

SB

204

COMMITTEE REPORT  
SENATE

*Labor & Commerce*

FURTHER: FINANCE

3/1/85

Date April 18, 1985

Mr. President

The Committee on C&RA considered SB 204

relating to contracts for architectural, engineering, and land surveying services; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for \_\_\_\_\_
- new title
- same title and recommends \_\_\_\_\_
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

*Edwin Stangulinski*  
\_\_\_\_\_  
*[Signature]*  
\_\_\_\_\_  
*[Signature]*  
\_\_\_\_\_  
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*Edw. De Vries*  
\_\_\_\_\_  
Chairman  
*Do Pass*  
\_\_\_\_\_  
Chairman recommendation



# Alaska State Legislature

Official Business

## Community & Regional Affairs Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 21, 1985

Senate C&RA Meeting -- 3:30p

Will take up two bills ----

SB 190 - An Act extending the residential property tax exemption and tax equivalency and reimbursement payments to certain widows and widowers

SB 204 - An Act relating to contracts for architectural, engineering, and land surveying services

SB 190 extends the exemption from municipal property taxes and tax equivalency payments for rent which is currently available to elderly residents and disabled veterans to widows and widowers of those persons if said persons are 60 years old or older. -- SB 113, an Administration bill, contains the same provisions (see Sec 4(e)) except that the surviving spouse must be at least 55 years of age. -- The Dept of C&RA supports SB 190, and requests that it be amended to allow the department to prorate payments in the event of funding shortages. Fiscal note requests \$31,900 in FY'86 and 10% annually thereafter due to inflation. -- Local government will be impacted in that local assessor/staff will be required to verify eligibility of widow/widower.

SB 204 requires that professional services contracts for architectural, engineering, and land survey services be negotiated rather than awarded strictly on the basis of lowest bid. Bill sponsor, Senator Sturgulewski proposes an amendment to the bill upon the recommendation of the Director of the Division of Occupational Licensing that would require that contracts be awarded only to persons, partnerships, and corporations registered in Alaska under AS 08.48 (Registration and Practice provisions). The Dept of Transportation/Public Facilities believes that price should be a factor in selecting architectural, engineering and survey services and suggests an amendment to the bill. Fiscal note for DOT/PF is zero  
-----The Dept of Administration opposes the bill and attaches a zero fiscal note.

The information packet on SB 204 includes a summary of other state laws relating to AE/S services; Public Law 92-582 which requires the GSA to negotiate with firms most qualified; a GSA special committee report on the subject; and a number of articles from professional periodicals relating to subject bill.



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# Alaska State Legislature

*Use this copy*

SENATOR  
**ARLISS STURGULEWSKI**  
Chairman, Senate Resources Committee  
Vice-Chairman, Senate Health, Education and Social Services Committee  
Member, Senate Community and Regional Affairs Committee



Senate

2957 SHELDON JACKSON STREET  
ANCHORAGE, ALASKA 99508

While in Juneau  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3818

*asked Terri to  
draw-up 4:35 4/18/85*

MEMORANDUM

18 April 1985

TO: Senator Arliss Sturgulewski  
FROM: Melissa Aber Fouse  
RE: Committee Substitute for SB 204

This proposed committee substitute for Senate Bill 204 incorporates solutions to most of the questions raised during the Community & Regional Affairs committee meeting held 16 April.

We have addressed the issue raised by the AIA and the Department of Transportation regarding under what circumstances price may be considered as a factor in evaluation proposals by adopting the language as proposed by DOT (which is incorporated in CSHB 278 (L&C), with the addition of:

- limiting the consideration of price to no more than 20% of the evaluation of a proposal,
- requiring that the evaluation formula for proposals be set out prior to the evaluation itself; and
- requiring that the schedule for evaluation objectively correlates price with points scored.

The concerns raised by the Department of Commerce, Division of Occupational Licensing are addressed by a new section which amends the miscellaneous provisions chapter of Title 36 stating that neither state agencies nor municipalities may contract for these services with an entity which is not registered under Title 08.

There had been a question regarding the applicability of this legislation to "design-build" contracts. We are told that the identifying characteristic of "design-build" contracts is that they include both design and construction services in a single contract. We have stated that this section does not apply to such contracts.

Local hire provisions were discussed during the committee meeting. It has been interpreted by the Attorney General that the current 95% employment requirement does not apply to professional services contracts, but only to those workers belonging to crafts. In order to include all professional services, it would be necessary to amend the professional services contracting section of Title 36. Because this is a complex issue, it may be better addressed in separate legislation.

Original sponsors: Sturgulewski and Rodey

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IN THE SENATE

BY THE COMMUNITY AND REGIONAL  
AFFAIRS COMMITTEE

CS FOR SENATE BILL NO. 204 (C&RA)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
FOURTEENTH LEGISLATURE - FIRST 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 36.90 is amended by adding a new section to read:

Sec. 36.90.100. COMPLIANCE OF CONTRACTS WITH PROFESSIONAL REGISTRATION REQUIREMENTS. The state or a political subdivision of the state may not award a contract for architectural, engineering, or land surveying services to

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

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

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

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

Sec. 36.98.043. ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING CONTRACTS. (a) Notwithstanding the provisions of AS 36.98.010(3) and 36.98.040, a state agency shall negotiate a contract with the most qualified and suitable firm or person of demonstrated competence for 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 th. 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 correlates

*Objectively*

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TECHNICAL CHANGE

PRICE WITH  
~~objectively with the~~ points scored.

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

\* Sec. 3. This Act applies to requests for bids or proposals for architectural, engineering, and land surveying services issued after the effective date of this Act.

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

SB 204 4/18/85

Richard Ritter - Ak Architects —  
support. CS in its present form

item (c) second sentence "have a question  
say" objectively correlates"

John Simpson - DOT —

Do not see why DOT would object to  
bill as presently written

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

5 A BILL

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 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  
 17 reasonable compensation as determined by the state agency, after  
 18 consideration of the estimated value of the services to be rendered,  
 19 and the scope, complexity, and professional nature of the services.

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 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 (d) In this section "state agency" has the meaning given in  
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AS 36.98.080(5), but also includes political subdivisions of the state when the political subdivision seeks architectural, engineering, or land surveying services for a project that is funded entirely or partially by state funds.

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

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: SB 204

Title: An Act Relating to Contracts

Sponsor: Sturgulewski, Rodey

Requestor: \_\_\_\_\_

Date of Request: 3/18/85

**FISCAL DETAIL**

Agency Affected: DOT&PF, DEC, DNR, DOA

Program Category Affected: Design, Construction

BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

for Arch., Engr., & Land Surveying Services

Lands, General Services

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

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

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**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 J. Simpson  
Division: Standards & Technical Services

Phone: 465-2951  
Date: 3/19/85

Approved by Commissioner: Wm Spahr  
Agency: Department of Transportation & Public Facilities

Date: 3-21-85

Distribution (by Agency preparing fiscal note):

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

Analysis - S B 204

This bill specifies the basis on which the state would negotiate and award contracts for architectural, engineering and land surveying services. It also applies to political subdivisions of the state when they use these services on a project that is entirely or partially funded with state funds. Except for the provision regarding political subdivisions, this bill is identical to H B 278.

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.

The Department is not able to estimate the fiscal impact of this bill on political subdivisions of the state since the procedures they follow are not known. It is recommended that the Alaska Municipal League or the individual political subdivisions be contacted directly for this information.



## Dept. of Transportation & Public Facilities

# Position Paper

**BILL NO:** SB 204

**APPROVED:** R. J. Knapp  
Commissioner

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

**DATE:** 3-21-85

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 36.08.043 of SB 204:

(d) 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.

For further information call Susan Fleischhauer at 465-3900.

It is noted that the proposed bill is very similar to HB 278 except that it also applies to political subdivision of the State in those cases where they seek architectural, engineering or land surveying services for a project that is funded entirely or partly with state funds. The Department is not able to address the impact of this provision on the applicable political subdivisions and recommends that their position on the bill be requested through the Alaska Municipal League.

April 16

SB 204

John Simpson - DOT

no problem using person of greatest competence  
\$17 mil in 1984 awarded for prof. services  
contract -

Not aware of where any dept. has  
used price as a consideration  
Am not sure about the percent?

