partnership that is not qualified under AS 08.48.251
19 to provide the architectural, engineering, or land surveying services
20 required by the contract; or

21 (3) a corporation that is not authorized under AS 08.48.241
22 to offer the architectural, engineering, or land surveying services
23 required by the contract.

24 * Sec. 2. AS 36.98 is amended by adding a new section to read:

25 Sec. 36.98.03. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING
26 CONTRACTS. (a) Notwithstanding the provisions of AS 36.98.010(3) and
27 36.98.040, a state agency shall negotiate a contract with the most
28 qualified and suitable firm or person of demonstrated competence for
29 architectural, engineering, or land surveying services. The state

1 agency shall award a contract for those services at fair and reason-
2 able compensation as determined by the state agency, after considera-
3 tion of the estimated value of the services to be rendered, and the
4 scope, complexity, and professional nature of the services.

5 (b) If negotiations with the most qualified and suitable firm or
6 person under (a) of this section are not successful, the state agency
7 shall negotiate a contract with other qualified persons or firms of
8 demonstrated competence, in order of public ranking. The state agency
9 may reject all or part of a proposal.

10 (c) This section does not apply to contracts awarded in a situa-
11 tion of public necessity if the person responsible for execution of
12 the contract on behalf of the state agency certifies in writing that a
13 situation of public necessity exists.

14 (d) Notwithstanding the other provisions of this section, a
15 state agency may include price as a factor in selecting architectural,
16 engineering, and land surveying services when, in the judgment of the
17 state agency, the scope, nature, and amount of services required are
18 sufficiently defined to reasonably enable firms and individuals making
19 proposals to compete with a substantially equal understanding and
20 interpretation of the services required. In order to include price as
21 a factor in selection, the state agency shall involve in the evalua-
22 tion of the proposals at least one person who is registered in the
23 state to perform the architectural, engineering, or land surveying
24 services that are the primary services to be provided by the contract.

25 (e) The consideration of price under (d) of this section as a
26 factor in the selection of architectural, engineering, and land sur-
27 veying services may not exceed 20 percent of the scoring formula used
28 in evaluating proposals. The state agency shall base the evaluation
29 of price on a previously established schedule that objectively

1 correlates price with points scored.

2 (f) This section does not apply to a contract that incorporates
3 both design and construction services.

4 * Sec. 3. This Act applies to requests for bids or proposals for archi-
5 tectural, engineering, and land surveying services issued after the effec-
6 tive date of this Act.

7 * Sec. 4. This Act takes effect immediately in accordance with AS 01.--
8 10.070(c).

9

Offered: 2/4/86
Referred Rules

Original sponsors: Sturgulewski and Rodey

1 IN THE SENATE BY THE FINANCE COMMITTEE
2 CS FOR SENATE BILL NO. 204 (Finance)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND 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 36.90 is amended by adding a new section to read:

11 Sec. 36.90.100. COMPLIANCE OF CONTRACTS WITH PROFESSIONAL REGIS-
12 TRATION REQUIREMENTS. The state or a political subdivision of the
13 state may not award a contract for architectural, engineering, or land
14 surveying services to

15 (1) an individual who is not registered under AS 08.48 to
16 perform the architectural, engineering, or land surveying services
17 required by the contract;

18 (2) a partnership that is not qualified under AS 08.48.251
19 to provide the architectural, engineering, or land surveying services
20 required by the contract; or

21 (3) a corporation that is not authorized under AS 08.48.241
22 to offer the architectural, engineering, or land surveying services
23 required by the contract.

24 * Sec. 2. AS 36.98 is amended by adding a new section to read:

25 Sec. 36.98.043. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING
26 CONTRACTS. (a) Notwithstanding the provisions of AS 36.98.010(3) and
27 36.98.040, a state agency shall negotiate a contract with the most
28 qualified and suitable firm or person of demonstrated competence for
29 architectural, engineering, or land surveying services. The state

1 agency shall award a contract for those services at fair and reason-
2 able compensation as determined by the state agency, after considera-
3 tion of the estimated value of the services to be rendered, and the
4 scope, complexity, and professional nature of the services.

5 (b) If negotiations with the most qualified and suitable firm or
6 person under (a) of this section are not successful, the state agency
7 shall negotiate a contract with other qualified persons or firms of
8 demonstrated competence, in order of public ranking. The state agency
9 may reject all or part of a proposal.

10 (c) This section does not apply to contracts awarded in a situa-
11 tion of public necessity if the person responsible for execution of
12 the contract on behalf of the state agency certifies in writing that a
13 situation of public necessity exists.

14 (d) Notwithstanding the other provisions of this section, a
15 state agency may include price as a factor in selecting architectural,
16 engineering, and land surveying services when, in the judgment of the
17 state agency, the services required are repetitious in nature, and the
18 scope, nature, and amount of services required are sufficiently de-
19 fined by measurable and objective standards to reasonably enable firms
20 and individuals making proposals to compete with a clear understanding
21 and interpretation of the services required. In order to include
22 price as a factor in selection, the state agency shall involve in the
23 evaluation of the proposals at least one person who is registered in
24 the state to perform the architectural, engineering, or land surveying
25 services that are the primary services to be provided by the contract.

26 (e) This section does not apply to a contract that incorporates
27 both design and construction services.

28 * Sec. 3. This Act applies to requests for bids or proposals for archi-
29 tectural, engineering, and land surveying services issued after the

1 effective date of this Act.

2 * Sec. 4. This Act takes effect immediately in accordance with AS 01.--
3 10.070(c).

4

Original sponsors: Koponen, Sund,
Szymanski, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 278 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND 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 36.90 is amended by adding a new section to read:

11 Sec. 36.90.100. COMPLIANCE OF CONTRACTS WITH PROFESSIONAL REGIS-
12 TRATION REQUIREMENTS. The state or a municipality may not award a
13 contract for architectural, engineering, or land surveying services to

14 (1) an individual who is not registered under AS 08.48 to
15 perform the architectural, engineering, or land surveying services
16 required by the contract;

17 (2) a partnership that is not qualified under AS 08.48.251
18 to provide the architectural, engineering, or land surveying services
19 required by the contract; or

20 (3) a corporation that is not authorized under AS 08.48.241
21 to offer the architectural, engineering, or land surveying services
22 required by the contract.

23 * Sec. 2. AS 36.98.010 is amended to read:

24 Sec. 36.98.010. APPLICATION OF CHAPTER. Except as otherwise
25 provided in AS 36.98.043, this [THIS] chapter applies to contracts for
26 professional services provided to a state agency unless

27 (1) the total amount of the contract does not exceed
28 \$25,000;

29 (2) the contract is an employment contract for services to

1 be performed under direct supervision regardless of the existence of
2 an employer-employee relationship and a written justification signed
3 by the person responsible for awarding the contract is filed with the
4 commissioner;

5 (3) the contract is awarded based on competitive bids
6 obtained under the procedure provided in AS 37.05.230.

7 * Sec. 3. AS 36.98 is amended by adding a new section to read:

8 Sec. 36.98.043. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING
9 CONTRACTS. (a) Notwithstanding the provisions of AS 36.98.010(3) and
10 36.98.040, a state agency shall negotiate a contract with the most
11 qualified and suitable firm or person of demonstrated competence for
12 architectural, engineering, or land surveying services. The state
13 agency shall award a contract for those services at fair and reason-
14 able compensation as determined by the state agency, after considera-
15 tion of the estimated value of the services to be rendered, and the
16 scope, complexity, and professional nature of the services.

