

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

2701 SLC HB 211 (FILE 1) - (FILE 2)

March 9, 1984

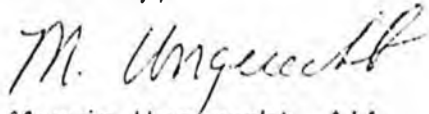
Senator Don Bennett  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Dear Senator Bennett,

This letter is written to express my concern for HB 211 currently stalled in the Senate Labor and Commerce Committee. I strongly support HB 211 as do a substantial majority of the constituent members of the architectural and engineering community. Your show of support for this bill could be of great help in moving it out of committee.

Thank you for your consideration of HB 211.

Sincerely,



Marvin Ungerecht, AIA

cc: Senator Richard I. Eliason

MU/nnl

ALASKA PROFESSIONAL DESIGN COUNCIL, INC.

POST OFFICE BOX 3115 D.T.  
ANCHORAGE, ALASKA 99510  
907-276-2834

March 8, 1984

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

Dear Senator Eliason:

On behalf of the Alaska Professional Design Council, an organization comprised of five professional societies with over 1,700 members, I am writing this letter to request your support of House Bill 211, "An Act relating to contracts for architectural, engineering, and land surveying services; and providing for an effective date."

The bill has passed the House and is presently in the Senate Labor and Commerce Committee. The Alaskan architects, engineers, and land surveyors have spent many years working on this bill. A recent poll indicates that 90 percent of the architectural, engineering, and land surveying profession supports this bill--a bill that 29 other states have enacted because it is in the public's best interests!

Your assistance in moving this bill will be appreciated by our professional community.

Sincerely,



Kent B. Heppe, P.L.S.  
President

ALASKA PROFESSIONAL DESIGN COUNCIL

bjm:misc:08

REPRESENTING:

ALASKA CHAPTER, THE AMERICAN INSTITUTE OF ARCHITECTS (AIA), ALASKA CHAPTER, PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE (IPEPP), ALASKA SECTION, AMERICAN SOCIETY OF CIVIL ENGINEERS (ASCE), ALASKA SOCIETY OF PROFESSIONAL ENGINEERS (ASPE), ALASKA SOCIETY OF PROFESSIONAL LAND SURVEYORS (ASPLS), THE INSTITUTE OF ELECTRICAL AND ELECTRONIC ENGINEERS (IEEE).

FEB 29 1984

Dear Senator, ELIASON (SITKA) —



I'm writing to request your support for HB 211. This bill would codify the current procedure whereby architects and engineers are chosen by the State and local governments. It would preclude price bidding for those services.

The architectural and engineering community has been working on this bill for three years. The bill has passed the House and currently resides in the Senate Labor and Commerce Committee. It will likely remain in this committee until there is a substantial show of support for the bill by the rest of the Senate.

During a recent poll of \_\_\_\_\_ architects and engineers, more than 90 % indicated they supported this bill.

371

The Federal government and twenty-nine other states have enacted similar legislation.

For further information on this legislation, please refer to the material we have provided to your office.

Thank you for your consideration. Any help you can give to move this bill will be greatly appreciated by our community.

Sincerely,

D. J. COOLIDGE - ARCHITECT  
Box 1720  
WASILLA, ALASKA 99687

REGISTERED PROF. ARCHITECT A-~~1577~~ 0470  
REGISTERED PROF. ENGINEER CE-0323

RESPONSE TO POLL OF THE PROFESSIONS OF ARCHITECTURE, ENGINEERING AND LAND SURVEYING  
REGARDING THE ADOPTION OF HB 211 BY THE STATE OF ALASKA

Poll Conducted December, 1983

Returns as of 2/16/84

	Licensed Respondents			Non-licensed Respondents	TOTALS		
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	Architects	Engineers	Land Surveyors				
<b>Government Administrators</b>							
In Favor	8	36	7	15	66		
Opposed		8	2	3	13		
Indifferent		1			1		
<b>Private Consultants</b>							
In Favor	38	114	24	11	187		
Opposed		5	2	1	8		
Indifferent		1			1		
<b>Other Respondents</b>							
In Favor	7	46	6	20	79		
Opposed	1	4	4	3	12		
Indifferent		1		3	4		
<b>All Respondents</b>							
In Favor	53	196	37	46	332		
Opposed	1	17	8	7	33		
Indifferent	0	3	0	3	6		
<b>Total Respondents</b>	<b>54</b>	<b>216</b>	<b>45</b>	<b>56</b>	<b>371</b>		

# h & b

**SURVEYORS**

3335 ARCTIC BLVD., ANCHORAGE, ALASKA 99503    PHONE 561-5257

March 5, 1984

Senator Richard I. Eliason  
Alaska State Legislature  
Pouch V (MS 3100)  
Room 417-C  
Juneau, Alaska 99811

Dear Senator:

HB 211 would codify the current procedure whereby the State and local governments choose architects and engineers. It would preclude price bidding for their services.