Sturg, realize there are differences - but this is  
being done - should be in statute  
work w/us to iron out problems

Simpson - Will work with you - bill almost  
where we could agree - still a few  
problems

Fischer - is this where we should put back in  
Alaska hire provisions - where  
they were left out some years back

Link - Admin -

Little less opposed than originally to 1st bill -  
We need more flexibility -  
still disagree w/ bill -

State professional people need more flexibility

Alk Bidders Pref is eliminated 36.98 and  
37.05  
eliminates design-build -

Fisher - ~~pro~~ U of Alaska utilizes design/build

Link - We don't mind people looking for  
protection - but we need flexibility  
this bill is getting closer - but locks up  
our flexibility -

Richard Ridder - Chm Alaska Architects  
until 2 yrs ago you could not  
consider price at all -

Justice Dept said can consider bidding for  
professional services

Attorney General has ruled that prof. services --  
architects, engineers, surveyors - do not  
come under "Alaska hire" laws -

Fisher It is an AG's opinion based on law passed  
2 yrs ago

Ridder - DOT prefers to use Ak architects

Sturg - As a prof. would you support Ak hire -

Ridder - That's a hard question  
Univ promotes out-of-state architects

Link - primarily we award on low bid

Sturz - If it cuts out design-build - not our intention

Ridder - No, that was not our attention

Sturz - offered amendment for Ak preference

Ridder - that is a severe problem w/ municipalities  
but not w/ DOT

~~Major~~ Muni's say they do not have  
to enforce State law -

State is good about this - cities are not --

Fischer - Artist Alaska pref. amendment -  
would it work to make law apply to  
cities -

Ridder - Law already says you must be registered in  
State - but not enforced

1) Does Ak registration apply to Muni contracts

2) Way can bring in local hire issue - still allow special  
things -

3) Design-build -

→ new Comm Substitute  
discuss more flexibility

# Alaska State Legislature

## Senate

### Committee on Community and Regional Affairs



Official Business

Committee on Community and Regional Affairs  
Chairman: [Name]  
Members: [List of Names]

Senate C&RA Meeting -- 16 April 1985

Committee will consider one new bill (SB 270) and one bill that was heard on March 21 (SB 204)

SB 270 - An Act relating to the durational residency requirement for a home rule charter commission (Kerttula)

Existing law requires that home rule charter commission candidates be voting residents of the Municipality the charter commission will serve for at least 3 years. SB 270 provides that candidates must have been voters of the affected city for at least one year; and of the borough where the city is located for at least three years.

Attached info on SB 270:

- 1) Sectional analysis
- 2) Legal Services opinion on constitutionality of residence requirements with the suggestion that residency requirements for home rule and unification charter commissions be made consistent (see final paragraph)
- 3) Position paper by Dept of C&RA -- Dept does not oppose the bill

SB 204 - An Act relating to contracts for architectural, engineering, and land surveying services (Sturgulewski & Rodey)

The committee considered this bill on March 21-- heard testimony but took no action.

A draft committee substitute has been drawn up...

The committee substitute deletes (d) under Section 1 (page 1, line 29) and replaces it with a new section. Major changes to the original bill are:

- 1) political subdivisions of the state are no longer under its provisions
- 2) price may be included by not more than 25% of the scoring formula for proposal evaluation for subject contract services when certain stated conditions exist

Attached info:

- 1) SB 204
- 2) draft CS for SB 204

# Alaska State Legislature



SENATOR  
ARLISS STURGULEWSKI

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Vice-Chairman, Senate Health, Education and Social Services Committee  
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## Senate

MEMORANDUM

April 3, 1985

TO: Senator Arliss Sturgulewski  
FROM: Melissa Aber Fouse *MAF*  
RE: SB 204

You have asked me to respond to certain questions regarding SB 204. The current professional services contracting statute calls for the contracting agency to request proposals and evaluate those proposals by assigning point values to factors considered by the agency in evaluating each proposal (AS 36.98.040). The proposal set forth in SB 204 would expand the current concept to require that demonstrated competence be the prevailing factor. Since this is a further refinement of procedures currently followed by state agencies [see AS 36.98.030(b)(2)] in soliciting proposals for professional services, it is assumed that agencies would determine "most qualified and suitable firm" as well as "fair and reasonable compensation" as they do now. "Public ranking" agency makes public the points assigned to each proposal which responds to the proposal solicitation.

Awarding of a contract based on qualifications and suitability requires a more general scope of work with less specificity required by the contracting agency. The design professional is involved more closely in the details of a project.

Proponents of this legislation feel that although it is conceivable that design costs may possibly be more by this method, long-term costs can be considerably reduced by contributing to a higher quality of work and an effort during the design phase to reduce both construction costs and costs over the lifetime of a project. Currently 21 states mandate selection of architectural and engineering services based on qualifications.

There is a committee substitute being prepared which would respond to two concerns raised during the hearing on SB 204. First, the requirement that municipalities use this method is being deleted. Second, a section is being drafted to provide that when a project that is repetitive, does not require design of professional judgement, or the scope of work of which can be thoroughly defined is considered, price may be considered as a factor not to exceed 25 percent of the scoring formula.

# Alaska State Legislature



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Scott Burgess -

Please delete Sec 36.98.043 (d)  
Leave out municipalities in this bill  
— Cost is a factor — ~~don~~ do not leave  
it out —

Arless

Hold bill & consider amendment by  
Dept of Transportation and also the  
requested amendment by Ak Munic League

---

SB 190

3/21/85

get amendment

Coghill moved amendment unanimous consent

Coghill moved bill w/individual recommendations —  
unanimous consent

Bannister  
4/10/85

*not adopted*

Original sponsors: Sturgulewski and Rodey

1  
2 IN THE SENATE

BY THE COMMUNITY AND REGIONAL  
AFFAIRS COMMITTEE

3 CS FOR SENATE BILL NO. 204 (C&RA)  
4 IN THE LEGISLATURE OF THE STATE OF ALASKA  
5 FOURTEENTH LEGISLATURE - FIRST SESSION

6 A BILL

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

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

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

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

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

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

(d) Notwithstanding the other provisions of this section, a

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state agency may include price as a factor in the selection of architectural, engineering, and land surveying services when all of the following conditions exist:

- (1) the architectural, engineering, or land surveying services required by the contract are repetitive;
- (2) the contract does not require design work;
- (3) the state agency has thoroughly defined the scope of the project and the architectural, engineering, or land surveying services required by the contract.

(e) A state agency may not allocate more than 25 percent of the scoring formula for proposal evaluation to the consideration of price allowed under (d) of this section.

\* Sec. 2. This Act applies to requests for bids or proposals for architectural, engineering, and land surveying services issued after the effective date of this Act.

\* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).



# Alaska State Legislature

Official Business

## Community & Regional Affairs Committee

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 21, 1985

Senate C&RA Meeting -- 3:30p

Will take up two bills ----

SB 190 - An Act extending the residential property tax exemption and tax equivalency and reimbursement payments to certain widows and widowers

SB 204 - An Act relating to contracts for architectural, engineering, and land surveying services

SB 190 extends the exemption from municipal property taxes and tax equivalency payments for rent which is currently available to elderly residents and disabled veterans to widows and widowers of those persons if said persons are 60 years old or older. -- SB 113, an Administration bill, contains the same provisions (see Sec 4(e)) except that the surviving spouse must be at least 55 years of age. -- The Dept of C&RA supports SB 190, and requests that it be amended to allow the department to prorate payments in the event of funding shortages. Fiscal note requests \$31,900 in FY'86 and 10% annually thereafter due to inflation. -- Local government will be impacted in that local assessor/staff will be required to verify eligibility of widow/widower.

SB 204 requires that professional services contracts for architectural, engineering, and land survey services be negotiated rather than awarded strictly on the basis of lowest bid. Bill sponsor, Senator Sturgulewski proposes an amendment to the bill upon the recommendation of the Director of the Division of Occupational Licensing that would require that contracts be awarded only to persons, partnerships, and corporations registered in Alaska under AS 08.48 (Registration and Practice provisions). The Dept of Transportation/Public Facilities believes that price should be a factor in selecting architectural, engineering and survey services and suggests an amendment to the bill. Fiscal note for DOT/PF is zero  
-----The Dept of Administration opposes the bill and attaches a zero fiscal note.

The information packet on SB 204 includes a summary of other state laws relating to AE/S services; Public Law 92-582 which requires the GSA to negotiate with firms most qualified; a GSA special committee report on the subject; and a number of articles from professional periodicals relating to subject bill.

Introduced: 3/1/85  
Referred to: 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

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  
17 reasonable compensation as determined by the state agency, after  
18 consideration of the estimated value of the services to be rendered,  
19 and the scope, complexity, and professional nature of the services.

20

(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

*new section (d)*  
(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

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

Page 1 of 1

REQUEST

Bill/Resolution No.: SB 204  
 Title: Contracts for Architects,  
 Engineers, Surveyors  
 Sponsor: Sturgulewski & Rodey  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: ALL  
 Program Category Affected: ALL  
 BRU, Program or Subprogram(s) Affected:  
ALL THOSE CONTRACTING FOR ARCHITECTS,  
 ENGINEERS AND SURVEYORS

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	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

No direct financial impact on the Department of Administration. It is difficult to calculate the increased cost of contracts for the services of architects, engineers and surveyors when price is removed from consideration in the award of their contracts, but there will be a definite premium paid without price competition.