17 (b) If negotiations with the most qualified and suitable firm or
18 person under (a) of this section are not successful, the state agency
19 shall negotiate a contract with other qualified persons or firms of
20 demonstrated competence, in order of public ranking. The state agency
21 may reject all or part of a proposal.

22 (c) This section does not apply to contracts awarded in a situa-
23 tion of public necessity if the person responsible for execution of
24 the contract on behalf of the state agency certifies in writing that a
25 situation of public necessity exists.

26 (d) Notwithstanding the other provisions of this section, a
27 state agency may include price as an added factor in selecting archi-
28 tectural, engineering, and land surveying services only when, in the
29 judgment of the state agency, the services required are repetitious in

1 nature, and the scope, nature, and amount of services required are
2 thoroughly defined by measurable and objective standards to reasonably
3 enable firms and individuals making proposals to compete with a clear
4 understanding and interpretation of the services required In order
5 to include price as a factor in selection, only persons who are regis-
6 tered in the state to perform the architectural, engineering, or land
7 surveying services that are the primary services to be provided by the
8 contract shall evaluate the proposals for the state agency.

9 (e) In this section "state agency" includes a municipality.

10 * Sec. 4. This Act applies to requests for bids or proposals for archi-
11 tectural, engineering, and land surveying services issued after the effec-
12 tive date of this Act.

13 * Sec. 5. This Act takes effect immediately in accordance with AS 01.-
14 10.070(c).

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PATRICK FALON
1041 CHENA RIDGE ROAD
FAIRBANKS 99709
479-2656

2/10/86
12:10 PM

WILLOE

I HAVE READ A WORK DRAFT
DRAFT OF A PROPOSED COMMITTEE
SUBSTITUTE FOR HB 278 DATED
2/9/86, AND COMMENT AS
FOLLOWS:

① MUNICIPALITIES ARE COVERED -
VERY GOOD - MOST ABUSE OF STATE
DOLLARS OCCUR WHEN MUNICIPALITIES
ARE INVOLVED. - FYI - THIS PMSB
PRESENTLY FOLLOWS PROCEDURES IN
LINE WITH THE BILL, AND THUS
WOULD NOT ~~HAVE~~ HAVE TO CHANGE
ANY OF THEIR PROCEDURES

② SEC 36.98.043 (d) HAS
BEEN REWRITTEN TO CLARIFY PRICE
OPTIONS - WE SUPPORT THE
CLARIFIED LANGUAGE.

③ PLEASE CONSIDER THIS
POTENTIAL ADDITION TO SEC.
36.98.043 (d) "AND IN NO EVENT
SHALL PRICE BE CONSIDERED FOR
MORE THAN 20% OF THE EVALUATION
CRITERIA"

WHETHER OR NOT ③ IS OBTAINABLE,
WE SUPPORT THE 2/9/86 C.S.

PATRICK FALON, CHAIRMAN
ASPLS LEGISLATIVE COMMITTEE

Bannister
2/5/86

Original sponsors: Koponen, Sund,
Szymanski, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 278 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND 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 36.90 is amended by adding a new section to read:

11 Sec. 36.90.100. COMPLIANCE OF CONTRACTS WITH PROFESSIONAL REGIS-
12 TRATION REQUIREMENTS. The state or a political subdivision of the
13 state may not award a contract for architectural, engineering, or land
14 surveying services to

15 (1) an individual who is not registered under AS 08.48 to
16 perform the architectural, engineering, or land surveying services
17 required by the contract;

18 (2) a partnership that is not qualified under AS 08.48.251
19 to provide the architectural, engineering, or land surveying services
20 required by the contract; or

21 (3) a corporation that is not authorized under AS 08.48.241
22 to offer the architectural, engineering, or land surveying services
23 required by the contract.

24 * Sec. 2. AS 36.98 is amended by adding a new section to read:

25 Sec. 36.98.043. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING
26 CONTRACTS. (a) Notwithstanding the provisions of AS 36.98.010(3) and
27 36.98.040, a state agency shall negotiate a contract with the most
28 qualified and suitable firm or person of demonstrated competence for
29 architectural, engineering, or land surveying services. The state

1 agency shall award a contract for those services at fair and reason-
2 able compensation as determined by the state agency, after considera-
3 tion of the estimated value of the services to be rendered, and the
4 scope, complexity, and professional nature of the services.

5 (b) If negotiations with the most qualified and suitable firm or
6 person under (a) of this section are not successful, the state agency
7 shall negotiate a contract with other qualified persons or firms of
8 demonstrated competence, in order of public ranking. The state agency
9 may reject all or part of a proposal.

10 (c) This section does not apply to contracts awarded in a situa-
11 tion of public necessity if the person responsible for execution of
12 the contract on behalf of the state agency certifies in writing that a
13 situation of public necessity exists.

14 (d) Notwithstanding the other provisions of this section, a
15 state agency may include price as a factor in selecting architectural,
16 engineering, and land surveying services when, in the judgment of the
17 state agency, the services required are repetitious in nature, and the
18 scope, nature, and amount of services required are thoroughly defined
19 by measurable and objective standards to reasonably enable firms and
20 individuals making proposals to compete with a clear understanding and
21 interpretation of the services required. In order to include price as
22 a factor in selection, the state agency shall involve in the evalua-
23 tion of the proposals at least one person who is registered in the
24 state to perform the architectural, engineering, or land surveying
25 services that are the primary services to be provided by the contract.

26 (e) This section does not apply to a contract that incorporates
27 both design services and construction.

28 * Sec. 3. This Act applies to requests for bids or proposals for archi-
29 tectural, engineering, and land surveying services issued after the

1 effective date of this Act.

2 * Sec. 4. This Act takes effect immediately in accordance with AS 01.-
3 10.070(c).
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**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: 1/31/86

REQUEST

Bill/Resolution No.: CS for HB 278 (L&C)
 Title: Relating to Contracts for Architectural, Engineering, and Land Surveying Services...
 Sponsor: Koponen, Sund, Szymanski
 Requestor: House Judiciary
 Date of Request: January 31, 1986

FISCAL DETAIL

Agency Affected: DOT&PF
 BRU: Engineering & Operations Standards
 Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

This bill specifies the basis on which the State would select, negotiate and award contracts for architectural, engineering and land surveying services. The fiscal impact is believed to be inconsequential since the provisions in the bill are for the most part identical to those followed under current practice.

Prepared by: [Signature]
 Division: Engineering & Operations Standards

Phone: 465-2951
 Date: January 31, 1986

Approved by Commissioner: [Signature]
 Agency: Transportation & Public Facilities

Date: 2/4/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Ry



Dept. of Transportation & Public Facilities

Position Paper

BILL NO: CS for HB 278 (L&C)

APPROVED: *[Signature]*
R. J. Knapp
Commissioner

TITLE: An Act Relating to Contracts for
Architectural, Engineering and Land
Surveying Services.

DATE: 2/4/86

This bill specifies the basis on which the State would negotiate and award contracts for architectural, engineering and land surveying services.

The Department of Transportation and Public Facilities acknowledges the merits of the argument that competitive bid selection for selection of professional design services could lead to undesirable cost and operating efficiency problems. In certain cases the practice of bidding for such services could put the public in a position of paying for facilities which are not in their best interest even though substantial sums appear to have been saved in the design phase.

