

**HB**

**239**

<TARGET><BILL>HB 239</BILL><SUBJECT>HB  
239</SUBJECT><COMM>HSTA27</COMM></TARGET>



## **Representative Lindsey Holmes**

### **Sponsor Statement**

#### **HB 239 – Professional Services in State Funded Contracts**

The State of Alaska currently requires that designers of state public works projects be selected using qualifications-based criteria – choosing the most qualified firms, based on experience, before negotiating price. Similarly, the federal government requires qualifications-based selection for professional services on projects that accept federal funds.

House Bill 239 extends state qualifications-based selection contract requirements for architectural, engineering and land surveying services to projects that receive state funding.

The qualifications-based methodology differs from the lowest-bid method, which is standard during the construction phase of public projects. A higher standard of selecting the most qualified people for the design of projects lowers the chances of multiple redesigns and project cost overruns.

Under HB 239, if the state participates in funding a project, the entity receiving state funds will select the highest ranked professionals to design the project. After that selection, the entity negotiates for cost of services. If negotiations fail, the entity goes to the second highest ranked firm to negotiate, and so on down the line in order of ranking until an agreement is reached.

This legislation lowers the chance that entities receiving state funds for projects will come back to the state asking for more funds to cover design errors.

Alaska statutes related to architectural, engineering, and land surveying contract requirements for State of Alaska projects.

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Sec. 36.30.270. Architectural, engineering, and land surveying contracts.

(a) Notwithstanding conflicting provisions of AS 36.30.100 - 36.30.260, a procurement officer shall negotiate a contract for an agency with the most qualified and suitable firm or person of demonstrated competence for architectural, engineering, or land surveying services. The procurement officer shall award a contract for those services at fair and reasonable compensation as determined by the procurement officer, after consideration of the estimated value of the services to be rendered, and the scope, complexity, and professional nature of the services. When determining the most qualified and suitable firm or person, the procurement officer shall consider the

(1) proximity to the project site of the office of the firm or person unless federal law prohibits this factor from being considered in the awarding of the contract; and

(2) employment practices of the firm or person with regard to women and minorities.

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

(c) This section does not apply to contracts awarded in a situation of public necessity if the procurement officer certifies in writing that a situation of public necessity exists.

(d) Notwithstanding the other provisions of this section, a procurement officer may include price as an added factor in selecting architectural, engineering, and land surveying services when, in the judgment of the procurement officer, the services required are repetitious in nature, and the scope, nature, and amount of services required are thoroughly defined by measurable and objective standards to reasonably enable firms or persons making proposals to compete with a clear understanding and interpretation of the services required. In order to include price as a factor in selection, a majority of the persons involved by the procurement officer in evaluation of the proposals must be registered in the state to perform architectural, engineering, or land surveying services.

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

# FISCAL NOTE

**STATE OF ALASKA**  
**2012 LEGISLATIVE SESSION**

Bill Version HB 239  
 Fiscal Note Number \_\_\_\_\_  
 ( ) Publish Date \_\_\_\_\_

Identifier (file name) HB239-DOT-AS-3-12-12 Dept. Affected Transportation  
 Title Procurement of Architectural, Engineering or Land Appropriation Administration and Support  
 Allocation Contracting and Appeals  
 Sponsor Rep. Holmes  
 Requester H (STA) OMB Component Number 2355

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
<b>OPERATING EXPENDITURES</b>	<b>FY13</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>FUND SOURCE</b>		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
<b>TOTAL</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>POSITIONS</b>							
Full-time							
Part-time							
Temporary							

<b>CHANGE IN REVENUES</b>							

Estimated **SUPPLEMENTAL (FY12) operating costs** \_\_\_\_\_ (separate supplemental appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** \_\_\_\_\_ (separate capital appropriation required)  
 (discuss reasons and fund source(s) in analysis section)

**Why this fiscal note differs from previous version (if initial version, please note as such)**

Initial version

Prepared by Brenda Hewitt, Legislative Liaison  
 Division Department of Transportation and Public Facilities  
 Approved by Marc Luiken  
Commissioner

Phone 465-4772  
 Date/Time 3/12/12 10:00 AM  
 Date 3/12/2012

**FISCAL NOTE**

**STATE OF ALASKA  
2012 LEGISLATIVE SESSION**

**BILL NO.** HB 239

**Analysis**

This bill requires entities receiving state funds, such as municipalities or school districts, to follow similar procurement policies utilized by the State of Alaska in regards to professional contracts with architects, engineers or land surveyors which allow for selection of the most qualified versus the lowest bidder.

The agency does not anticipate any fiscal impact from the passage of this bill.



THE AMERICAN  
INSTITUTE  
OF ARCHITECTS

# Issue Brief

The American Institute of Architects • Government Advocacy • Current Issue Position and Analysis

## Qualifications Based Selection

### Key Points:

- *The American Bar Association endorses QBS in its "Model Procurement Code for State and Local Governments."*
- *48 states follow QBS procedures for procuring A/E services.*
- *In recent polling, only 11 percent of voters said they agreed with the viewpoint that "architects and engineers who are hired by government agencies to design and construct public buildings like schools, court houses, hospitals, airports, and prisons should always be awarded to the lowest bidder in order to save money."*
- *88 percent agreed with the statement, "Because public health and safety is at stake, these contracts should be awarded by selecting the best qualified architects and engineers and then negotiating the best possible fee."*
- *Every major voter group registered over 80 percent support for the QBS concept.*

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## Qualifications Based Selection

### AIA Position

The American Institute of Architects strongly supports Qualifications Based Selection (QBS) for procuring professional design services for public projects. QBS is required for federal projects as described by the Brooks Architect/Engineer Act (Public Law 92-582, 40 U.S.C. 541 et seq.).

### Action Sought

The AIA urges state legislators to support the use of Qualifications Based Selection for procuring architectural services.

### Explanation and Justification

QBS stands for Qualifications Based Selection. QBS provides owners with a selection process that is not only straightforward and easy to implement, but is objective and fair. It recognizes that design professionals play a critical role in the public building process.

As QBS is predicated on the notion that qualifications, not price, should be the determining factor in selecting an architect, it places fee negotiation at the end of the selection process. While price may have its place within the selection process, it alone should not be the determining factor.

The reason for this is clear: Projects that are contracted solely on price do not take into account the myriad additional factors that go into architectural design. Architectural design is an evolving process and much goes into it after the drawings are signed, sealed and delivered. In fact, one of an architect's principal duties is to ensure that the construction process goes smoothly.