Prepared By: Robert J. Link *RJL* <sup>A</sup>

Division: General Services & Supply

Phone: 465-2250

Date: March 7, 1985

Approved by Commissioner: Lisa Rudd *LR*

Agency: Department of Administration

Date: 3/18/85

Distribution (by Agency preparing fiscal note):


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

Position Paper  
SB 204

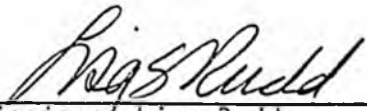
The Department of Administration is opposed to this bill.

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.

  
\_\_\_\_\_  
Robert J. Vink, Director  
Division of General Services & Supply  
Department of Administration

3/16/85  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Commissioner Lisa Rudd  
Department of Administration

3/18/85  
\_\_\_\_\_  
Date



ALASKA CHAPTER  
THE AMERICAN INSTITUTE OF ARCHITECTS  
P.O. BOX 10-3563 • ANCHORAGE, ALASKA 99510

STATEMENT OF POLICY  
SELECTION OF ARCHITECTS/ENGINEERS  
FOR DESIGN SERVICES FOR PUBLIC BUILDINGS

The Alaska Chapter of the American Institute of Architects believes that government procurement policies should make quality design the key criterion in the selection of architectural and engineering services. The Brooks Act provides the federal government with the ability to obtain A/E services for a "fair and reasonable" fee after having selected a firm based upon an open and vigorous competition in the areas of competence, experience, prior performance, and qualifications. This Act further identified as Public Law 92-582; 92nd Congress, H.R. 12807; October 27, 1972 established Federal Regulations governing the selection of Architects based on qualifications rather than competitive bidding. This regulation was enacted after considerable study, debate, and investigation.

It is clear that procurement of design services on the basis of qualifications provides the most cost-efficient procurement possible. Without the qualifications-based procurement procedure, public buildings are likely to be more expensive to build, to operate and to maintain, and their design is far more likely to be unimaginative, uninspired, and inflexible.

The Alaska Chapter/AIA supports qualifications-based procurement of A/E services for the following reasons:

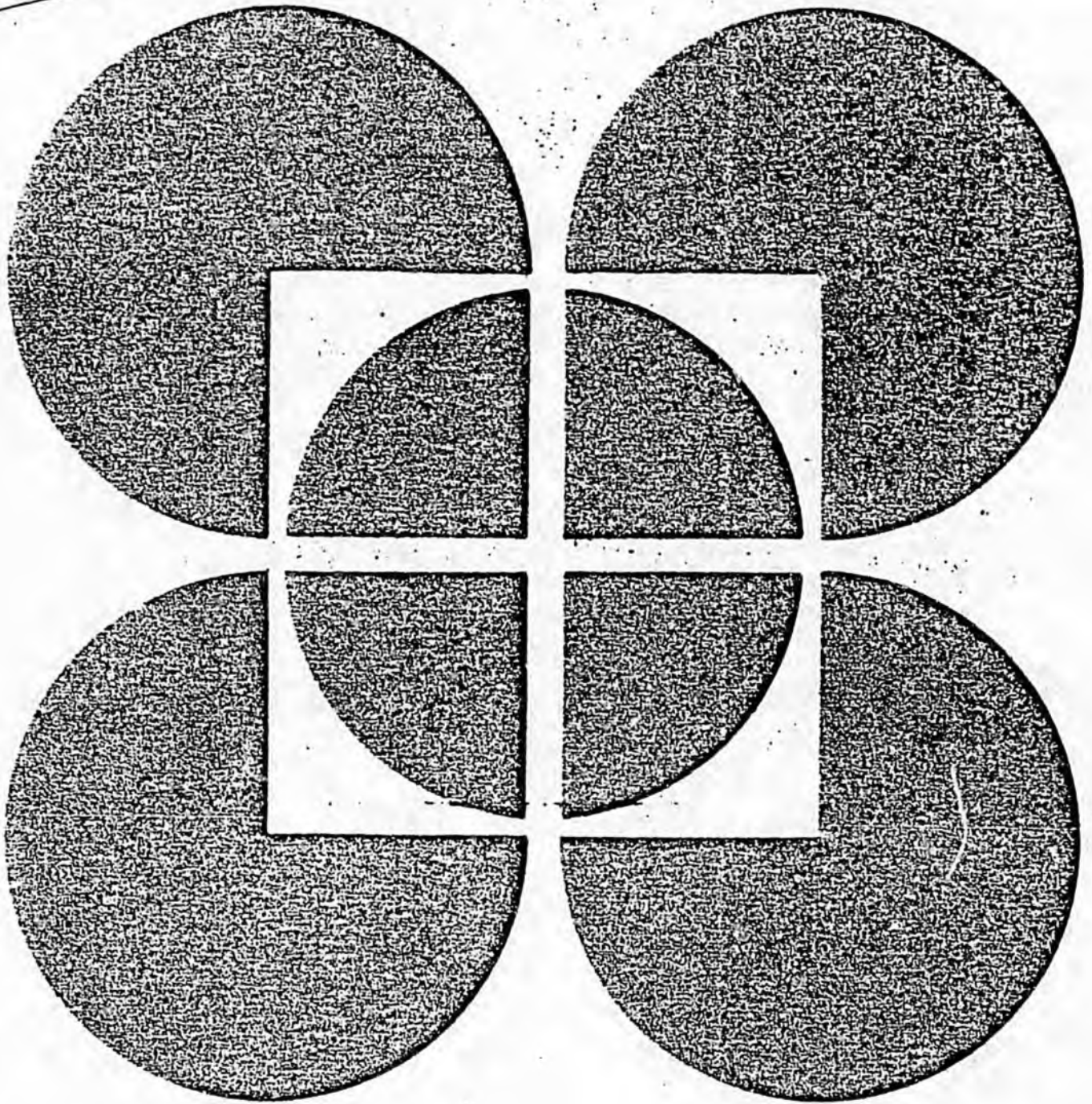
- Procurement of architectural services is a very specialized type of procurement and should not be compared to "spare parts" procurement.
- The creative exercise of reasoning, judgment, and design simply cannot be reduced to dollars and cents price quotations.
- In procuring architectural services the scope of work cannot be sufficiently defined so as to provide the basis upon which to make a price quotation.
- The qualifications-based procurement procedure provides vigorous competition for architects seeking projects.
- When price and quality are considered together in selecting a firm all too often disproportionate weight is given the low price bidder at the expense of quality.

- It is clear from congressional investigations that efforts to drive an architect's fee as low as possible, through price bidding, increase the risk of faulty design.
- It is patently incorrect to believe that lowest bid procurement procedures result in budget cost savings -- because to calculate the true cost of a facility, a life-cycle bases must be employed. Thus, the expertise on the part of an architect can have a dramatic effect on maintenance and operating costs over the life-span of a building.
- The AIA's Maryland-Florida study demonstrates conclusively that the low-bid procedure is more time consuming and costs more to administer than does the qualifications-based.
- Private and public officials support the Brooks-type procurement, which has been in existence for over 12 years, as evidenced by the fact that more than half the states use a similar method for procuring A/E services.

The aforementioned Policy Statement may appear self serving, however it includes the opinions and facts established by Government Agencies involved in A/E procurement, the American Bar Association, the National Academy of Science, and insurers in the Construction Industry and presents conclusive evidence of the most cost effective and efficient method of the A/E selection to achieve excellence in design for the built environment.

The following publications are referenced and will be made available on request. These documents confirm, in a substantial manner, the conclusions of the Alaska Chapter/AIA - Policy Statement:

- Letter dated April 14, 1983 - Victor O. Schinnerer & Company, Inc.
- Letter dated February 24, 1983 - Design Professionals Financial Corporation.
- Selecting Architects for Public Projects.
- Selecting Architects for Public Projects - An Analysis And Comparison of the Maryland and Florida Systems.
- Legal Briefs for the Construction Industry.
- Report of the GSA Special Study Committee on the Selection of Architects and Engineers - June 1974.
- The American Bar Association Model Procurement Code for Architect/Engineer selection for State and Local Governments.



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."<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

In order to carry out its assignment, the Special Study Committee focused on the GSA procedure rather than specific contract awards.<sup>4</sup> 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,<sup>5</sup> conducted comprehensive research in their areas of concern, held public hearings,<sup>6</sup>

## BACKGROUND (con't)

conducted interviews,<sup>7</sup> utilized questionnaires<sup>8</sup> and attended a round-table discussion with knowledgeable individuals.<sup>9</sup> 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.<sup>10</sup>

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 construction<sup>11</sup> 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.<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</sup>

## 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.<sup>25</sup>

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.