At the same time the Department has occasion to procure engineering and architectural services for classes of projects ranging from the most complex to the most simple and straight forward. To accommodate selection of these services for projects that cover the entire spectrum, flexible selection criteria, including price where applicable, is essential.

The bill provides this flexibility and its provisions for selection of engineering and architectural services are very similar to those used in current practice.


The Department supports the intent of this bill. However, it is noted that a similar bill, CS SB 204, is presently being considered in the Senate. In order to define the extent to which price can be considered, it is suggested that the language in paragraphs (e) and (f) of Section 36.98.043 of that bill be incorporated into this version also.

Position Paper
HB 278

The Department of Administration is opposed to this bill.

This legislation would require the State and political subdivisions to award contracts for architectural, engineering and surveying services in compliance with AS 36.98.010(3) and 36.98.040, except that price could not be considered as an award factor in the request for proposals. This effectively creates a separate class of Professional Services contractors.

Price is often a significant factor, among many, in determination of lowest responsible bidder cost. Without price constraints costs would likely rise as the criteria for selection would be increasingly subjective.

 A

Robert J. Link, Director
Division of General Services & Supply
Department of Administration

3/18/85

Date



Commissioner Lisa Rudd
Department of Administration

3/18/85

Date

HB 278 File Contents

March 20, 1985

- 1) Bill Summary -- Legislative Reporting Service
- 2) Overview -- R. Poppe, Committee Staff
- 3) Alaska Statutes AS 36.98
- 4) Fiscal Note -- Dept. of Transportation
- 5) Position Statement -- Dept. of Transportation
- 6) Supplemental Materials supplied by a representative of the Alaska Chapter of American Institute of Architects
 - a) Report of the federal GSA Special Study Committee on the Selection of Architects and Engineers (June, 1974)
 - b) Article: "Why not contract for architectural services on competitive-bid basis?"
 - c) Summary of State Laws
Public Law 92-582, October 27, 1972
Memo: Newsletter of the AIA, Jan. 23, 1985
on Qualifications or Price: How Should States Select A/Es for Public Projects?
- 7) Copy of SB 204 by Sturgelewski

INTRODUCTION OF BILLS (House)

Appropriation
(special)
(Ketchikan
pioneers'
home) HOUSE BILL NO. 275, by Reps. Sund and Taylor. Makes a special appropriation in the amount of \$3,600,000 to the Dept. of Administration for construction of a new wing to the Ketchikan Pioneers' Home. Appropriation is for a capital project and does not lapse. Takes effect July 1, 1985.

Introduced March 8 and referred to State Affairs, Finance.

Home Services
Payments
(sliding fee) HOUSE BILL NO. 276, by Reps. M. M. Miller and Duncan. Would authorize the Dept. of Health & Social Services to establish a sliding fee schedule for payment by recipients of homemaker services, home health aide services, and home health nursing services. Fees would be set in accordance with the person's ability to pay. Provides Act takes effect immediately.

Introduced March 8 and referred to Health, Education & Social Services, Finance.

Bank
Investments HOUSE BILL NO. 277, by the Judiciary Committee by Request. See Senate Bill 116, page 169, identical.

Introduced March 8 and referred to the House Special Committee on State Loans, Finance.

Architectural,
Engineering,
& Land Survey
Contracts HOUSE BILL NO. 278, by Reps. Koponen, Sund, Szymanski and Collins. See Senate Bill 204, page 351, nearly identical. The House version does not include the definition of "state agency" as does the Senate version.

Introduced March 8 and referred to Labor & Commerce, Judiciary and Finance.

INTRODUCTION OF RESOLUTIONS (House)

Merchant
Marine Act of
1920
(repealing) HOUSE JOINT RESOLUTION NO. 21, by Rep. Marrou. Urges Congress to repeal the Merchant Marine Act of 192 (the Jones Act). Identical to SJR 11, see page 224.

Introduced March 6 and referred to Transportation.

Appropriation
Reserve Fund HOUSE JOINT RESOLUTION NO. 22, by Reps. M. W. Miller, Pearce, Ringstad, Shultz and Thompson. The resolution does the following:

--Section 1 rewrites Article IX, section 16 of the Alaska Constitution, "Finance and Taxation. Appropriation Limit." to establish a limit on appropriations that is the lesser of two amounts ". . . appropriations from the treasury during a fiscal year may not exceed the lesser of the amount appropriated in the year this section takes effect adjusted for the cumulative inflation and population growth or decline as defined by law or 95 percent of the unrestricted revenue of the state for the previous calendar year. . . ."

INTRODUCTION OF BILLS (Senate)(cont'd)

SB 201 (cont'd)

The fund would consist of private contributions. The state would be authorized, but not required, to contribute.

The Dept. of Revenue must inform all applicants for permanent fund dividends about the fund so that they may pledge their dividend if they so desire. Does not provide for an effective date.

Introduced February 28 and referred to Resources and Finance.

Appropriation SENATE BILL NO. 202, by Senators Kelly and Halford.
(special) Appropriates \$23,555,100 to the Dept. of Transportation and
(Eagle River Public Facilities for right-of-way acquisition, engineering,
Hiland Bridge) and construction of the Eagle River Hiland Bridge. Provides
that appropriation is for a capital project and does not lapse.
Effective July 1, 1985.

Introduced February 28 and referred to Transportation and Finance.

Capital SENATE BILL NO. 203, by Senator Josephson. Creates a 16-
Projects member "Capital Projects Advisory Commission" to conduct state-
Commission wide public hearings to ascertain public opinion on the need
for capital projects. The Commission would be directed to report
its findings and recommendations for capital projects to the
governor and legislature no later than January 30 of each year.

Membership would include: four employees or officials of the executive branch appointed by the governor; two members of the House; two members of the Senate; and eight public members who are not state employees. Four of the public members would be appointed by the governor, and the President of the Senate and the Speaker of the House would jointly select the remaining four.

Does not provide for an effective date (becomes law 90 days after signed).

Introduced March 1 and referred to State Affairs and Finance.

Architectural, SENATE BILL NO. 204, by Senators Sturgulewski and Rodey.
Engineering, Would require state agencies that enter into contracts for
& Land Survey architectural, engineering or land surveying services to nego-
Contracts tiate contracts only with "the most qualified and suitable
firm or person of demonstrated competence."

Compensation under the contract must be "fair and reasonable," as determined by the state agency. If negotiations with the most qualified and suitable firm or person are not successful, the agency "shall negotiate a contract with other qualified persons or firms of demonstrated competence, in order of public ranking."

Does not apply to contracts awarded in a situation of public necessity "if the person responsible for execution of the contract on behalf of the state agency certifies in writing that a situation of public necessity exists." Applies to requests for bids or proposals for services issued after the effective date of the bill.

Editor's notes. — Section 3, ch. 85, SLA 1982, provides that the 1982 amendment to this section applies to contracts entered into after the effective date of this act (July 1, 1982).

This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

AS 14.08.161 referred to in (3) of this section was repealed by § 10, ch. 92, SLA 1982.

Opinions of attorney general. — Alaska State Housing Authority is a state agency within the definition of AS 36.95.010(6). May 28, 1974, Op. Att'y Gen.

NOTES TO DECISIONS

Applied in Hicklin v. Orbeck. Sup. Ct. Op. No. 1435 (File No. 3025), 565 P.2d 159 (1977), rev'd, 437 U.S. 518, 98 S. Ct. 2482, 57 L. Ed. 2d 397 (1978).