It is an architect's experience, expertise and ability to resolve unforeseen problems creatively that will keep a construction project moving forward. These intangibles are common throughout the process. As a result, owners who rely only on a submitted bid as the project cost may be placed in a difficult position if the final cost is significantly higher.

QBS helps resolve the projected vs. final cost dilemma by negotiating the project's cost with the most qualified firm among the applicants. QBS also fosters a collaborative environment, so the roles of all stakeholders are known, documented and understood. Finally, because the selection process is well-documented, decisions the owner makes are more likely to stand up to public scrutiny.

For more information contact the State and Local Affairs team at 202-626-7507 or [govaffs@aia.org](mailto:govaffs@aia.org).

Updated: December 2005



AMERICAN CONSULTING  
ENGINEERS COUNCIL

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# BIDDING IS NOT THE SOLUTION

## CASE STUDIES IN BIDDING

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*Prepared by ACEC's Professional Procurement Committee*

*"It is unwise to pay too much, but it's worse to pay too little. When you pay too little, you sometimes lose everything because the thing you bought was incapable of doing the thing you bought it to do."*

*"The common law of business balance prohibits paying a little and getting a lot—it can't be done."*

**John Ruskin (1819-1900)**

*"Price has no meaning except in terms of the quality of the product."*

**Dr. W. Edwards Deming (1900-1993)**

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## **BIDDING IS NOT THE SOLUTION**

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*Why is the hiring of a design professional to design a project any different from hiring a general contractor to construct a project? As a Purchasing Agent, don't I have a responsibility to get the most I can for the least amount of money spent, or an obligation when purchasing goods or services with public dollars to see that the lowest price is obtained? Why is the likelihood of the success of a project reduced simply because the services of the design professional for the project are obtained through the bidding process?*

Design professionals do not sell a commodity, but rather their knowledge. Architectural and engineering design work is a highly skilled and personally distinctive service. Because of this, design professionals encourage owners to select them on the basis of their experience and qualifications to do the work.

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## EXAMPLE #1: ROOF COLLAPSE

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### SAV-ON FOODS STORE BURNABY, BRITISH COLUMBIA

On April 23, 1987, shortly after the official opening of the new mega Sav-On Foods Store at Station Square in Burnaby, British Columbia, an area of the building roof-top parking lot of approximately 6400 square feet collapsed into the food store, injuring 20 people. A Commissioner's Inquiry by the Canadian Government determined that one of the major factors that led to the ultimate collapse of the structure was the selection of the Structural Engineer on the basis of competitive bidding, with the structural design being done by lesser skilled staff of the Structural Engineer, and much of the detailing of the connections being done by the subcontractor of the steel erector.

Although competitive bidding bids were required, the structural engineering work had been awarded to the third lowest bidder for the \$5.4 million Sav-On Foods building. Unfortunately, this bidder's fee was subsequently negotiated down by the building's development manager. In the Commissioner's Report, it was stated that:

*"with tendering [bidding], relatively intense competition has driven fee levels down, and this has raised questions about the quality of professional services in this environment."*

The Commissioner's Report went on to state that *"bidding for Professional Services...caused a great deal of concern."*

The report stated that one approach to correcting the situation was to *"pressure the owner of the building to provide sufficient compensation to permit the Engineer to do the work properly."*

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**EXAMPLE: SKYWAY COLLAPSE**

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KANSAS CITY HYATT REGENCY  
KANSAS CITY, MISSOURI

In July of 1981, two elevated walkways over the lobby of the Kansas City Hyatt Regency Hotel collapsed during a party, killing 111 people and injuring 188 others. The engineering services on this structure had been awarded on the basis of low bid, and the design professional services were limited by contract. In order to keep his fees low, and because of the *“practices of the industry at the time and past dealings with the fabricator, the Engineer had specified that the detailing of the rod connections of the two walkways to the building be done by the fabricator.”*

Had a properly qualified and experienced design professional carefully designed and detailed these rod assemblies, this disaster may have been averted.

A 1984 U.S. House of Representatives Subcommittee report on Structural Failures in Public Facilities (House Report 98-621), stated that one of the six factors of critical importance in causing the structural failures in this particular project was the selection of architects and engineers based on bid. When such selection is generally made on a *“low bid”* basis, the report stated as one of its findings:

*“...there is a tendency to unrealistically reduce the price when price is known to be the primary basis for the contract award...use of “low bid” procedure has frequently resulted in insufficient funds allocated to a project to adequately verify the accuracy of design and to thoroughly check plans before construction...selection of*

*an Architect or Engineer solely on price-competition basis provides the potential for reductions in quality due to initial underestimation of the costs and resources required to adequately perform the work.”*

The recommendations of that same report went on to say:

*“Federal procurement practices that lead to or promote the selection of Architects and Engineers on a ‘low-bid’ basis should be changed to require...greater consideration given to prior related experience and past performance of the parties seeking the contract award.”*

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## THE REALITY OF BIDDING

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If an architect or engineer is asked at the outset for a price, coupled with the knowledge that the contract will be awarded to the lowest bidder, severe limitation will be placed on how much creative talent, exploration of alternatives and other efforts that design professionals can bring to the project. Architects and engineers who know that low price is the only way that will get them the work have no incentive to provide great value or service.

A system that simply seeks the cheapest design cost is bound to produce lower quality projects—not every time, but most of the time. A design firm's approach to a project must change when fee becomes a major criteria for selection. These firms develop a means of cutting their time on a project by minimizing the level of service such as:

- ◆ *Using less experienced personnel and evaluating fewer alternatives.*
- ◆ *Developing plans with minimal details that often require much layout and decision-making in the field by the contractor.*
- ◆ *Selecting systems that are easiest to design as opposed to selecting those that are the most economical and cost-effective for the owner over the life of the project.*
- ◆ *On a structural project, designing only the most heavily loaded members, and then repeating these conservative member sizes throughout, resulting in oversizing of most members.*
- ◆ *Providing minimal review of the drawings and observation of the work during construction, leaving the owner with lower quality construction and higher maintenance costs.*

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## **QUALIFICATIONS IS THE SOLUTION**

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The procurement of engineering and architectural services is one of the most important parts of the process of ensuring quality in the constructed project. A qualifications-based selection (QBS) process allows the owner to choose the firm determined to be most qualified by objective criteria, whereas selecting design professionals by low bid takes this process out of the hands of the owner.