DESIGN PROFESSIONALS

FINANCIAL CORPORATION

P. O. DRAWER DPFC • MONTEREY, CALIFORNIA 93942 • (408) 649-5522

February 24, 1983

Mr. Jeffrey Rosenblum  
121 Wentworth Street  
Charleston SC 29401

Dear Mr. Rosenblum:

This letter will be in reply to our telephone conversation of today wherein you asked about our views on competitive bidding by Architects and Engineers. I will try to give you some background information that will support our opinion on this subject.

Two recent independent studies have supported the argument that competitive bidding is not the most effective guardian of the public interest. Both the Standing Committee on Procurement Policy of the National Academy of Sciences and the Architect, Engineer and Professional Services Committee of the American Bar Association concluded that the basic purpose of the Brooks Act is to mandate a selection process that puts the emphasis on professional qualification and quality of services. These studies presented several reasons for their conclusion that selection of an Architect/Engineer based upon competitive bidding would not be in the best interests of the government, among them were:

- o The Brooks Act system of negotiating a contract with the "highest qualified firm for architectural and engineering services at compensation which the agency determines is fair and reasonable to the government" has been working well. There certainly are not sufficient problems with this concept to justify significant modification of the law.

Mr. Jeffrey Rosenblum  
February 24, 1983  
Page Two

- o According to the National Academy of Sciences' study, the inclusion of fee in the procurement process will "inevitably lead to fee becoming the overriding consideration."
- o In order for fee bids to be meaningful, the government will have to define specifically what services would be expected in the performance of a contract. Agencies would have to develop these detailed statements of work before beginning competitive negotiation on fees. Developing a legitimate, precise statement of work would probably require two rounds of negotiation with several competing firms, a process that would be extremely time consuming and inefficient.
- o The price of the Architect/Engineer contract is almost insignificant compared to the overall cost of most projects. A reduction of costs in the design phase can have an extremely adverse effect on the quality of work and can result in higher construction costs, operating and maintenance costs and contract administration costs. A simple case of "penny wise and pound foolish."
- o Without the Brooks law approach to procurement, Architect/Engineer firms that have an abundance of work will tend not to seek government contracts. Thus, the government frequently will find itself in the position of having to choose from among mediocre firms.

Beyond the above-cited studies, our own experience indicates that the competitive bidding process is destructive to the building of a cohesive team that is characteristic of successful projects. In the long term no one benefits, least of all the owner (government). Often, a greater investment in a full scope of services by the Architect/-Engineer results in design refinements and better solutions which reduce construction and lifetime costs. A few extra hours spent in analysis and explanation can change a

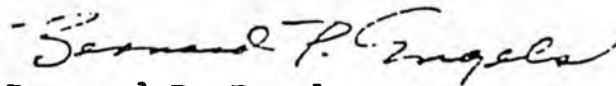
Mr. Jeffrey Rosenblum  
February 24, 1983  
Page Three

client's direction and save him hundreds of thousands, or even millions of dollars. Simply put, the negotiated fee system ensures that the effort to reduce costs will be part of the design professional's service.

From our point of view, the underwriting of professional liability insurance for architects and engineers is tenuous business at best - a marginal situation. Any practice that erodes the quality of the construction process increases the burden of exposure to catastrophic loss. Our prohibition against those who would conduct business in a less than professional manner is for the protection of the design professions and the general public. Should your state allow competitive bidding by Architects and Engineers, we will seriously consider not covering those policyholders of ours who operate in this fashion in South Carolina.

I hope this information is helpful to you.

Yours truly,



Bernard P. Engels  
Senior Vice-President

BPE:dlf

## What selection process works best?

Public agencies have two primary objectives in selecting design professionals: first, to see that the taxpayers get the best available design services for their money, and second, to insure that the selection process is carried out fairly and that all interested and qualified professional firms receive consideration for agency work.

To make sure these objectives are met, the federal government, many states,<sup>1</sup> and some municipalities have enacted laws governing the procurement of architect/engineer (A/E) services. While these laws differ in their specifics, most provide for the following elements:

Announcement of the proposed project should be made either in an official government publication or in the general press. Announcements typically include an indication of the type of project to be designed; the scope of services required; budget and time constraints; evaluation criteria; the form in which statements of interest and qualifications are to be submitted, and the submittal deadline.

Submittals made by interested firms are the second step in the process. To simplify the task of comparing the relative qualifications and experience of various firms, many agencies have adopted the use of standard forms for A/Es to use in providing this information. Some have adapted the U.S. General Services Administration's standard forms SF 254 and 255, used by federal government agencies.

SF 254, which is generally updated annually by firms interested in government work and kept on file by the agencies, provides an overall profile of the firm's size, experience, volume of business and area of specialization, if any.

SF 255, which is submitted in response to the announcement of a specific project, deals with the firm's experience with projects of similar type and scope, and with the special expertise of personnel who would be assigned to the project.<sup>2</sup> Firms also may be required by the agency to provide additional detailed information in specific response to the request for proposal.

Evaluation of submittals is the third step in the selection process. Evaluation criteria<sup>3</sup> generally include relevant experience and expertise; performance on previous projects; experience of consultant team and staff; availability of key personnel, and current and projected workloads that would affect the firm's ability to perform the required work on schedule.

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The purpose of this preliminary evaluation is to select a manageable number of firms for personal interviews. The number of firms to be interviewed depends in part on the size, scope and complexity of the project, and also on the time available to complete the selection process.

Great care should be taken to insure the ability of prescreening panels to select the best firms to be interviewed for specific projects. The final selection can be only as good as the original screening.

Inquiries to previous clients can help determine a firm's ability to perform with regard to budget, schedule and adherence to program requirements. It should be kept in mind that outside factors—many of them not within the design professional's control—can affect the outcome of an individual project. By talking to a number of former clients, it is possible to assess overall performance. If a majority report general satisfaction, the firm should not be rejected on the basis of, for example, one slipped schedule.

Since each firm should be given enough time—up to an hour or more—to present its qualifications, and since interviews may represent a considerable investment in travel and/or the loss of billable time for the firm's personnel, only those that appear qualified to take on the project should be interviewed. (Prescreening to limit the number of interviews is clearly to the advantage of the agency as well.)

Firms invited to interview should be given as much information as possible about project scope, the size and makeup of the interviewing panel, division of time between formal presentation and question/answer period, etc.

**Interviews** are conducted after the evaluation process has identified a number of firms with the appropriate experience and qualifications for the project. The interviews provide an opportunity to compare the design philosophies, approaches to the design process and interpretations of the specific program. They also allow for the comparison of the personal styles of each firm's managers and key personnel—an important consideration, since the firm selected will be closely associated with the agency's work over a period of months or years.

For that reason, agencies frequently request that key personnel who would actually be assigned to the project appear at the interview.

Firms with complementary experience and qualifications sometimes join together in joint venture to seek a specific project. In such a situation, the interviewers should be prepared to determine the proposed division of responsibilities between the joint-venture firms, to insure that all the needed expertise will be available and that all required services will be performed.

For an unusually large or complex project, two rounds of interviews are sometimes held, with three to five of the first round firms asked to return for a second interview.

Ranking of the top firms to identify the best qualified firm is the fifth step. Ranking criteria might include such items as design ability and philosophy, experience, demonstrated interest in the project, understanding of unique requirements of a public project, relevance of previous projects presented during the interview, availability of key personnel, schedule and budget performance on previous projects, etc.

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**Selection of the top-ranked firm is then made.** Discussions with the firm follow to determine its ability to perform the necessary work, on time, within budget and at the expected level of quality.

**Negotiation of the architect's compensation normally completes the procurement process.** Some jurisdictions may mandate the method of compensation (as a percentage of construction cost, cost-plus-fixed-fee, lump sum or some other formula). However, it is important to understand that design professionals base their compensation on their direct and indirect costs of providing services, plus a normal profit margin. Thus, if the compensation asked by the top-ranked firm is higher than the amount the agency can or will pay, it might be reasonable to review the scope of services to determine whether all the services requested are in fact necessary, and whether any of the required services can be provided by the agency itself or some other entity apart from the design firm. (For more on the subject, see "Your Architect's Compensation," N902, Publications Fulfillment, The AIA, 1735 New York Ave., N.W., Washington, D.C. 20006-5292. (202) 626-7475.)

If agreement on the scope of services and compensation cannot be reached, negotiations with the first-ranked firm are formally terminated, and the agency enters into negotiations with the firm that was ranked second.