This bill has passed the House and currently resides in the Senate Labor and Commerce Committee. It will likely remain in this committee until there is a substantial show of support for the bill by the rest of the Senate.

The Federal government and twenty-nine other states have enacted similar legislation, and a recent poll indicates more than 90% of our community supports this bill. Any help you can give to move this bill will be greatly appreciated.

Sincerely,



Robert B. Mallahan  
Chief Engineer

RBM:s1

**nana-bell, inc.**

engineers  
and land  
surveyors



3335 Arctic Boulevard, Suite 201, Anchorage, Alaska 99503  
Telephone 907-561-5252

March 5, 1984

Senator Richard I. Eliason  
Alaska State Legislature  
Pouch V (MS 3100)  
Room 417-C  
Juneau, Alaska 99811

Dear Senator:

I'm writing to request your support for HB 211. This bill would codify the current procedure whereby architects and engineers are chosen by the State and local governments. It would preclude price bidding for those services.

HB 211 currently resides in the Senate Labor and Commerce Committee and unless there is a substantial show of support for this bill it will die in its current committee.

A recent poll indicates more than 90% of our community supports this bill. Any help you can give us will be greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Dennis Gelvin".

Dennis Gelvin  
Chief of Surveys

DG:sl

# NANA surveying

surveyors-engineers

3335 Arctic Blvd.  
Anchorage, Alaska  
99503

(907) 561-5130

March 5, 1984

Senator Richard I. Eliason  
Alaska State Legislature  
Pouch V (MS 3100)  
Room 417-C  
Juneau, Alaska 99611

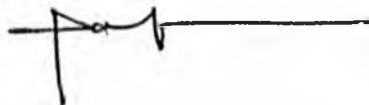
Dear Senator:

HB 211 would codify the current procedure whereby the State and local governments choose architects and engineers. It would preclude price bidding for their services.

Unless there is a substantial show of support for this bill it will die in its current committee, Senate Labor and Commerce.

Any help you can give us to move this bill will be greatly appreciated by our community. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Martin', written over a horizontal line.

John Martin  
Operations Manager

JM:sl



ENGINEERS AND LAND SURVEYORS

3335 Arctic Boulevard, Anchorage, Alaska 99503 Telephone 561-5257  
P.O. Box 73678, Fairbanks, Alaska 99707 Telephone 452-5198

March 5, 1984

Senator Richard I. Eliason  
Alaska State Legislature  
Pouch V (MS 3100)  
Room 417-C  
Juneau, Alaska 99811

Dear Senator:

I'm writing to request your support for HB 211. This bill would codify the current procedure whereby architects and engineers are chosen by the State and local governments. It would preclude price bidding for these services.

The architectural and engineering community has been working on this bill for three years. The bill has passed the House and currently resides in the Senate Labor and Commerce Committee. It will likely remain in this committee until there is a substantial show of support for the bill by the rest of the Senate.

The Federal government and twenty-nine other states have enacted similar legislation.

Thank you for your consideration. Any help you can give to move this bill will be greatly appreciated by our community.

Sincerely,

F. Robert Bell, P.E., L.S.  
Principal

FRB:EL

# Bell Lavalin

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ENGINEERS, PLANNERS AND CONSTRUCTION MANAGERS

BELL LAVALIN, INC.  
3335 ARCTIC BOULEVARD, SUITE 201  
ANCHORAGE, ALASKA, U.S.A., 99503  
TEL. (907) 561-5257


March 5, 1984

Senator Richard I. Eliason  
Alaska State Legislature  
Pouch V (MS 3100)  
Room 417-C  
Juneau, Alaska 99811

Dear Senator:

The Alaska Architectural and Engineering Community needs your support to move HB 211 through the Senate. This bill currently resides in the Senate Labor and Commerce Committee. A recent poll indicates more than 90% of our community supports this bill. Any help you can give us will be greatly appreciated.

Sincerely,



Doug Rorex, P.E.  
Project Engineer

DR:sl

**Wirum  
& Cash**  
Architects

500 L Street Suite 500 Anchorage Alaska 99501-5998 Tel. 907/278-3400

March 2, 1984

Senator Robert Ziegler  
State Capitol, Room 107  
Pouch V  
Juneau, AK 99811

Dear Senator,

I'm writing to request your support for HB 211. This bill would codify the current procedure whereby architects and engineers are chosen by the State and local governments. It would preclude price bidding for those services.

The architectural and engineering community has been working on this bill for three years. The bill has passed the House and currently resides in the Senate Labor and Commerce Committee. It will likely remain in this committee until there is a substantial show of support for the bill by the rest of the Senate.

During a recent poll of architects and engineers, more than 90% indicated they supported this bill.

The Federal government and twenty-nine other states have enacted similar legislation.

For further information on this legislation, please refer to the material we have provided to your office.

Thank you for your consideration. Any help you can give to move this bill will be greatly appreciated by our community.