The owner's challenge is to get a good "return" on the investment in design services. This may be achieved by selecting a qualified A/E and negotiating the appropriate scope and compensation to permit the A/E to work toward a successful constructed project. The impact of the A/E's efforts on innovative design, exploration of alternatives, life cycle costs, construction costs and liability exposure to the public client is critical to a project's success.

The design professional is in a unique position to assist the owner with both the scope of the project and the services required to fulfill the owner's needs. The only way to develop a complete scope of work that fully meets the owner's needs is through interaction between the selected design professional and the owner. QBS has the advantages that:

- ◆ a well qualified firm is selected
- ◆ a scope of work satisfactory to both parties is negotiated
- ◆ a mutually agreed-upon price is paid for the services
- ◆ a team approach (partnership) between the owner and consultant can be developed so that both parties have an interest in the project's success.

Mr. Ben Watts, P.E., the Secretary of Transportation for the State of Florida, one of the recipients of the National Society of Professional

Engineers 1996 QBS Award, made the following remarks about the Qualifications Based Selection process:

*"The (QBS) process is open, the process is fair, and the process is honest. It is a simple process...you do good work, you get more work. And, if you do poor work, it is the end of the partnership (with the Florida DOT). I think that is what the public is demanding of us more and more each day.*

*"I would hate to think that I would be lying on the operating table and the doctor came in with the low bid competitive system, and he scrubbed up and he looked at me and said... 'Well, you know we do this by low bid, Mr. Watts, and things have been a little slow and I really needed this job...now, I have never done one of these before, but I am fairly certain that I can handle it...'*

*"We as engineers need to help every citizen to understand that when they ride across a bridge structure or they drive on the interchange or traffic signal phasing, or whatever it is, it is just as important an impact on that individual as what that doctor could be doing, and then they will understand this (QBS) system much better."*

The QBS process is a legal, fair and objective process. Used successfully since the Civil War, QBS is the most widely endorsed method by which public owners select design professionals. Particularly because of concerns for public health and safety, the QBS process is endorsed by the American Institute of Architects (AIA) and the National Society of Professional Engineers (NSPE), as well as public organizations such as the American Public Works Association (APWA) and the American Water Works Association (AWWA). The process is also strongly supported by the American Bar Association (ABA) and the Associated General Contractors of America (AGC).

This process is mandated on federally funded projects as outlined in Public Law 92-582 (Brooks Architectural and Engineering Act). At least 34 states have adopted a statute requiring the QBS process on publicly funded state projects.

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## FOR FURTHER INFORMATION CONTACT:

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(Ask by name)
- ◆ *Qualifications Based Selection of Design Professionals by Public Owners: Video Series*  
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#### **QBS Products Disclaimer**

Nothing in this product is intended or should be intended to prohibit any member of the American Consulting Engineers Council (ACEC) from submitting price quotations at any time during the design professional selection process or to suggest that to do so is unethical, unprofessional or contrary to ACEC policy. Nor should this document be read as in any way prohibiting any project owner from requesting such submissions.

ACEC does, however, advocate that public owners voluntarily adopt the qualifications-based approach when not mandated by law to select design professional services. Conversely, private non-governmental owners may wish to consider the QBS process as one means to procure such design professional services.

Any revisions, reviews, or other alterations to this document should be reviewed by ACEC's General Counsel's office before being disseminated.

THE AMERICAN  
INSTITUTE OF  
ARCHITECTS

SELECTING ARCHITECTS AND ENGINEERS  
FOR PUBLIC BUILDING PROJECTS:  
AN ANALYSIS AND COMPARISON OF  
THE MARYLAND AND FLORIDA SYSTEMS

EXECUTIVE SUMMARY AND CONCLUSIONS

## Executive Summary

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### Introduction

Design professionals play a critical role in the public building process. The quality of the design services provided by the architect or engineer is the single most important factor in determining the overall construction costs and life-cycle costs of a building. Since design services represent only a small percentage of the initial construction budget, it is in the best interest of the taxpayer to insure that the most qualified firms are selected for public projects.

Recognizing the need for a qualification-based approach to procuring design services, the U.S. Congress established as federal law in 1972 (P.L. 92-582, commonly referred to as the "Brooks Act") the requirement that architects and engineers be selected for projects on the basis of their qualifications subject to negotiation of fair and reasonable compensation. Most states and numerous local jurisdictions also use Brooks Act procedures relying on the traditional selection method of negotiating a contract with the firm most qualified to provide the services. Should negotiation fail between the public owner and the highest-ranked firm, negotiations are terminated with that firm. Negotiations then take place with the second-most-qualified firm and so on down the line in order of their ranking until an agreement is reached.

### A/E Selection in Maryland and Florida

This study compares the experience of Maryland's Department of General Services, which selects architects and engineers (A/Es) on the basis of price and other factors, with that of Florida's Department of General Services and State University System, which emphasize technical qualifications in the selection process and, thereafter, negotiate a "fair and reasonable" fee. A study of the Maryland public building procurement process was prompted by Maryland's advocacy of price competition in the A/E selection process and the belief of Maryland officials that a system based on price and other factors is more cost-effective than the traditional qualifications-based system. Florida, which uses the traditional Brooks Act approach, was selected for comparison with Maryland because, until price enters the process in Maryland, the A/E selection procedures in both states are similar.

Maryland. The 1974 law governing the selection of architects and engineers in Maryland requires that both price and professional qualifications be considered during the A/E selection process. The process involves the following key steps: 1) the state develops a comprehensive project program that provides A/Es with "a clear understanding of the problem and the requested solution"; 2) a request for professional services is published in the Maryland Register; 3) those judges most qualified on the basis of Standard Form (SF) 254 and 255 submissions (forms setting forth the A/Es' qualifications) are placed on a short list and asked to submit price and technical proposals; 4) price and technical proposals are evaluated and firms are ranked; and 5) an award is made with "neither the

price proposal nor the technical proposal becoming the sole criterion for selection.” The law applies only to projects with estimated design services over \$50,000.

Florida. The method of procuring architectural and engineering services in Florida is governed by the 1973 Consultants’ Competitive Negotiation Act. The act establishes a qualifications-based system of selecting A/E services that involves the following steps: 1) public announcement of projects requiring A/E services, including general descriptions of the projects; 2) selection of a short-list of firms based on the submitted SF 254 forms and Professional Qualifications Supplement; 3) interviewing and final ranking of at least three firms based on the A/Es’ understanding of the specific project requirements and the A/Es’ approach and method; and 4) negotiation of a fair and reasonable fee with the selected A/E.

### Conclusions

The following conclusions are based on an analysis of information and data supplied by the Maryland Department of General Services, Florida’s Department of General Services and the State University System of Florida. (The Maryland Department of General Services handles both general public building construction and university system construction.)