Quoted in City of Sitka v. Construction & Gen. Laborers Local 942. Sup. Ct. Op. No. 2495 (File Nos. 5774, 5811), 644 P.2d 227 (1982).

Collateral references. — 64 Am. Jur. 2d, Public Works and Contracts, §§ 1-235.

65 Am. Jur. 2d, Public Works and Contracts, §§ 1-238.

72 C.J.S. Supplement, Public Contracts, §§ 1-61.

Differences in character or quality of materials, articles, or work as affecting acceptance of bid for public contract. 27 ALR2d 917.

Right of public authorities to reject all bids for public work or contract. 31 ALR2d 469.

Determination of amount involved in contract within statutory provision requiring public contracts involving sums exceeding specified amount to be let to lowest bidder. 53 ALR2d 498.

Amount of compensation of attorney for services as to public contract, in absence of contract or statute fixing amount. 56 ALR2d 195.

"Changed conditions" clause in a public works or construction contract, construction and effect of. 85 ALR2d 211.

Effect of stipulation, in public building

or construction contract, that alterations or extras must be ordered in writing. 1 ALR3d 1273.

Revocation, prior to execution of formal written contract, of vote or decision of public body awarding contract to bidder. 3 ALR3d 864.

Right of contractor with federal, state, or local public body to latter's immunity from tort liability. 9 ALR3d 382.

Contract for personal services as within requirement of submission of bids as condition of public contract. 15 ALP3d 733.

Requirement that public contract be awarded on competitive bidding as applicable to contract for public utility. 81 ALR3d 979.

Duty of public authority to disclose to contractor information, allegedly in its possession, affecting cost or feasibility of project. 86 ALR3d 182.

Right of bidder for state or municipal contract to rescind bid on ground that bid was based upon his own mistake or that of his employee. 2 ALR4th 991.

Chapter 98. Professional Services Contracts.

Section

- 10. Application of chapter
- 20. Professional services contractors register
- 30. Solicitation of proposals
- 35. Standard overhead rate
- 40. Evaluation of proposals and award of contract

Section

- 45. Review and approval by Department of Law
- 50. Contract administration
- 60. Filing of proposal and contract
- 70. Regulations governing contract procedures
- 80. Definitions

INTRODUCTION OF BILLS (Senate)(cont'd)

SB 204 (cont'd)

Effective immediately.

Introduced March 1 and referred to Community & Regional Affairs and Finance.

Community
Colleges
(bond issue)

SENATE BILL NO. 205, by Senator Kerttula. Calls for the issuance of \$31,880,000 in state general obligation bonds to finance community college land acquisition, design, and construction, as follows:

--Anchorage CC - lab/admin. building	\$18,000,000
--Northwest CC - land acquisition	400,000
--Tanana Valley CC - phase II design	2,000,000
--Univ. of AK, Juneau - site development and access roads	600,000
--Prince Wm. Sound CC - admin./classroom bldg.	4,600,000
--Mat-Su CC - classrooms	3,500,000
--U of A Mat-Su agric. experiment station research lab	980,000
--Kenai CC - Soldotna Campus, phase III classrooms	1,800,000

Provides that question be placed on the next statewide general election ballot. Effective immediately.

Introduced March 1 and referred to HESS and Finance.

State
Purchases
(timely pmt.
of)

SENATE BILL NO. 206, by Senators DeVries, Coghill and Paul Fischer. Identical to HB 30 by Rep. Shultz. See page 45.

Introduced March 1 and referred to State Affairs and Finance.

Public
Employees
(cost-of-
living
differentials)

SENATE BILL NO. 207, by the Finance Committee. Amends laws governing public employees to enact restrictions on use of area differentials in calculating overtime or other salary adjustments.

Sec. 1 amends AS 23.40.210 relating to negotiations between labor organizations and public employers. Adds: "The cost-of-living differential or other geographic cost-of-living adjustment may not be considered part of the basic salary for purposes of calculating overtime compensation or other salary adjustments."

Sec. 2 amends AS 39.27.020 (Pay Plan for State Employees; Pay step differentials by election district and in other states) by adding: "If an employee's basic annual salary is no more than \$30,000 the

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 when:

- (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. 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 or firm materially changed since the last filing by the person or firm. (AS 36.98.020 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 this section, when a state agency proposes to enter into a contract for professional services it shall

- (1) review the register maintained by the commissioner;
- (2) provide a request for professional services contract to each prospective provider of professional services that the agency finds is qualified.

(c) A request for proposals from prospective providers of interest in competition is addressed to persons or firms with the following characteristics: (1) contracts of less than \$100,000; (2) the expertise required is not available to more than a limited number of proposals other than the agency shall solicit proposals

- (1) from each person or firm in the professional services contractors register maintained by the commissioner who possess the required expertise;
- (2) from each person or firm who is not in the register but who is under (a) of this section who possess the required expertise.

(d) The provisions of this section shall not apply to (1) the contracting agency; (2) the expertise or knowledge of the person or firm; (3) the person's or firm's prior work; (4) the head of the state agency; (5) the commissioner that details to the commissioner or deputy commissioner; (6) the agency to enter contract negotiations.

- (2) the commissioner may, in the interest of the state, if necessary will not permit the agency to enter into a contract for professional services required by this chapter; or
- (3) the service is to be performed by the agency, or a political subdivision of the state.

(e) A request for proposals for professional services to be performed under the contract shall include the following information necessary for a proposal to be considered: (1) or contain references to any other information included with the request; (2) a description of the factors that the agency shall consider when it evaluates the proposal.

(f) Nothing in this section shall be construed to mean additional means that it may

(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

Title 37
Public Finance

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 and AS 36.98.036 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 professional services from the state agency, the standard overhead rate shall be included in a proposal for a contract submitted under AS 36.98.035.

(b) As used in this section, "standard overhead rate" means a rate 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 36.98.035(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 on 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 (a). The provisions of that subsection, however,

Sec. 36.98.045. Review a
 a contract contains terms that are not standard, the contract or if the standard terms that are not standard, the contract of Law and approved required by this section must be awarded of the contract by the commissioner. (AS 36.98.040(e); § 5 ch 144 SLA 1982)

Editor's notes. — This section was enacted as AS 36.98.040(e) but

Sec. 36.98.050. Contract:
 has entered into a professional contract for the diligent administration of the provisions of the contract.

(b) When a professional contractor under the contract of the final product of the contract prepared under this subsection shall be retained by the commissioner is required to do so. (§ 5 ch 144 SLA 1982)

Sec. 36.98.060. Filing of p
 contract and the response to the contract was awarded must be filed with the contracting state agency request for proposal and the submitted a response to it must be filed with the contracting state agency. (§ 5 ch 144 SLA 1982)

Sec. 36.98.070. Regulations
 The commission shall, by regulation, promulgate the Administrative Procedure Act form by which state professional contracts are to be prepared and processed, including, but not limited to, the rights of persons aggrieved under this chapter.

Sec. 36.98.080. Definitions

(1) "commissioner" means the commissioner of the Department of Transportation and Public Facilities, except that for contracts entered into under the provisions of this chapter relating to transportation and public facilities, "commissioner" means the commissioner of the Department of Transportation and Public Facilities.