**Notification of unsuccessful firms** should be made as soon as negotiations with the successful firm are complete. Unsuccessful firms frequently request a "debriefing" meeting with agency representatives, in an effort to learn why they were not selected. This debriefing, if requested, is a courtesy that should be granted, at least to the contenders in the final round of interviews. A candid debriefing can be useful to the agency as well as to the "also-ran" firms, since it provides an opportunity to educate the firm about the agency's goals and standards in selecting design professionals, and thus helps upgrade the quality of submittals for future projects.

The procedure outlined above is typical of the selection methods that have been adopted by many government agencies and local jurisdictions. If your agency is interested in developing a formal procedure, the local chapter or state component of The American Institute of Architects can offer valuable advice and counsel.

One special type of selection process—the *design competition*—is much more commonly used for public than for private projects (although it is sometimes used by clients in the private sector when the project is of unusual scope and high public visibility, such as a corporate headquarters). In an *open competition*, a complete building program, specific as to site, function and other constraints, is made available to all interested design firms, who then develop a proposed design solution, with drawings and other documentation, for submittal to the competition's sponsors. The same rules apply to *limited competitions* which restrict eligibility to compete, usually by geographic means such as those licensed to practice in a particular state.

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A third type of architectural competition is the *invited competition* in which the competing firms are chosen by the sponsor and compensated for their expenses. Most competitions are run in one design phase, but large projects may suggest the holding of a *two-stage competition*, in which firms surviving a first-round evaluation are asked to develop further their design solutions for a second round of judging. For those interested in more information about design competitions, the AIA's "Handbook of Architectural Design Competitions" (J500) is a useful reference.

Design competitions can serve a number of worthy purposes, including the advancement of talented designers who might not otherwise get a chance to compete for major work. However, there are a number of reasons why the method is not suitable for every project.

*Competitions are generally more expensive than other selection methods.* Expenses include the preparation of a more-than-usually complete program statement. A professional adviser should be retained to administer the competition. The adviser is generally a well-known and highly esteemed professional, and is compensated accordingly. The expenses of convening a jury must be considered. And finally, in invited competitions and the second stage of two-stage competitions, the unsuccessful competitors are compensated for the time and effort expended in developing a comprehensive design solution.

*Competitions generally take more time than other selection methods, for obvious reasons.*

Finally, there is the chance that *even though a winning design may be selected, it may require modification* before it can be built—which again involves more time and greater cost. This is because design competitions often lead to the selection of a designer rather than a specific design solution. Once selection is made in this manner, the architect can then work closely with the client to develop the design concept into a final design, meeting the detailed needs and budget of the client.

Competitions have traditionally produced some of the world's most monumental architecture—capitol buildings, opera houses and concert halls, memorials, etc. However, they have been held to produce designs for all types of projects such as urban planning, neighborhood renovation, or the adaptive re-use of historic buildings. When they are held, competitions generally attract considerable public interest.

## 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,<sup>4</sup> 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.

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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.

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<sup>1</sup>Appendix 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.

<sup>2</sup>Copies 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) 763-3238. Cost for SF 254 25 copies/\$7.50, SF 255 20 copies/\$8. Enclose payment with order. Visa and MasterCard charges accepted.

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

<sup>4</sup>Appendix 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.

# Alaska State Legislature



SENATOR  
**ARLISS STURGULEWSKI**

Chairman, Senate Resources Committee  
Vice-Chairman, Senate Health, Education and Social Services Committee  
Member, Senate Community and Regional Affairs Committee

2957 SHELDON JACKSON STREET  
ANCHORAGE, ALASKA 99508

While in Juneau  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3818

## Senate

M E M O R A N D U M

March 21, 1985

TO: Members, Senate Community & Regional Affairs Committee

FROM: Senator Arliss Sturgulewski

RE: Senate Bill 204

Senate Bill 204, "an Act relating to contracts for architectural, engineering, and land surveying services," would require that professional services contracts with architects, engineers, and land surveyors be negotiated with firms selected on the basis of demonstrated competence.

This bill is similar to the Brooks Act, federal legislation enacted in 1972 which requires the GSA to negotiate with firms found to be the most highly qualified. Studies have shown that the public interest is often better served when design services are negotiated.

Consideration of cost alone in the design phase of a project can have an adverse effect on the quality of work and can result in higher construction costs, operations and maintenance costs, and contract administration costs. The negotiated fee system can help to ensure that the effort to reduce costs will be part of the design professional's service. A greater investment in a full scope of services by a design professional can result in design refinements and better solutions which can reduce both construction costs and costs over the lifetime of a project.

Currently there are 21 states which mandate selection of architectural and engineering services based on qualifications.

# Alaska State Legislature



SENATOR  
**ARLISS STURGULEWSKI**

Chairman, Senate Resources Committee  
Vice-Chairman, Senate Health, Education and Social Services Committee  
Member, Senate Community and Regional Affairs Committee

2957 SHELDON JACKSON STREET  
ANCHORAGE, ALASKA 99508

While in Juneau  
**POUCH V**  
JUNEAU, ALASKA 99811  
(907) 465-3818

## Senate

M E M O R A N D U M

March 21, 1985

TO: Members, Senate Community & Regional Affairs Committee  
FROM: Senator Arliss Sturgulewski  
RE: Attached amendment

Attached is a suggested amendment to Senate Bill 204. This additional section would ensure that contracts only be awarded to persons, partnerships and corporations which are registered in Alaska under AS 08.48.

Title 08 of Alaska Statutes governs business and professions; chapter 48 of that title applies to architects and land surveyors.

The director of the Division of Occupational Licensing in the Department of Commerce suggested this addition. His letter is attached.

A M E N D M E N T

Offered in the SENATE

By Sturgulewski

TO: SB 204

Page 1, following line 28, insert a new subsection to read:

"(d) A state agency may award a contract covered by this section only to

(1) an individual who is registered under AS 08.48 to perform the architectural, engineering, or land surveying services covered by the contract;

(2) a partnership that is qualified under AS 08.48.251 to provide the architectural, engineering, or land surveying services covered by the contract; or

(3) a corporation that is authorized under AS 08.48.241 to offer the architectural, engineering, or land surveying services covered by the contract."

Reletter the following paragraph accordingly.

March 5, 1985

The Honorable Arliss Sturgulewski  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Dear Senator Sturgulewski:

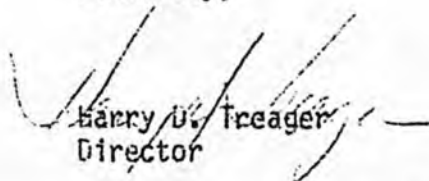
Re: Senate Bill #204

I have reviewed Senate Bill 204 and endorse its intent. I am writing to you as co-sponsor to offer a suggestion. I respectfully ask you to consider an additional requirement of those submitting bids. This would be to submit evidence of current State of Alaska licensure as an architect, engineer or land surveyor. In reviewing AS 36.98, it is my opinion that no where does it require current State licensure. This would even include mention of the Department of Revenue business license. I must admit the licensure requirement may be engrossed in the requirements by regulations or the list of professionals offering services. That list is maintained by the Department of Administration. Even the currently used form "Standard Agreement Form for Professional Services Contract" does not have a space for business or professional license or registration number. I know you will be receiving comments from the currently licensed professional groups. If the requirement is spelled out, we will eliminate misunderstandings by other State agencies; those submitting proposals will understand and comply with your other legislative mandates.

Licensure of architects, engineers and land surveyors is found in AS 08.48.281 "Prohibited Practice."

Thank you for your time. If I can assist further, please contact me.

Sincerely,

  
Harry U. Treager  
Director

HDT/1t2354t-1  
030485a

cc: Loren H. Lounsbury, Commissioner

# Alaska State Legislature

SENATOR BETTYE FAHRENKAMP  
CHAIRMAN, HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE  
1117 LAKEVIEW TERRACE  
FAIRBANKS, ALASKA 99701  
907-456-2899



Senate

WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA 99811  
OFFICE (907) 465-3763  
HESS COMMITTEE  
(907) 465-3834  
HOME 907-780-6027

April 1, 1985

Clark Milne, P.E.  
1119 Coppet Street  
Fairbanks, Alaska 99701

Dear Clark:

Thank you for your message requesting my support for SB 204, relating to state contracts for architects and engineers. The bill is presently being considered by the Senate Committee on Community and Regional Affairs. I've taken the liberty of forwarding a copy of your letter to the committee chairman.

As I'm sure you know, the two contracting agencies, the Departments of Transportation and Administration, have the statutory discretion to award design and engineering contracts based on procedures other than competitive bidding. It is my understanding that they exercise this discretion to the greatest extent possible.