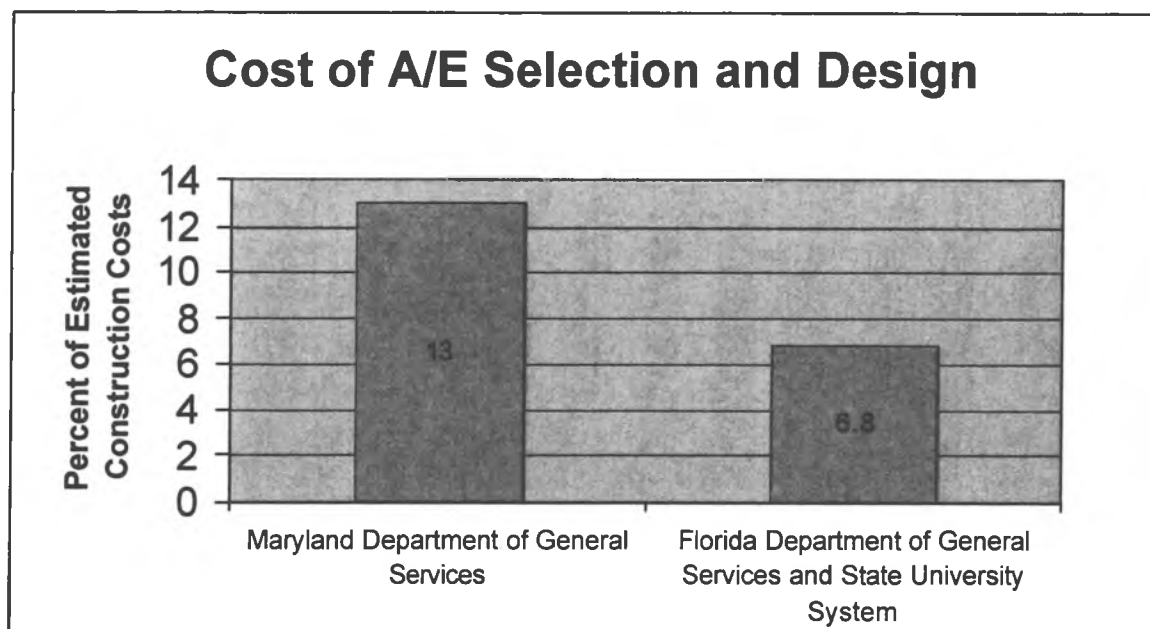
1. Maryland’s A/E selection process is significantly more time-consuming and expensive than Florida’s. In Maryland, the necessity of preparing detailed programs on which A/Es can base price proposals results in added expense to the state in the form of administrative staff, time delays and consultant costs. These additional system costs are unique to the Maryland process.

Total cost of the A/E portion of Maryland’s capital construction process average 13 percent of estimated construction costs. Total costs in Florida average 6.7 percent of estimated construction costs for the Florida Department of General Services and 7.3 percent for the State University System. A/E fees are lower in Maryland than in Florida; however, the added costs of the Maryland process far outweigh the savings in A/E fees that result from a process in which the state develops detailed programs and A/E selections are made on the basis of both price and technical competence.<sup>1</sup>

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<sup>1</sup> Development of detailed programs in Maryland is done in-house or by consultants prior to the A/E selection process. In Florida, programs are developed jointly by the state and the selected A/Es.

The following chart shows the comparative costs of the A/E portion of the capital construction process in Maryland and Florida.



The Maryland A/E selections system, because of its requirement that competing firms submit elaborate technical proposals accompanied by fixed prices, also results in extraordinary cost to the A/E firms that compete but are not awarded contracts. Although not direct costs to the state, as operating expenses of the firms, those costs are eventually passed on to consumers of A/E services.

- a. Maryland's A/E selection process requires a significantly larger administrative staff and budget than Florida's. The increased administrative costs in Maryland result from the necessity of preparing detailed programs on which A/Es can submit price proposals.

Since Maryland's law requiring selection based on price and technical proposals went into effect, there has been an 11.6 percent increase in personnel and a 17.9 percent increase in the budget (in constant dollars) of the DGS Office of Engineering and Construction, which participates in the A/E selection and capital construction process. In 1983, with a total of 96 personnel and a budget of \$2.5 million, the Maryland DGS' Office of Engineering and Construction administered a capital construction program that averages \$65 million in estimated construction costs annually.<sup>2</sup>

<sup>2</sup> This figure represents the average annual dollar value in estimated construction costs of projects for which A/E selections were made between 1975 and 1983. At any one time, the state agency would be administering projects in all phases of the planning; design and

In comparison, the Florida Department of General Services, which, like the Maryland DGS, administers procurements for many state agencies, had a total of 51 personnel and an annual budget of \$1.6 million in 1983 to handle a capital construction program that averages over \$100 million.<sup>3</sup> In the 1975-83 period, the Maryland DGS awarded 174 A/E contracts on projects worth a total of \$518 million in estimated construction costs; in the same time period the Florida DGS awarded 1,166 contracts on projects totaling \$875 million in estimated construction costs.

Florida's State University System, unlike Maryland's university system, administers its capitol construction program independently. The size of Florida's University System program (\$64 million) is roughly the same as the Maryland DGS' program, but the administrative staff and budget of Florida's University System is only one-tenth the size of Maryland's. In the period between 1980 (when the University System began procuring A/E services independently) and 1983, the State University System of Florida awarded 74 A/E contracts on projects totaling \$191 million in estimated construction costs.