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;

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

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

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

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

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

(5) "state agency" means a department, institution, board, commission, division, authority, or other administrative unit of the executive branch of state government, and the University of Alaska. (AS 5 ch. 36 SLA 1982)

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

FISCAL DETAIL

Bill/Resolution No.: HB 278
 Title: An Act Relating to Contracting for Arch., Engr., & Land Survey Services
 Sponsor: Koponen, Sund, et al
 Requestor: _____
 Date of Request: 3/18/85

Agency Affected: DOT&PF, DEC, DNR, DOA
 Program Category Affected: Design, Construct Land Management, General Services
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

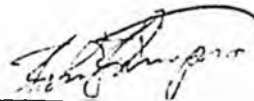
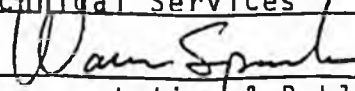
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

See Attachment

Prepared By: John Simpson  Phone: 465-2951
 Division: Standards & Technical Services Date: 3/19/85
 Approved by Commissioner: Walter Spahr  Date: 3/21/85
 Agency: Department of Transportation & Public Facilities

Distribution (Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

Analysis - HB 278

This bill specifies the basis on which the state would negotiate and award contracts for architectural, engineering and land surveying services.


If it is not possible to estimate the fiscal impact of the bill on state agencies, but it is believed to be relatively small. For the most part, the bill's provisions for selection of architectural, engineering and land surveying services are very similar to those followed in current practice.



Dept. of Transportation & Public Facilities

Position Paper

BILL NO: HB 278

APPROVED: R. J. Knapp
Commissioner 

TITLE: An Act Relating to Contracts for
Architectural, Engineering, and Land
Surveying Services

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. The State wishes to include price as a factor in selecting AE&LS' services when, in the judgment 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.

The Department suggests adding the following language to Section 36.98.043 of SB 204:

(a) Notwithstanding any other provisions of this section, the State may include price as a factor in selecting AE&LS' services when, in the judgment 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.

the prospective client to compare services on the basis of price prior selection, and it presumes that the contract will go to the qualified firm submitting the lowest price.¹ Of the 29 states which have statutes on selection, 21 are similar to the Brooks bill and the Model Code; twelve specifically exempt A/E selection from competitive bidding; two prohibit bidding for A/E services by law; one permits agencies to request price proposals at their discretion (Georgia); and one requires price proposals (Maryland). Table 1 summarizes these state statutes.

TABLE 1

SUMMARY OF STATE LAWS			
<u>States which prohibit competitive bidding for A/E services in Law:</u>			
Tennessee		Texas	
<u>States which exempt A/E services from general bidding requirements:</u>			
California		New Jersey	
District of Columbia		New York - by state	
Hawaii		comptroller's opinion 1/2	
Illinois		Ohio	
Kentucky		Oklahoma	
Mississippi-by attorney		Pennsylvania	
general's ruling		Wyoming	
<u>States calling for selection based on qualification:</u>			
(with procedure requiring ranking of firms, negotiation on scope of project and fee with the top firm. If no contract can be reached, negotiations are terminated and taken up with the second ranked firm, etc.)			
California	(1973)	Nebraska	(1978)
Connecticut	(1979)	New Hampshire	(1973)
Colorado	(1979)	New York State	(1980)
Delaware	(1976)	Oklahoma	(1974)
Florida	(1973)	Pennsylvania-building	(1975)
Kansas As and Es	(1977)	construction offices	
Kentucky	(1978)	South Carolina	(1974)
Louisiana	(1975)	Texas	(1971)
Maine	(1979)	Utah	(1980)
Massachusetts	(1975)	Virginia	(1950)
Minnesota	(1975)	Washington	(1951)

¹"Report of the GSA Special Study Committee on the Selection of Architects and Engineers," Part IV, Appendix F, p. 1 (June 1974).

Appendix A

PUBLIC LAW 92-582; 92ND
CONGRESS, H. R. 12807;
OCTOBER 27, 1972

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.) 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 architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the work of professional services, and that it is fair and reasonable for the

Request 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.

"Negotiation of contracts for architectural and engineering services

"Sec. 904. (a) The agency head shall negotiate a contract with the most 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.

Architects and engineers: Federal selection policy, establishment 63 Stat 117, 82 Stat 1104
786 Stat 1278
786 Stat 1279

LEGISLATIVE HISTORY

HOUSE REPORT No. 32-1188 (Comm. on Government Operations)
SENATE REPORT No. 92-1219 (Comm. on Government Operations)
CONGRESSIONAL RECORD Vol. 118 (1972) July 26, considered and passed House Oct. 14, considered and passed Senate

Memo

Newsletter of The American Institute of Architects #682 January 23, 1985

Convention '85 Will Show How To Integrate Design Trends Into 'Value Architecture'

How can architects apply the newest design techniques to create quality facilities for the elderly, energy-efficient "smart" new buildings, space-efficient interiors and other projects that produce profits for their clients and themselves?

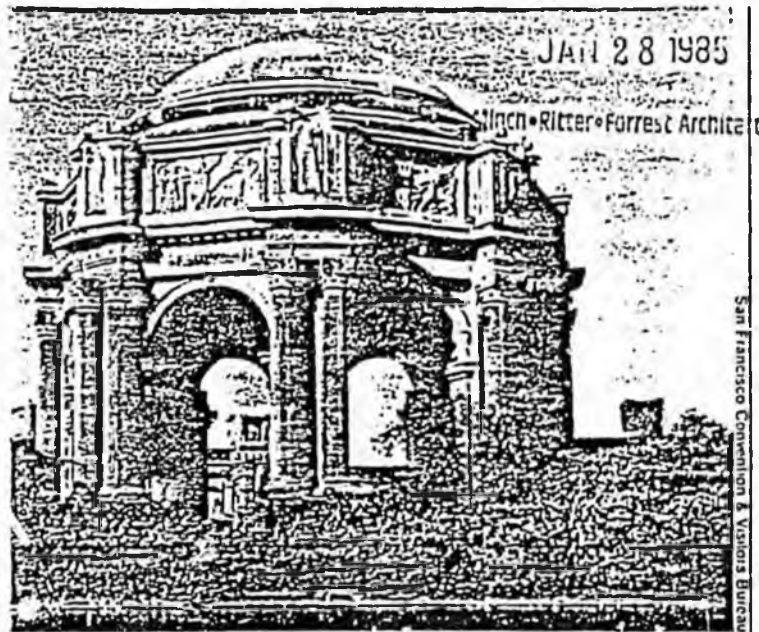
The 1985 AIA National Convention in San Francisco, June 9-12, will feature 10 information-packed hours of special design programs to help architects integrate new techniques into the various facets of "value architecture."

The "Value Architecture" convention's four professional interest programs, covering design for aging, research and design, interior design and the 1985 AIA design awards, will complement a wide range of professional development seminars, small-group consultations and theme programs. (See Memos #680 and #681.)

The workshop on "Design for Aging" will review the special needs, information sources and design guidelines available for all environments—from independent living communities to health, recreational, cultural and extended-nursing-care facilities—for the fastest growing segment of America's population.

This comprehensive program will be led by former AIA Board member Samuel A. (Pete) Anderson III of Richmond and Martin H. Cohen, FAIA, New York City.

Another in-depth program will present highlights of the Institutes "Research and Design '85"



San Francisco's Palace of Fine Arts (1915) by Bernard Maybeck

conference to be held this March in Los Angeles, where architects are expected to explore state-of-the-art findings from architectural research and technology.

This workshop will emphasize the application of new design and management tools—especially computers—to energy-conscious design, life safety and codes, building redesign, design of specialized facilities and environmental needs.