Most would agree that we don't necessarily get a better product for less money with design and engineering contracts. Are we better off following the example of 22 other states and the U.S. General Services Administration by providing award procedures in statute, or should we allow the state agencies to continue to exercise their discretionary authority in these matters?

Clark, I've yet to form an opinion on the issue and am interested in hearing both sides of the argument. Rest assured that I will give it my careful consideration when it comes before the full Senate for a vote, and that I will keep your comments in mind.

Sincerely,

Bettye Fahrenkamp  
Alaska State Senate

cc: Senator DeVries

BF:er

MAR 18 1986

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\*  
\* DELIVER TO: JFOM \*  
\*  
\* ORIGINAL \*  
\* SENT: 03/15/85 TIME: 16:19 \*  
\* FROM: PAULA GRAY \*  
\* SUBJECT: FOM-FAIRBANKS \*  
\* PRINT DATE: 03/15/85 TIME: 16:20 \*  
\*  
\*\*\*\*\*

TO:

SENS: SACKETT, FAIKS, HALFORD, KERTTULA, FERGUSON, P. FISCHER,  
ELIASON, DEVRIES, STURGULEWSKI, V. FISCHER

INTERIOR DELEGATION

SENS: BENNETT, COGHILL, FAHRENKAMP  
REPS: DAVIS, KOPONEN, M.W. MILLER, RINGSTAD, FRANK

FROM: CLARK MILNE, P.E., 1119 COPPET ST., FBX, 99701

PHONE: 456-8074-H 452-4761-W

RE: SB 204, COMPETITIVE BIDDING/CONTRACTORS

MSG: AS AN EXPERIENCED CONTRACTOR'S ENGINEER, I AM VERY  
PRO-COMPETITIVE BIDDING FOR CONSTRUCTION, BUT AS THE NEW CHIEF  
CIVIL ENGINEER AT THE FAIRBANKS NORTH STAR BOROUGH I PERSONALLY  
BELIEVE THAT PROFESSIONAL DESIGN WORK DOES NOT LEND ITSELF TO  
PRICE BIDDING. I STRONGLY SUPPORT THIS BILL.

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

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

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

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

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

(5) "state agency" means a department, institution, board, commission, division, authority, or other administrative unit of the executive branch of state government; and the University of Alaska. (§ 5 ch 144 SLA 1982)

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

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

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

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STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

<p><b>REQUEST</b>                  Bill/Resolution No.: <u>SB 204</u>                  Title: <u>An Act Relating to Contracts for Arch., Engr., &amp; Land Surveying Services</u>                  Sponsor: <u>Sturgulewski, Rodey</u>                  Requestor: _____                  Date of Request: <u>3/18/85</u></p>	<p><b>FISCAL DETAIL</b>                  Agency Affected: <u>DOT&amp;PF, DEC, DNR, DOA</u>                  Program Category Affected: <u>Design, Construction Lands, General Services</u>                  BRU, Program or Subprogram(s) Affected: _____</p>
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**EXPENDITURES/REVENUES: (Thousands of Dollars)**

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

**FUNDING: (Thousands of Dollars)**

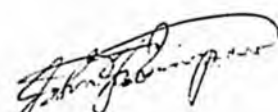
	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

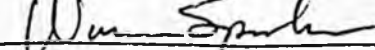
**POSITIONS:**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
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 J. Simpson  Phone: 465-2951  
 Division: Standards & Technical Services Date: 3/19/85

Approved by Commissioner: Wm Spahr  Date: 3-21-85  
 Agency: Department of Transportation & Public Facilities

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

Analysis - S B 204

This bill specifies the basis on which the state would negotiate and award contracts for architectural, engineering and land surveying services. It also applies to political subdivisions of the state when they use these services on a project that is entirely or partially funded with state funds. Except for the provision regarding political subdivisions, this bill is identical to H B 278.

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.

The Department is not able to estimate the fiscal impact of this bill on political subdivisions of the state since the procedures they follow are not known. It is recommended that the Alaska Municipal League or the individual political subdivisions be contacted directly for this information.



## Dept. of Transportation & Public Facilities

# Position Paper

BILL NO: SB 204

APPROVED: R. J. Knapp  
Commissioner

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

DATE: 3-21-85

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:

(d) 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.

For further information call Susan Fleischhauer at 465-3900.

It is noted that the proposed bill is very similar to HB 278 except that it also applies to political subdivision of the State in those cases where they seek architectural, engineering or land surveying services for a project that is funded entirely or partly with state funds. The Department is not able to address the impact of this provision on the applicable political subdivisions and recommends that their position on the bill be requested through the Alaska Municipal League.

# VERNON AKIN AND ASSOCIATES

CONSULTING ENGINEERS

P.O. BOX 1081

JUNEAU, ALASKA 99802

PHONE (907) 586.6622

March 13, 1985

Dear Legislator and Friend:

The selection of professional services for architects and engineers, for many years, has been done based upon the qualifications of the professional instead of on the lowest price for design. In the past there have been trends to base the selection upon cost only, but it was found by sad experience that the system was not satisfactory. It takes only a small amount of analysis to see why the selection based primarily on cost does not produce satisfactory results. The owner is the party who suffers when the finished product does not perform as intended or desired. The work of a designer of a building cannot be made analogous to the work of a contractor, as many people have tried to do. Some people have asked why a designer can not bid a job the same as a contractor does. When a contractor bids a job, he has the plans and specifications prepared by a design team, so he knows exactly what the scope of the work is and what is required. On the other hand, when an owner wants a building designed and hires an architect or engineer, all the design team has for scope is a concept of the purpose for which the building is going to be used, the monies available, and possibly the breakdown of the approximate square feet desired for each function. Before and during design, the design team confers with the owner and at that time the true scope of the work is set. Many times the full extent of the scope of the work is not fully set until well into the design phase. So at the time of bidding of services there is no way that the true extent of the scope can be enumerated. If it were, then there would be a complete set of plans and specifications required for bidding the services, which is impractical. With a negotiated contract, it leaves the design team latitude to include cost and energy saving features into the design, as well as cost saving maintenance features.

The least expensive initial-cost building is not necessarily the most economical to operate and maintain. Life cycle costing has shown that the initial cost of a building is about 4 to 5 percent of the total cost of the building for the life of the building. So it is a fallacy to try to save a few dollars on the initial cost of a building if the operating and maintenance costs are going to be high. If the design of a building is going to be based upon cost only for the design, this eliminates the chance of getting a good design. All the owner is getting by accepting the low bidder is a minimum design. And a minimum design will result in a minimum quality building, without concern for any energy saving features, esthetic features, quality of materials, or effective operating and maintenance features that will prolong the life of the building and equipment.

Some proponents of the bidding feature say that it will result in lower design costs. They are not evaluating correctly. Time costs money. The more time expended the more the cost. The only way lower design costs can be obtained is by spending less time on the design. But who suffers for this less time? It is not the design team, because their time is calculated and allotted at the time of the bidding. So it is the owner who gets exactly for what he is paying. There is no such thing as a "free lunch".

The proponents of the bidding arrangement say there is no competition. This is not correct. Under the present system, which has proven over the many decades to be the best method for the results desired, there is competition. The difference is that qualifications are the primary basis for selection--not cost for design. Under the present system used by the State of Alaska, the project is advertised for letters of interest. Any design team can put in their letter of interest. The applicants are then scored on a basis of 100 points related to the project. They are scored by the owner, which could consist of several agencies and departments of the state. From the scoring, the highest scoring team is interviewed first to see if there is an agreement on scope of the work, procedure, timing, and finally cost proposal. If there is no agreement, then negotiations are cancelled and the second highest scoring team is interviewed. This extends down the line of applicants until an agreement is reached. So the first team knows that their cost proposal must be acceptable to the owner or they are permanently out. There is no chance for competitive "price cutting" by the applicants. As stated previously, price cutting is to the detriment of the owner and not the designer.

Again, this bidding process on design work has been tried previously, and found that it was not successful. It resulted in poorly designed buildings lacking coordination in design, and the owner was the loser. There are all quality of designers from excellent to very poor, as in all fields of endeavor. If the selection is based upon qualifications, the owner will get the better designer. If the selection is based upon cost only, he will get the poor designer, because less time and coordination will be spent on the design. Details will be incomplete or totally missing which will cost more change orders and more time spent during construction. Remember that a design team in the selection process has reached an amicable agreement with the owner on cost to furnish the services the designer deems necessary for a satisfactory design, so the design team is working for the owner to see that the owner gets full value for his money. During construction the design team is the owner's representative, to protect the owner's interests. If the designer has to bid competitively for the job, the good design team who wants to put the extra time into the job to protect the owner's interests will not be the low bidder. So the owner is going to be the ultimate loser.