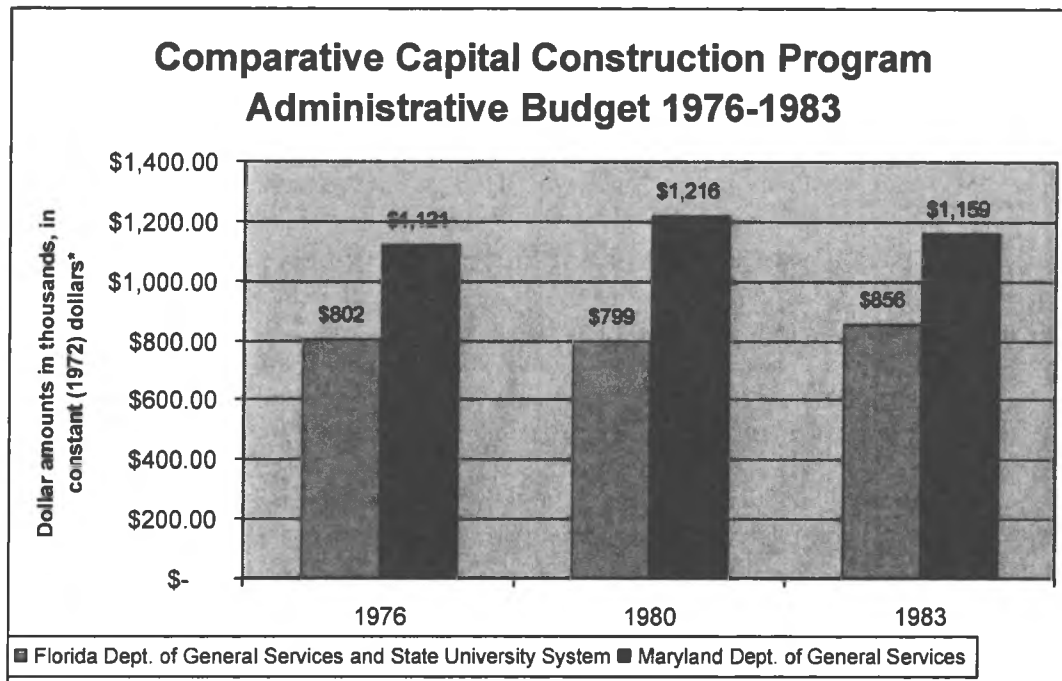
In terms of the effectiveness of administration, both the Maryland and Florida A/E procurement processes appear to be open and well-managed.

The chart on the next page illustrates the administrative budget of Maryland's and Florida's capital construction programs.

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construction process, and the total estimated construction costs of all of those projects would be much greater.

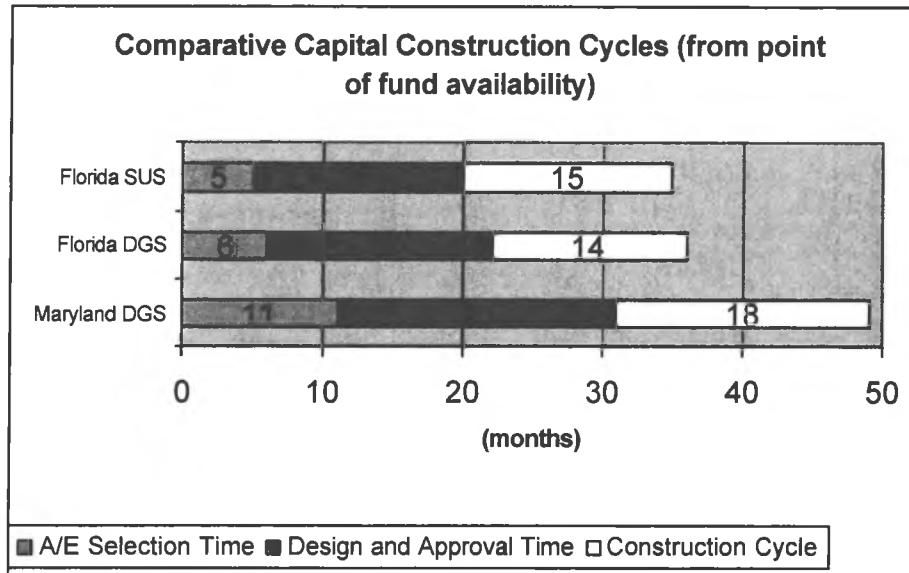
<sup>3</sup> This figure represents the average annual dollar value in estimated construction costs of projects for which A/E selections were made between 1975 and 1983. At any one time, the state agency would be administering projects in all phases of the planning; design and construction process, and the total estimated construction costs of all of those projects would be much greater.



- b. Maryland's A/E selection process takes considerably longer to complete than Florida's. The total delay relating to the A/E portion of the capital construction process in Maryland is almost 10 months. The delay occurs while the detailed program descriptions are being prepared, during the actual selection process and during the design and approval phase.

The Maryland Department of General Services completes the A/E portion of the capital construction process, from the point that funds are approved to the beginning of the actual construction cycle, in 31 months. The same steps are completed in 22 months by the Florida Department of General Services and in 20 months by the State University System of Florida. From the point that funds are approved in Maryland, it takes 11 months to prepare program descriptions and select the A/E.

The comparative capital construction cycles in Maryland and Florida are detailed in the following chart.



2. Florida selects A/E's on the basis of technical competence; contrary to Maryland law, price appears to be the dominant selection factor in Maryland. In Florida's traditional qualifications-based selection process, initial A/E selection is made on the basis of demonstrated qualifications and competence. The agencies then negotiate an equitable fee with the most qualified firm, relying heavily on fee schedules.

By law, Maryland considers both price and technical competence in the award of state contracts, but it appears that price is becoming the dominant factor. Of the last 40 projects awarded by the Maryland Department of General Services prior to June 1983, 33 (83%) went to the firm with the lowest price proposal.

3. User agencies in both states are generally pleased with their state's A/E selection process, but A/E's in Maryland are resentful of the system. Most A/E's who design state projects in Maryland dislike the system, which they feel rewards them inadequately. Accordingly, Maryland state projects are not attractive to many firms, who view them as work of last resort.

User agencies in both states are generally pleased with both the A/E selection system and the A/E's' work.