Moderated by Earle W. Kennett of the AIA Foundation's research department, the research and design program will feature selected papers from the March conference.

Interior design's value as a project-enhancing service to clients will be addressed in the "Designing Value Interiors" workshop. Participants will examine how interior design has emerged as one of the fastest-growing dimensions of the design profession and how it can become one of the most profitable services of architecture firms.

The interior design workshop will be led by Michael Brill, president of the Buffalo Organization for Social and Technological Innovation.

The final design program will include a series of panel discussions of AIA Honor Award-winning projects for 1985—from perspectives of both the architect and the client. Panelists will discuss how quality design adds "value"—monetary and otherwise—to an architectural project.

Essex (Conn.) architect Mark Simon will moderate these discussions.

"This year's design programs offer a unique and valuable opportunity for architects to learn more about design excellence and the tools for creating it," explained 1985 convention chairman Joseph Monticciolo, FAIA.

Qualifications Or Price: How Should States Select A/Es for Public Projects?

Which is more cost-effective for state governments: Selecting architects and engineers primarily on the basis of qualifications or on the basis of their fees?

This question is the focus of a recent AIA study comparing the experience of Maryland, which selects architects and engineers on the basis of price and other qualifications, and Florida, which emphasizes technical qualifications in the selection system.

The AIA-supported "Brooks Act" approach to granting public building contracts, specifying that A/Es be selected on their qualifications subject to negotiation of fair and reasonable compensation, is used by most localities; the federal government and the majority of state governments, including Florida.

Maryland, however, has advocated its selection process as more cost-effective than the traditional "Brooks Act" approach, thus prompting the AIA to include Maryland in the study.

Florida was selected for comparison because, until price enters the process, its A/E selection is similar to Maryland's.

The study concludes that Maryland's A/E selection process "is significantly more time-consuming and expensive than Florida's," according to AIA Board member David E. Lawson, chairman of the AIA A/E Selection Consulting Group.

In Maryland, total costs of the A/E portion of the capital construction process average 13 percent of estimated construction costs; but in Florida they average only 6.8 percent. While A-E fees

are lower in Maryland than in Florida, "the added costs of the Maryland process far outweigh the savings in A/E fees," reports the study.

These added costs are in part the result of a larger administrative staff and budget necessary for preparing detailed programs on which architects and engineers can submit price proposals. These program descriptions also take additional preparation and review time, resulting in costly delays.

While Maryland requires the consideration of both price and technical competence when awarding contracts, the study finds that price is becoming the dominant factor in the system.

Of the last 40 projects awarded by the Maryland Department of General Services prior to June 1983, 33 (83 percent) went to the firms with the lowest price proposals.

Although both state governments are pleased with their A/E selection procedures and the quality of the buildings that result, A/Es in Maryland are resentful of its system.

"Most A/Es who design state projects in Maryland dislike the system, which they feel rewards them inadequately," reports the study.

The Maryland system, which requires competing firms to submit elaborate technical proposals accompanied by fixed prices, results in extraordinary costs to firms that compete but are not awarded contracts. These costs are eventually passed on to consumers of A/E services, according to the study.

Contact: Nancy Somerville, AIA government affairs, (202) 626-7386.

New AIA/SC Specifications For High-Tech Buildings Can Ease Design Problems

To help architects adapt to rapidly changing construction technology, the AIA Service Corporation is expanding its MASTER-SPEC system by developing specifications for a new generation of highly automated buildings.

Specifications for these so-called "intelligent" buildings are designed to alleviate problems for design professionals who have limited experience working with high-technology construction systems.

Entering the marketplace in the wake of the AT&T divestiture and the explosion of computer technology, "intelligent" systems use a network of sensors to determine a building's environment, and computers and microcomputers to adjust building controls to ever-changing conditions.

MASTERSPEC will now encompass transmission media, telecommunications systems, lighting, building controls, signaling, energy-management systems and building automation.

Specifically, new building construction technologies for transmitting audio, video and data signals may significantly affect architectural designs.

These signals, generally transmitted through electronic cables, can now be sent with fiber optics—a much smaller medium. Use of fiber optics can dramatically alter the amount and type of space necessary to accommodate transmission equipment in new buildings.

Contact: William Aird, AIA SC, (202) 626-7371.

6 'Energy in Architecture' Workshops Are Scheduled for Early 1985

Architects can continue to sharpen their knowledge and skills in energy-conscious design by taking advantage of the Institute's comprehensive "Energy in Architecture" workshops this year.

The schedule for this winter and spring:

—"Microcomputer-Based Energy Analysis (level 4a), Feb. 28, Moraine Valley Community College, Argonne, Ill.;

—"Energy in Design: Techniques" (level 2), Feb. 28–March 1, AIA Building, Washington, D.C.;

—"Energy-Conscious Redesign" (level 3c), March 21–22, Kona Kai Club, San Diego;

—"Energy in Design: Process" (level 3a), March 28–29, AIA Building, Washington, D.C.;

—"Microcomputer" (4a), April 15, San Diego;

—"Redesign" (3c), April 25–26, AIA Building, Washington, D.C.

Registration fees will remain the same for AIA members in 1985 but will increase for non-members.

Contact: Brenda Henderson, AIA professional development, (202) 626-7353.

Design Firm Management To Be Examined at D.C. Conference March 13–15

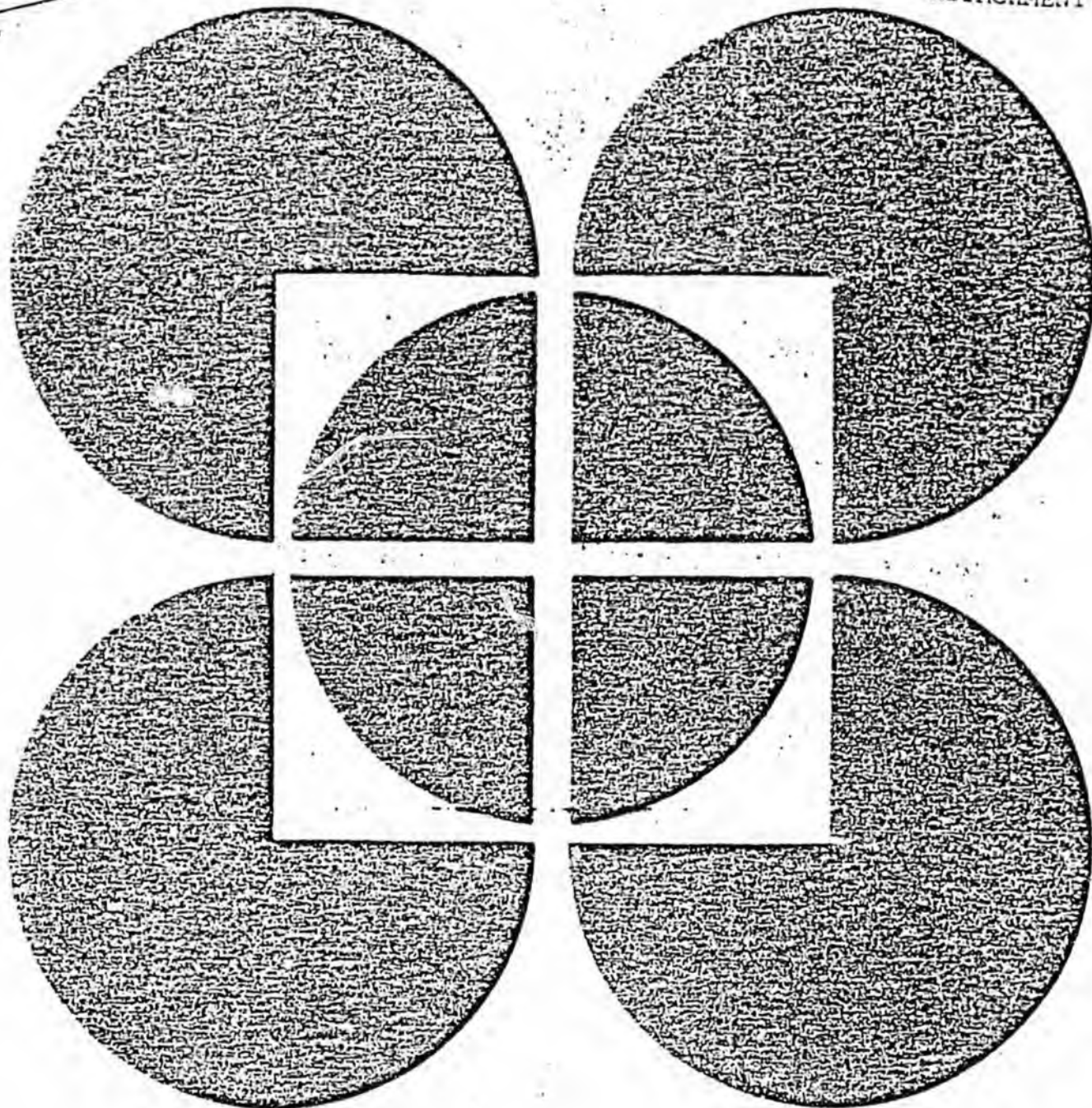
Management techniques and specifying strategies to prepare design professionals for 21st century challenges will be explored at the first Consulting Engineers Exposition and Management Conference, March 13–15, at the Washington (D.C.) Convention Center.