Letter, SB 204

Some municipal governments oppose this bill because they are under the mistaken impression that they are going to get more for their design money. They are going to get less, both in quality of design and quality of finished building, and they will have a monument consisting of the finished building for the lifetime of the building to remind them of their decision. This bill is an offshoot of the federal Brooks Act of 1972 which requires selection of architects and engineers "on demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices". As of 1983 twenty one states have adopted this policy with similar legislation. I strongly recommend that you do your utmost to get this bill out of committee with a vote favorable for passage. We need this legislation in Alaska to insure that we will not be saddled with buildings of minimum design and maximum operating and maintenance costs.

Cordially

A handwritten signature in cursive script that reads "Vernon Akin". The signature is written in dark ink and is positioned above the printed name.

Vernon Akin

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

Page 1 of 1

**REQUEST**

Bill/Resolution No.: SB 204  
 Title: Contracts for Architects,  
 Engineers, Surveyors  
 Sponsor: Sturgulewski & Rodey  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected: ALL  
 Program Category Affected: ALL  
 BRU, Program or Subprogram(s) Affected:  
ALL THOSE CONTRACTING FOR ARCHITECTS,  
 ENGINEERS AND SURVEYORS

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

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

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

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

**ANALYSIS: (Attach a separate page if necessary)**

No direct financial impact on the Department of Administration. It is difficult to calculate the increased cost of contracts for the services of architects, engineers and surveyors when price is removed from consideration in the award of their contracts, but there will be a definite premium paid without price competition.

Prepared By: Robert J. Link *RL* Phone: 465-2250  
 Division: General Services & Supply Date: March 7, 1985

Approved by Commissioner: Lisa Rudd *LR* Date: 3/18/85  
 Agency: Department of Administration

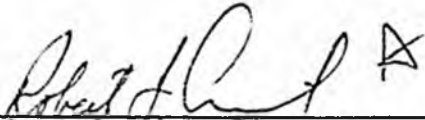
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 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Position Paper  
SB 204

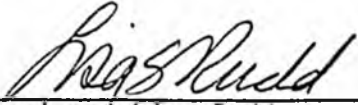
The Department of Administration is opposed to this bill.

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.

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

3/16/85  
Date

  
\_\_\_\_\_  
Commissioner Lisa Rudd  
Department of Administration

3/18/85  
Date

KODIAK ISLAND BOROUGH  
RESOLUTION NO. 85-36-R

A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY OPPOSING SENATE BILL NO. 204 CONCERNING CONTRACTS FOR ARCHITECTURAL ENGINEERING AND LAND SURVEYING SERVICES.

WHEREAS, Senate Bill No. 204 has been introduced to become law and proposes to require selection of architectural engineering and land surveying services from firms prior to any cost discussions, and

WHEREAS, the present system of requesting proposals allows cost consideration to be part of the selection criteria, and

WHEREAS, the proposed system would increase the costs of such contracts in Alaska, and

WHEREAS, the public interest is best served by the current cost effective method of selection and is not served by the proposed law.

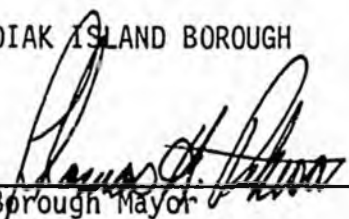
NOW, THEREFORE, BE IT RESOLVED by the Kodiak Island Borough Assembly that Senate Bill No. 204 fail to pass out of committee and not be considered for law, and

BE IT FURTHER RESOLVED that copies of this resolution be sent to the following individuals:

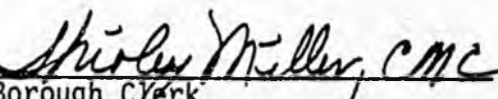
The Honorable Bill Sheffield, Governor of Alaska  
The Honorable Edna DeVries, Chairman, Senate C&RA Committee  
The Honorable Fred F. Zharoff, State Senate  
The Honorable David W. Thompson, House of Representatives

PASSED AND APPROVED this 4th day of April, 1985.

KODIAK ISLAND BOROUGH

By   
Borough Mayor

ATTEST:

By   
Borough Clerk

*Alaska*  
**MUNICIPAL**  
*League*

TELEPHONES  
(907) 586-1325  
(907) 586-6526

105 MUNICIPAL WAY, SUITE 301  
KUNEAU, ALASKA 99801

TO: Senator Edna DeVries, Chair  
Members, Senate Community and Regional  
Affairs Committee

FROM: Scott A. Burgess  
Executive Director



DATE: March 21, 1985

SUBJECT: SB 204

On behalf of the Alaska Municipal League, I respectfully request that municipalities; i.e., political subdivisions not be included in this bill. Municipalities are best able to determine their own contracting procedures, and resist additional State mandates which restrict municipalities from tailoring those procedures to meet the individual communities' needs to complete a satisfactory project and to do so at a good price.

Therefore, please delete Section 36.98.043 (d) of SB 204 in its entirety. Thank you.



## The 700% Solution—A Billion Dollar Ripoff

By Paul J. Andrews

*(A commentary in the April 1980 edition of Government Executive addressed the issue of the high cost of architect-engineer services in Federal contracts. The following opinion/commentary is an update on that same issue and was submitted by a long-time (1946-1979) Federal employee who is now retired from Government service but retains a strong interest in Federal expenditures. An attorney, Mr. Andrews spent much of his Federal service in the areas of supply, contracts, claims and compliance.)*

One of the obvious ways to reduce the federal deficit is to reduce the outlay of funds for federal procurement; and an important procurement technique to reduce prices is by competitive bidding or negotiation. On August 11, 1983, President Reagan called on the heads of departments and agencies to increase price competition in the \$160 billion spent annually in federal procurement and restrict the use of noncompetitive procurement. As a part of its deficit reduction package, both houses of Congress drafted a "competition in contracting" bill (S. 338 and H.R. 5184).

The one exception, in the latter bill, to more "fair and open competition" is the procedures in the Brooks Act (sponsored by Rep. Jack Brooks and passed on October 27, 1972), which forbids price competition for architect-engineer (A/E) services. A/E fees in federal procurement total about \$5 billion annually. In the "Deficit Reduction Act of 1984" (P.L. 98-369, enacted July 18, 1984), which combined the two bills, the Federal Property Act was amended to provide (sec. 309 (b)) that—"the term 'competitive procedures' means procedures under which an executive agency enters into a contract pursuant to full and open competition. Such terms also includes—

(1) procurement of architectural or engineering services conducted in accordance with title IX of this Act (40 U.S.C. 541 et seq) [the Brooks Act]"

On April 25, 1978, antitrust action against the A/E industry (National Society of Professional Engineers v. U.S.) culminated in the Supreme Court's decision that the traditional method of selecting A/E's without comparison of prices

was a "frontal assault on the basic policy" of the Sherman Anti-trust Act. But by then the A/E code of ethics prohibiting comparison of prices had been written into law (the Brooks Act, dated October 27, 1972).

The current NSPE Code of Ethics (as revised, July 1981) rescinds section 11(c) of its previous code, recognizing the Supreme Court decision, and permits price negotiation for A/E services. The private client may now compare prices offered by competing A/E's; but the federal government client is forbidden by the Brooks Act from making price comparisons. The new NSPE Code also notes that "Engineers and firms may individually refuse to bid for engineering services. Clients are not required to seek bids for engineering services . . . State registration board rules of professional conduct, including rules prohibiting competitive bidding for engineering services, are not affected and remain in full force and effect." As we shall observe later, the absence of price comparison results in a 600 to 700 per cent price spread in the cost of A/E services. In other words, the Brooks Act alone insures that A/E services which could be obtained for \$50,000, will cost the federal government as much as \$350,000.

A survey of the largest construction firms in the east revealed a definite move toward price comparison in the A/E selection process. Joe Wood of Marriott Corporation said that for the design of hotels and facilities around the world they ask for A/E design proposals with prices, then select the proposals in the lower half of the price range and negotiate with the best qualified A/E. Alan Brangman said Oliver T. Carr Co. was paying time and service rates for A/E services but found the costs so high that the project managers are now going into the market place to expand the pool of eligible A/E's and to negotiate lump sum prices with all A/E's qualified for the particular design job. Steve Hayes, Project Manager for the Washington-Baltimore area for Cabot and Forbes, who construct multi-story office buildings, said they use Skidmore, Owings and Merrill as the A/E for their largest buildings; but in suburban areas (for designs of smaller facilities) a feasibility design is developed, a pool of

qualified A/E's is selected and price is negotiated with all of them. The consensus was that price comparison for A/E services is the definite trend—in order to reduce costs of design work and continue to obtain highly qualified A/E's.