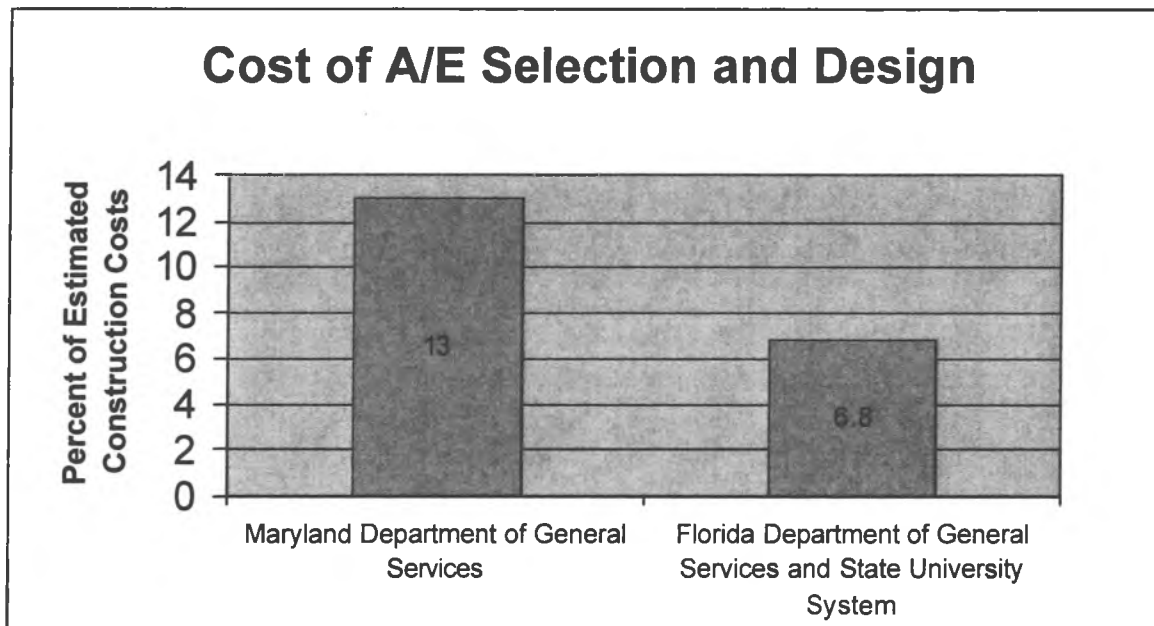
## CONCLUSIONS: A/E SELECTIONS IN MARYLAND AND FLORIDA

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1. Maryland's A/E selection process is significantly more time-consuming and expensive than Florida's. In Maryland, the necessity of preparing detailed programs on which A/Es can base price proposals results in added expense to the state in the form of administrative staff, time delays and consultant costs. These additional system costs are unique to the Maryland process.

Total cost of the A/E portion of Maryland's capital construction process average 13 percent of estimated construction costs. Total costs in Florida average 6.7 percent of estimated construction costs for the Florida Department of General Services and 7.3 percent for the State University System. A/E fees are lower in Maryland than in Florida; however, the added costs of the Maryland process far outweigh the savings in A/E fees that result from a process in which the state develops detailed programs and A/E selections are made on the basis of both price and technical competence.

The following chart shows the comparative costs of the A/E portion of the capital construction process in Maryland and Florida.



The Maryland A/E selection system, because of its requirement that competing firms submit elaborate technical proposals accompanied by fixed prices, also results in extraordinary cost to the A/E firms that compete but are not awarded contracts. Although not direct costs to the state, as operating expenses of the firms, those costs are eventually passed on to consumers of A/E services.

- a. Maryland's A/E selection process requires a significantly larger administrative staff and budget than Florida's. The increased administrative costs in Maryland result from the necessity of preparing detailed programs on which A/Es can submit proposals.

Since Maryland's law requiring selection based on price and technical proposals went into effect, there has been an 11.6 percent increase in the budget (in constant dollars) of the DGS Office of Engineering and Construction which participated in the A/E selection and capital construction process. In 1983, with a total of 96 personnel and a budget of \$2.5 million, the Maryland DGS' Office of Engineering and Construction administered a capital construction program that averages \$65 million<sup>4</sup> in estimated construction costs annually. In comparison, the Florida Department of General Services which, like the Maryland DGS, administers procurements for many state agencies had a total of 51 personnel and an annual budget of \$1.6 million in 1983 to handle a capital construction program that averages over \$100 million.<sup>5</sup> In the 1975-83 period, the Maryland DGS awarded 174 A/E contracts on projects worth a total of \$518 million in estimated construction costs; in the same time period the Florida DGS awarded 1,166 contracts on projects totaling \$875 million in estimated construction costs.

Florida's State University System, unlike Maryland's university system, administers its capitol construction program independently. The size of Florida's University System program (\$64 million) is roughly the same as the Maryland DGS' program, but the administrative staff and budget of Florida's University System is only one-tenth the size of Maryland's. In the period between 1980 (when the University System began procuring A/E services independently) and 1983, the State University System of Florida awarded 74 A/E contracts on projects totaling \$191 million in estimated construction costs.

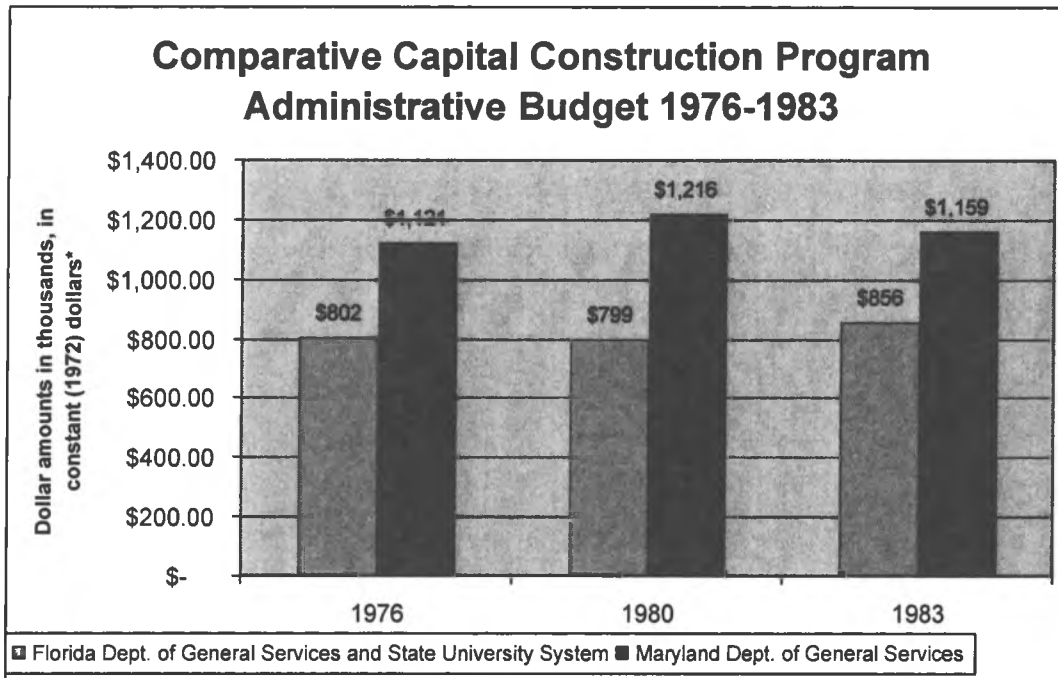
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<sup>4</sup> This figure represents the average annual dollar value in estimated construction costs of projects for which A/E selections were made between 1975 and 1983. At any one time, the state agency would be administering projects in all phases of the planning; design and construction process, and the total estimated construction costs of all of those projects would be much greater.