The comprehensive conference, cosponsored by ACEC and Consulting Engineer magazine, will identify new markets for design firms and examine how firms should be structured to tap these markets.

More than 2,500 design professionals from across the nation are expected to attend the conference, which will feature 60 management sessions, over 75 technical seminars and an extensive exposition showcasing companies that offer products and services for design professionals.

Carrying the theme "On Track to the 21st Century . . . Trends, Traps and Targets," the three-day conference will offer a four-track program with seminars on management development, vendor specifier relations, trends in engineering practice and methodologies for internal practice.

General session speakers will include Marvin Catron, the futurist who addressed the 1984 AIA National Convention; Lee Iacocca, chairman of Chrysler's board; Paul Goldberger, New York Times architecture critic; Abel Wolman, educator and author of *The Livable City*, and Samuel C. Florman, a construction company executive. Contact: Linda Oswald, Slack Inc., (609) 848-2147.



REPORT OF THE

GSA SPECIAL STUDY COMMITTEE ON THE
SELECTION OF ARCHITECTS & ENGINEERS

JUNE 1974

BACKGROUND

On October 10, 1973, Arthur F. Sampson, the Administrator of the General Services Administration, announced his intention to appoint a "Special Study Committee to scrutinize the architect-engineer selection process of the agency."¹ He made it clear that his decision was not prompted by a belief that the GSA system was defective. Rather, he wanted to confirm his opinion that the basic system was sound and, in the process, receive any suggestions for improvement.²

The Administrator convened a joint meeting of the GSA National Public Advisory Panel on Architectural and Engineering Services and the GSA Public Advisory Council on October 19, 1973 and requested their advice regarding the scope, structure and membership of the Special Study Committee.

The Study Committee first met with Mr. Sampson on December 10, 1973. Members had been chosen from the architectural, engineering and legal professions, private industry, government, the academic community, and the press. Gerald D. Hines, a developer/builder from Houston, was appointed Chairman. The Committee was asked to conduct an "independent and comprehensive study of GSA's existing procedures", to make whatever recommendations for improvements deemed necessary, and to report to the Administrator by June, 1974.³

In order to carry out its assignment, the Special Study Committee focused on the GSA procedure rather than specific contract awards.⁴ The Chairman appointed several subcommittees and asked them to undertake the following:

BACKGROUND (con't)

1. Collect and analyze Federal statutes, regulations and instructions governing the award of A-E contracts. Document the authority for GSA's A-E selection process. Identify and evaluate differences between GSA procedures and those of other agencies.
2. Collect and analyze the A-E selection procedures of states and foreign governments.
3. Collect and analyze A-E selection policies of a representative number of quasi-governmental authorities, major corporations and private entrepreneurs.
4. Collect and analyze studies of A-E procurement made by the Congress, the Commission on Government Procurement, Federal agencies, local and state governments and professional societies.
5. Collect and analyze information that describes and defines competitive bidding as applied to A-E procurement. Determine whether competitive bidding would improve the GSA process.
6. Assess the public image of GSA's A-E selection process.

In carrying out their assignments, the Subcommittees and/or staff prepared a statistical analysis of GSA projects awarded during 1970-1973,⁵ conducted comprehensive research in their areas of concern, held public hearings,⁶

BACKGROUND (con't)

conducted interviews,⁷ utilized questionnaires⁸ and attended a round-table discussion with knowledgeable individuals.⁹ Extensive public notice was given to all elements of the Committee's work to encourage participation by all interested parties. In addition, Committee members and staff attended Advisory Panel and Evaluation Board meetings in order to observe the selection process in operation.¹⁰

The findings, conclusions and recommendations that follow relate directly to the Administrator's study request and are documented in the subcommittee reports. In addition, the subcommittee and related reports contain other information and suggestions concerning A-E procurement. Each of these reports is an integral part of the Committee's work and must be read to obtain a clear understanding of those recommendations adopted by the full Committee.

In developing recommendations to improve the GSA process for the selection of A-Es, Subcommittees were instructed to measure any recommendation against the following criteria:

- Will it minimize or eliminate the opportunity for unethical or illegal practices?
- Does it recognize the economics of Federal construction¹¹ and the necessity of safeguards built into the public construction process?
- Does it improve the design and functional quality of Federal construction?

Feasibility of Competitive Bidding

Based on testimony presented at a public hearing, interviews with key individuals on both sides of the issue and a review of available opinion on this subject, the Committee found that price is one of the factors in awarding an A-E contract by both government agencies and private entrepreneurs. Those who procure A-E services seem to be sophisticated buyers who, for the most part, engage in serious price discussions after selecting the firm most qualified to perform the particular project. Price bidding was found to be a factor in the selection process only in rare instances when the work was of a quasi-professional nature and capable of accurate and complete specification in advance.¹⁸

The data and opinion offered favored the negotiated procurement process followed by the General Services Administration. No facts were presented to suggest that this method led to unsatisfactory results or higher A-E fees. Those testifying in favor of price competition argued that price should be a factor only when the scope of services was "adequately defined" and when firms were "equal" in ability.¹⁹ Those opposed to price competition testified that the scope of services could not often be defined in advance and that purchasing professional services by low bid might create an adversary relationship between the client and low bidder which could be counterproductive to ultimate life-cycle cost.²⁰

CONCLUSIONS

General

The Study Committee believes that the basic concept of GSA's A-E selection process is a good one. There is a great deal of interest in and competition for GSA work among the design professionals. Well qualified architects and engineers are selected for GSA projects. Firms without previous Government experience have a fair opportunity to obtain GSA contracts.²⁵

The Committee is of the opinion that several modifications in GSA's procedures should be made which would improve the selection process consistent with the public interest. These improvements are particularly necessary in light of the need to maintain public confidence in the A-E procurement process.