In its December 1972 report, the Commission on Government Procurement recommended price competition as a "non-dominant factor" in selections of A/E's. Congressman Brooks, in the ensuing 12 years has never sought review of the Brooks Act, although for most of these years he has been in a prime position, as Chairman of the House Government Operations Committee, to do so. He has repeatedly stated that the Act calls for "fair and reasonable" prices and if administration of A/E procurement fails to curb excessive profits, it is not his concern. Section 2753 of the recently enacted Deficit Reduction Act of 1984 finally calls for a study of all factors in the procurement with recommendations from the Office of Federal Procurement Policy (OFPP), where the survey will be conducted.

In August, 1983, the Inspector General of the Department of Transportation published an investigative report in which he reviewed 102 A/E grant-funded contracts and concluded that there had been a loss of tens of millions of dollars to the American taxpayer. Fifty three percent of the contracts were entered into without the benefit of adequate cost estimates and analyses of A/E costs and 68 percent of the contracts were not sufficiently documented to show that reasonable prices were obtained. Ten of the contracts showed a price spread of 7 to 733 percent for the same services. Frank Musica, Washington Counsel for the American Society of Civil Engineers, explained that price spreads of \$50,000 to \$300,000 (600 percent) were not unusual for A/E proposals on the same project because the federal agencies were unable to define adequately the scope of work. The anomaly in this assertion is that federal agencies also claim they cannot define adequately the scope of work for a particular project for the purpose of price comparison among the three best qualified A/E's selected. Having said that, the agency immediately enters into a contract with the best qualified A/E in which

scope of work is defined sufficiently to measure the A/E's performance.

The significance of the price spread is that so much of A/E design work is repetitive (such as rooms and other space units in a building) that prices paid in the past become the basis for estimates by the government or the client for future design projects. Prices near the top of the 600 to 700 percent spread, therefore, create a plateau estimated price for future projects. If the three best qualified A/E's are permitted to offer prices for comparison by the client, and the plateau price offered by the best qualified A/E is at the top of the 700 spread, the prices offered by the other two best qualified A/E's could introduce competition at the 300 percent and 100 percent level. The A/E industry price fixing rate schedules, of course, keep prices at the 700 level. And if over 98% of A/E contracts are awarded by the federal government to the best qualified A/E at the 700 level the inflationary trend in prices is obvious. Notwithstanding this inflationary trend, in the 12 years that the Brooks Act has been in effect, no effort has been made by the Federal Government to survey the prices for A/E services.

The absence of requirements for competitive price negotiation in the A/E selection process is the crux of the problem of excessive profits. The DOT audit found that "in 36 percent of the 102 A/E contracts reviewed, available evidence indicated that A/E firm proposals were apparently accepted without analysis or efforts to negotiate reasonable prices. It appeared that these grantees did not have either the capability or the incentive to conduct meaningful (price) negotiations with the A/E firms."

From the time the Brooks Act was enacted, price negotiation has been a charade. The A/E selected as best qualified prescribes the industry fixed price for

current competitive restraints upon A/E services procurement." Apparently in conformance with the Administration's pro-industry policy, the OFPP ignored the "strong" advice of Justice with respect to A/E procurement reform when it sent its final System proposal to the Congress.

The primary factors in the selection process for other professional services is the professional competence of those who will do the work and the relative merits of proposals for the end products. The fee to be charged is not a dominant factor but price comparison is required. It is this latter factor which is missing under the Brooks Act.

Professionals who perform work similar to that performed by A/E's have sought to be included under the Brooks Act. Appeals to the Comptroller General of the United States by the Association of Soil and Foundation Engineers, and by other engineering firms referenced in that opinion, to be exempt from price competition for services their members performed that were related to A/E services, were denied because the Brooks Act procedures are strictly limited to such services "when performed by A/E firms." However, the surveyors and mappers have prevailed; 97 Stat. 311 adds their services to the Brooks Act. This was accomplished by a floor amendment introduced by Senator Charles Percy to the supplemental appropriations act of 1983 (P.L. 98-63). Other professionals (real estate appraisers, lawyers and others) have sought, over the years, to get aboard the gravy train that has profited the A/E's so much.

With the support of the Brooks Act, sole source procurement of A/E services at prices fixed by the industry have lulled state and federal contracting and administrative officials into a state of euphoric disregard of all sound contracting principles. Money is poured into A/E projects with no evaluation of cost or accountability required. The rationale is that the ultimate cost of the design concept, whatever it is, will be justified in the construction to which it is applied. The logical control is to be found in some kind of price competition. The A/E lobby in Congress is betting its money against such a retreat from the status quo.

It is encouraging that the Deficit Reduction Act of 1984, in its final provision, calls for a study of procurement of professional services, including A/E services. The report on the legislation (House Report 98-861) proposes a system in which all qualified persons be encouraged to submit a competitive proposal in response to each solicitation for services "and in which the award is made to the bidder on the list who can perform the service for the lowest over-all cost." This is the light at the end of the tunnel. May this commentary contribute to the study of procurement of A/E services.

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the prospective client to compare services on the basis of price prior to selection, and it presumes that the contract will go to the qualified firm submitting the lowest price.<sup>1</sup> Of the 29 states which have statutes on A/E 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	
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	(1980)
Minnesota	(1975)	Washington	(1981)

<sup>1</sup>"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:<sup>1</sup>

#### "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.<sup>2</sup>

##### "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 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.

##### "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.<sup>3</sup> 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."<sup>3</sup>

Approved October 27, 1972.

<sup>1</sup>Architects and engineers. Federal selection policy, establishment 63 Stat 377, 82 Stat 1104  
<sup>2</sup>86 Stat. 1278  
<sup>3</sup>86 Stat. 1279

##### LEGISLATIVE HISTORY

HOUSE REPORT, No. 92-1188 (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

RECEIVED

JAN 28 1985

Winch•Ritter•Forrest Architects

## 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?

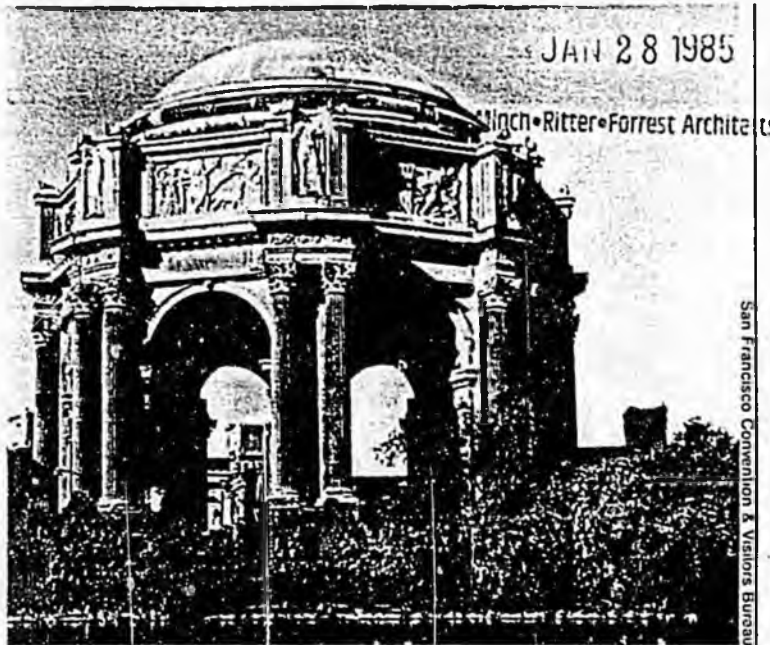
The 1985 AIA National Convention in San Francisco, June 9-12, will feature 10 information-packed hours of special design programs to help architects integrate new techniques into the various facets of "value architecture."

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 Institute's "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.

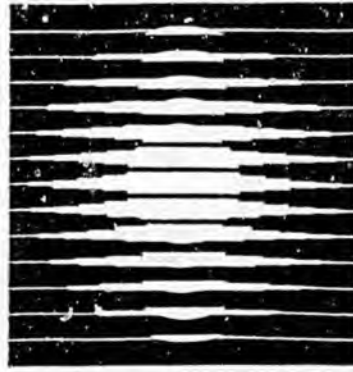
Maryland, however, has advocated its selection process as more cost-effective than the traditional "Brooks Act" approach, thus prompting the AIA to include Maryland in the study.

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

San Francisco Convention & Visitors Bureau



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/E's in Maryland are resentful of its system.

"Most A/E's 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.

MASTER-SPEC will now emphasize 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 methodology for internal practice.

General session speakers will include Marvin Cetron, 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.