<sup>5</sup> This figure represents the average annual dollar value in estimated construction costs of projects for which A/E selections were made between 1975 and 1983. At any one time, the state agency would be administering projects in all phases of the planning; design and construction process, and the total estimated construction costs of all of those projects would be much greater.

In terms of the effectiveness of administration, both the Maryland and Florida A/E procurement processes appear to be open and well-managed.

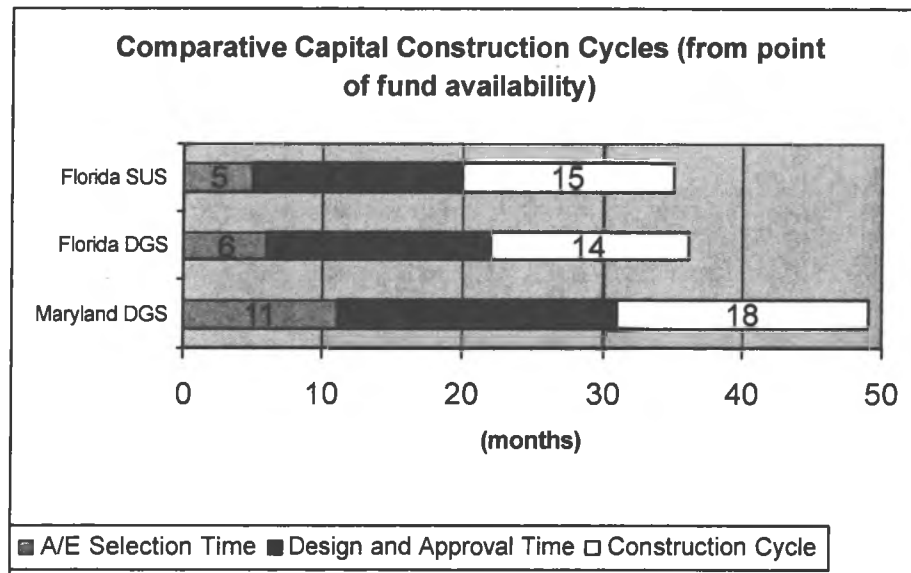
The following chart illustrates the administrative budget of Maryland's and Florida's capital construction programs.



- b. Maryland's A/E selection process takes considerably longer to complete than Florida's. The total delay relating to the A/E portion of the capital construction process in Maryland is almost 10 months. The delay occurs while the detailed program descriptions are being prepared, during the actual selection process and during the design and approval phase.

The Maryland Department of General Services completes the A/E portion of the capital construction process, from the point that funds are approved to the beginning of the actual construction cycle, in 31 months. The same steps are completed in 22 months by the Florida Department of General Services and in 20 months by the State University System of Florida. From the point that funds are approved in Maryland, it takes 11 months to prepare program descriptions and select the A/E.

The comparative capital construction cycles in Maryland and Florida are detailed in the following chart.



2. Florida selects A/Es on the basis of technical competence; contrary to Maryland law, price appears to be the dominant selection factor in Maryland. In Florida's traditional qualifications-based selection process, initial A/E selection is made on the basis of demonstrated qualifications and competence. The agencies then negotiate an equitable fee with the most qualified firm, relying heavily on fee schedules.

By law, Maryland considers both price and technical competence in the award of state contracts, but it appears that price is becoming the dominant factor. Of the last 40 projects awarded by the Maryland Department of General Services prior to June 1983, 33 (83%) went to the firm with the lowest price proposal.

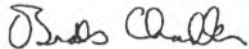
3. User agencies in both states are generally pleased with their state's A/E selection process, but A/Es in Maryland are resentful of the system. Most A/Es who design state projects in Maryland dislike the system, which they feel rewards them inadequately. Accordingly, Maryland state projects are not attractive to many firms, who view them as work of last resort.

User agencies in both states are generally pleased with both the A/E selection system and the A/Es' work.

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**MEMORANDUM**

**TO:** Chris Hladick  
Unalaska City Manager



**FROM:** Brooks W. Chandler  
City Attorney

**RE:** HB 239

**DATE:** January 24, 2011

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This is written in response to your request for our review and comment on HB 239. In summary we do not believe the legislation is appropriate as discussed in greater detail below.

We begin by summarizing what the bill requires and how it changes current law. Under current law, rules regarding how local governments need to procure surveying and professional design services when using state grants to pay for those services are contained either in regulations of the department of state government administering the grant or in specific grant agreements. For example, design services for construction of school facilities (but not surveying services) must be competitively procured with specific notice requirements and awarded to the "most qualified" offeror. 4 AAC 31.065(a).

The proposed bill does not simply take existing requirements and codify them as state statutes. Instead it significantly adds to those requirements in the following ways:

1. It requires compensation to be "fair and reasonable".
2. It eliminates the option of rebidding if negotiations with the "most qualified" professional person are not successful.

3. It prohibits awards based on the lowest price. In fact, this statute prohibits even considering price as a "factor" in awarding a contract except in circumstances involving "repetitious" services and "measurable and objective" standards regarding the work to be done.

4. It mandates that consideration of "proximity to the project site of the office of the professional person" be considered in award of a contract.

Here are the concerns I believe the city should have with this legislation:

1. "If it ain't broke don't fix it." There is no evidence in my experience that the current regulations are generating substandard public works projects. Certainly Unalaska has successfully constructed literally hundreds of millions of dollars of exemplary public facilities under the current rules.

2. Local governments should be free to choose for themselves how they weigh factors when awarding contracts for design services. Price should most definitely always be a consideration. Existing state licensing laws and the typical play of the free market should be allowed to function without state interference.

3. It is a stretch in my view to include surveying work in the same category as architectural and engineering work. Certainly this is professional work but it involves much less "creativity" to delineate existing boundaries than to design a new school. Price based procurement of surveying services is fairly logical.

4. It is not logical that a design or engineering firm from Fairbanks should be at a competitive disadvantage from an Anchorage firm when proposing to do work for Unalaska yet that is what this bill requires.

5. The relatively imprecise language "fair and reasonable", "repetitious", "measurable and objective" could lead to disputes.

6. The language creates additional barriers for young professionals who may be extremely talented but relatively less experienced. They are precluded from competing for work using lower prices thereby restricting competition and driving prices up for work covered by the statute. In this regard, the bill smacks of "good old boy" protection for existing firms which may not be in the best interests of the citizens of Unalaska. The City typically uses well established firms for our public works projects but it does not make sense to eliminate an option to use a less experienced but impressive young professional especially on a smaller project.