Why not contract for architectural services on a competitive-bid basis?

Agency representatives who are experienced in the procurement of commodities are used to taking competitive bids from vendors, selecting contractors and awarding contracts on the basis of price. They may wonder why the bidding process is seldom used to procure professional design services.

There are good reasons why the federal government, and many states, have formalized their A/E procurement procedures with laws that specifically exclude A/E procurement from competitive bidding requirements.

Public-sector building projects involve public health and safety considerations. The agency that builds a facility is responsible to the taxpayers for obtaining the best project possible. To insure that the public interest is being properly served, the designers selected should be talented in both design and management.

The successful purchase of goods or services on a competitive-bid basis depends on the ability to provide the would-be supplier with a very complete set of specifications as to what is required.

At the start of an architectural project, the exact nature and scope of services can rarely be defined, since much depends on the type of project, the capabilities within the agency itself, and how much groundwork has already been done.

Also, professional design services involve many intangibles such as technical knowledge, esthetic judgment and decision-making skills that are difficult to compare on an "apples and apples" basis.

The American Bar Association (ABA), in developing a model procurement code for state and local governments,⁴ recognized the unique character of professional design services. Article 5 of the code deals specifically with procurement of construction, architect-engineer and land surveying services. In a commentary on Article 5, the ABA stated, "The principal reasons supporting this selection procedure (i.e., selection based on qualifications and negotiation rather than on low bid) are the lack of a definitive scope of work and the importance of selecting the best qualified firm."

One purpose for competitively bidding goods and services is to keep the selection process free from political influences. But bidding isn't the only way to avoid political problems: Alternative procedures such as open records and the public announcement of projects can effectively keep the selection process out of the political arena, while still obtaining the best available design talent.

Procurement of design services on the basis of their costs can also be extremely shortsighted. Most agencies have begun to calculate the cost of their physical facilities on a life-cycle basis; that is, initial construction cost plus operating cost over the building's anticipated useful life.

A recent article in *Dun's Review* calculates the initial cost of a building with a 40-year life as one-seventh of its life-cycle cost, with the remaining six-sevenths representing maintenance and operation costs.

With professional fees that come to only a small percentage of construction cost, it is easy to see that they represent a much smaller proportion of life-cycle cost. Yet a particular type of expertise on the part of the architect—in energy-efficient design, for example—can have a dramatic effect on maintenance and operating costs, year after year.

Clients should also consider that the bidding process is time consuming, and that time spent in preparing bidding documents, holding prebid conferences, etc., can be extremely costly, given the constant escalation in material and labor costs characteristic of an inflationary economy.

Architects do not oppose competition. In fact, the architectural profession is extremely competitive, and competition is a healthy and desirable factor for architects in marketing their services. But they realize that to serve the needs of their clients and the users of the buildings they design, they must compete on the basis of their skills, experience and ability to perform the services required—not on the illusory "economy" that a low-bid may seem to provide.

¹Appendix A contains the text of Public Law 92-582, the Architect/Engineer Selection Act passed by the U.S. Congress in 1972. Representative state laws, in effect in California and Minnesota, are set out in Appendix B.

²Copies of SF 254 and 255 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 or calling (202) 783-3239. Cost for SF 254 25 copies/\$7.50, SF 255 20 copies/\$8. Enclose payment with order. Visa and MasterCard charges accepted.

³Appendix C contains a representative project announcement from the state of California to illustrate typical evaluation criteria and other architect-selection procedures.

⁴Appendix D contains the text of section 5-501 Architect-Engineer and Land Surveying Services of the American Bar Association Model Procurement Code for State and Local Governments.

Introduced: 3/8/85
Referred: Labor & Commerce,
Judiciary and Finance

1 IN THE HOUSE

BY KOPONEN, SUND, SZYMANSKI
AND COLLINS

2

HOUSE BILL NO. 278

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH 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

Sec. 36.98.043. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING

12

CONTRACTS. (a) Notwithstanding the provisions of AS 36.98.010(3) and

13

36.98.040, a state agency shall negotiate a contract with the most

14

qualified and suitable firm or person of demonstrated competence for

15

architectural, engineering, or land surveying services. The state

16

agency shall award a contract for those services at fair and reason-

17

able compensation as determined by the state agency, after consid-

18

eration of the estimated value of the services to be rendered, and the

19

scope, complexity, and professional nature of the services.

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(b) If negotiations with the most qualified and suitable firm or

21

person under (a) of this section are not successful, the state agency

22

shall negotiate a contract with other qualified persons or firms of

23

demonstrated competence, in order of public ranking. The state agency

24

may reject all or part of a proposal.

25

(c) This section does not apply to contracts awarded in a situa-

26

tion of public necessity if the person responsible for execution of

27

the contract on behalf of the state agency certifies in writing that a

28

situation of public necessity exists.

29

* Sec. 2. This Act applies to requests for bids or proposals for

1 architectural, engineering, and land surveying services issued after the
2 effective date of this Act.

3 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
4 10.070(c).

Introduced: 3/1/85
Referred: Community & Regional
Affairs and Finance

1 IN THE SENATE

BY STURGULEWSKI AND RODEY

2

SENATE BILL NO. 204

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

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29

(d) In this section "state agency" has the meaning given in

1 AS 36.98.080(5), but also includes political subdivisions of the state
2 when the political subdivision seeks architectural, engineering, or
3 land surveying services for a project that is funded entirely or
4 partially by state funds.

5 * Sec. 2. This Act applies to requests for bids or proposals for archi-
6 tectural, engineering, and land surveying services issued after the effec-
7 tive date of this Act.

8 * Sec. 3. This Act takes effect immediately in accordance with AS 01.--
9 10.070(c).

10

M E M O R A N D U M

To: All Members, House Labor and Commerce Committee

From: Roger Poppe, Committee Staff

Date: March 20, 1985

Subject: Overview, HB 278

On March 20, 1985, the House Labor and Commerce Committee met in Room 102 of the Capitol Bldg. on HB 278, "An Act relating to contracts for architectural, engineering, and land surveying services."

There were bills in both the House and the Senate last year on this issue. HB 211 by Furnace, et alii which had several CSs, but passed the House but died in the Senate Labor and Commerce Committee. This year, there is companion legislation on this bill in SB 204, by Sturgelewski and Rodey, which differs from HB 278 primarily in that it includes municipalities and other political subdivisions of the state who use state funds to be included in the bill.

The basic question posed by this bill is whether it is more cost-effective to hire architects and engineers on state projects on the basis of qualifications or on the basis of their fees? The lowest bidder in such situations can lead to shoddy and ugly planning and construction which will have to go through a constant repair and maintenance process.

If hiring is on the basis of their qualifications, we should consider the question of whether this will mean more contracts going to out-of-state people and firms, or for that matter, even firms in other countries. Or, it could lead to a series of sweetheart contracts with a few selected in-state firms. One question is how many available local architects are there in Alaska? On the other side of the question, the whole thing could be negated depending on how one interprets lines 25 and 26, which say that these negotiations to hire the most qualified people does not apply in a situation of public necessity. One could define this to include every single state contract.

Your file shows that roughly 2/3 of the states have some kind of statute dealing with this issue.