## Rural Alaska Community Action Program, Inc.

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P.O. Box 200908, Anchorage, AK 99520-0908  
(907) 279-2511 ♦ Fax: (907) 278-2309  
[www.ruralcap.com](http://www.ruralcap.com)

March 7, 2012

Representative Bob Lynn, Chair  
House State Affairs Committee  
Alaska State Capitol Building – Room 108  
Juneau, Alaska 99801-1182

Re: HB 239 "An Act relating to the procurement of architectural, engineering, or land surveying contracts funded by money from the state."

Dear Representative Lynn and Members of the Committee:

The Rural Alaska Community Action Program (RurAL CAP) is a diverse statewide non-profit organization with services ranging from early childhood education, to supportive housing, community wellness and home weatherization. Serving lower-income Alaskans since 1965, RurAL CAP employs over 900 persons annually, and has developed many capital facilities that support its programs, including supportive housing projects and early childhood education centers.

We are pleased to see legislation introduced that would extend the process the state uses itself in procuring professional development-related services to organizations that receive state funds for capital projects. We have found that issuing a Request for Qualifications allows us to identify and select a development team that is the best fit for our projects, and helps to bring projects to the construction stage more quickly, avoiding lost time and material cost increases.

However, we have two areas of concern that we would encourage the Legislature to consider: 1) preference based on the proximity of the professional to the project site; and 2) coordination with federal funding requirements.

A preference based on proximity to the project site may result in an inadequate pool of professionals from which to choose within a particular discipline. Further, many state-funded projects are sponsored and undertaken by entities (like RurAL CAP) who are themselves removed from the project site - it is generally more cost-effective for the sponsor and the professional to be located in the same geographic area. We have found that it works well for us to have our design team members located nearby to us, which does not preclude the participation of local stakeholders in the design and development process, nor the design team's boots-on-the-ground familiarity with project site. An alternative might be for the legislation to call for a preference for professionals who have specific experience with projects in the location of the proposed project site.

Many projects these days combine state and federal funding; the bill contains a clause that provides for exemption in the case of prohibition by federal law. Unfortunately, not all of the challenges with

coordination of state and federal funding stem from federal law, but are the products of a complex set of regulations, policies and practices that often differ from one federal agency to the next. We believe that the bill would be improved by instead inserting a clause that these requirements are superseded by any contracting and/or procurement requirements imposed by federal agencies providing additional funding for the project.

Thank you for the opportunity to provide our comment on this bill. If you have any questions, please feel free to contact me at (907) 865-7370.

Very truly yours,

Mitzi C. Barker, FAICP  
Director, Planning and Construction Division



March 9, 2012

Representative Bob Lynn  
Chairman, Administrative Committee  
State Capitol Building, Room 108  
Juneau Alaska 99801

Re: HB 239, Quality Based Selection Hearing

Dear Representative Lynn:

It is my understanding that you had or may still have some concerns about scheduling a hearing for the Quality Based Selection bill (HB 279). I also understand the hearing is now scheduled for Tuesday morning March 12, at 8:00 AM and I would like to thank you for the opportunity to provide input on the bill. I am a professional designer and past president of the Alaska Professional Design Council, which represents Architects, Landscape Architects, Engineers, and Surveyors in our state.

As you may know, projects directly funded by the Federal Government, the State of Alaska, and most of the larger cities in Alaska require a Quality Based Selection for design services. There is good reason for this and I will get to that shortly, but the issue this bill addresses arises when the State of Alaska passes money through to non-profit organizations or other smaller communities who in turn seek to bid design services. This is a relatively small fraction of the dollars spent on public facilities and it is often done by organizations or individuals with limited experience in selecting or using design professionals. The issue is not generally one of public safety, but rather fairness in contracting and obtaining best value. If these same non-profit organizations or communities wish to hire design services using their own funds through a bid process, this bill will not hinder them. The State of Alaska, however, has already determined that quality based selection is the best means of fairly acquiring design services and this bill will provide some assurance that state funds are used wisely and fairly at the community level.

We most often bid construction projects and selection of the low bidder ensures we are paying a competitive price for the work required. For a construction project, there are often drawing sets of a hundred or more sheets and specifications of several hundred pages. Construction projects are very clearly spelled out and even then there are often change-orders as a result of misunderstandings. In recent years, even construction contractors are more frequently being selected based on their qualifications, instead of just price. By contrast, designers are selected through a "Request for Proposal" (RFP) process. An RFP is seldom longer than 20 pages and of that, the actual project description may be a page or less. As you might imagine, the ability to accurately bid design services for a public building

when the description of that building is only a page or so long is virtually impossible. As a designer, the best strategy when pursuing a bid project is to simply put in an unrealistically low bid based on a variety of assumptions or conditions that cannot be met. Once the project is awarded, the low bidder has free reign to begin requesting changes based on unforeseen circumstances. For the owner, there is little recourse but to pay for the changes because the project has not been accurately defined. The fairness issue arises because the more ethical designer, knowing what is really required to complete the work can be easily underbid by an individual or group who will seek realistic pay for the work through change orders. It has strong implications for the owner because the actual cost of design may be far higher than what is seen at a bid opening.

The Army Corps of Engineers and the State of Alaska have bid design services as part of design build projects. These projects would be exempt from the requirements of this bill, but the reason it works for the Corps of Engineers is that the RFP is often more than 1,000 pages in length and the scope of the services is very clearly delineated. Even the number of meetings is identified in these types of projects.

Cost can be included as a factor in selecting designers. The City and Borough of Juneau and other communities do this now by asking design firms to submit the hourly rates of the designers who will be working on the project. It can be argued whether or not this actually results in lower design fees for projects, but it is an acceptable comparison. Additionally, if an agency encounters difficulty in negotiating a fee with a design firm, they have the alternative of ending negotiations and entering into discussions with the next most qualified firm.

In summary, we support this bill because quality-based-selection is a fair means of hiring design expertise in most conditions. When it comes to design, qualifications and references are a far stronger indicator of a designer or firm's capability than cost. In most cases, where program and other aspects of the proposed building are not clearly defined, an award to the lowest bidder has little meaning. The negotiation process still allows checks and balances to ensure a financially responsible selection.

I am planning to be at the hearing on Tuesday Morning and I would respectfully request three minutes to address the hearing and answer any questions that may arise.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Terry Schoenthal', with a long horizontal flourish extending to the right.

Terry Schoenthal, RLA  
USKH Inc.  
2515 A Street  
Anchorage Ak 99503