Sincerely,



C. Harold Wirum, AIA

jb

# DOWL Engineers

4040 "B" Street Anchorage, Alaska 99503  
Telephone (907) 562-2000

March 7, 1984

Senator Robert H. Ziegler, Sr.  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Dear Senator,

I'm writing to request your support for HB 211. This bill would codify the current procedure whereby architects and engineers are chosen by the State and local governments. It would preclude price bidding for those services.

The architectural and engineering community has been working on this bill for three years. The bill has passed the House and currently resides in the Senate Labor and Commerce Committee. It will likely remain in this committee until there is a substantial show of support for the bill by the rest of the Senate.

During a recent poll of 371 architects and engineers and land surveyors, more than 90% indicated they supported this bill.

The Federal government and twenty-nine other states have enacted similar legislation.

For further information on this legislation, please refer to the material we have provided to your office.

Thank you for your consideration. Any help you can give to move this bill will be greatly appreciated by our community.

Sincerely,



William P. Hamm, P.E.  
Alaska Registration #3000E





engineers  
planners  
economists  
scientists

March 5, 1984

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

Dear Senator Eliason:

As a practicing professional engineer in Alaska, I urge your support of HB 211, "An Act relating to contracts for architectural, engineering, and land surveying services; and providing for an effective date."

This bill is in the public's best interest. If cost becomes a factor in the selection of professional services, quality will slide. Competitive bidding is only suitable for work that has a very definitive scope of work. In my 11 years of professional experience, I have not seen one request for proposals that had a clear enough scope of work suitable for bidding. When the request for proposals is issued, many details have not yet been considered by the client. Bidding will lead to unnecessary compromises. Our work involves the public's health and safety. We do not need compromises in these areas.

Those of us that know this business are urging your support of HB 211. This is not selfish interest, but true concern for the public's health and safety, and wise use of public funds.

Sincerely,

A handwritten signature in cursive script that reads "Floyd J. Damron".

Floyd J. Damron, P.E.  
Projects Manager

bja:misc:07

CONSULTANTS

William L. Shannon, P.E.  
Stanley D. Wilson, P.E.



SHANNON & WILSON, INC.  
Geotechnical Consultants

2055 Hill Road, P.O. Box 843 • Fairbanks, Alaska 99707 • Telephone (907) 452-6183

March 5, 1984

Senator Richard I. Eliason  
Alaska State Legislature  
Pouch V (MS3100)  
Juneau, Alaska 99811

Dear Senator:

HB 211 would codify the current procedure whereby the State and local governments choose architects and engineers. It would preclude price bidding for their services.

A recent poll of architects and engineers indicated more than 90% supports this legislation.

Unless there is a substantial show of support for this bill it will die in its current committee, Senate Labor and Commerce.

Any help you can give us to move this bill will be greatly be appreciated by our community. Thank you for your consideration. For further information on this legislation please refer to the material we have provided to your office.

Sincerely,  
SHANNON & WILSON, INC.

By

A handwritten signature in cursive script that reads "Rohn D. Abbott".

Rohn D. Abbott, P.E.  
Vice President & Manager

RDA/mdi

Rohn D. Abbott, P.E.  
Vice President and Manager

Seattle • Spokane • Portland • Fairbanks • St. Louis • Houston



engineers  
planners  
economists  
scientists

March 5, 1964

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

Dear Senator Eliason:

The Alaska Architectural and Engineering Community needs your support to move HB 211 through the Senate. This bill currently resides in the Senate Labor and Commerce Committee. A recent poll indicates more than 90 percent of our community supports this bill. Any help you can give us will be greatly appreciated.

For further information on this legislation, please refer to the material we have provided to your office.

Sincerely,

A handwritten signature in black ink, appearing to read 'John L. Aho'.

John L. Aho, Ph.D.  
General Engineering Manager

bj:misc:06

**Wirum  
& Cash**  
Architects

500 L Street Suite 500 Anchorage Alaska 99501-5998 Tel. 907/276-3400

March 2, 1984

Senator Richard Eliason  
State Capitol, Room 417  
Pouch V  
Juneau, AK 99811

Dear Senator,

I'm writing to request your support for HB 211. This bill would codify the current procedure whereby architects and engineers are chosen by the State and local governments. It would preclude price bidding for those services.

The architectural and engineering community has been working on this bill for three years. The bill has passed the House and currently resides in the Senate Labor and Commerce Committee. It will likely remain in this committee until there is a substantial show of support for the bill by the rest of the Senate.

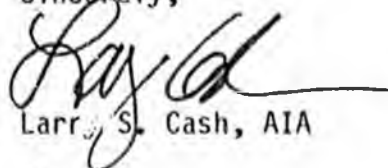
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The Federal government and twenty-nine other states have enacted similar legislation.

For further information on this legislation, please refer to the material we have provided to your office.

Thank you for your consideration. Any help you can give to move this bill will be greatly appreciated by our community.

Sincerely,



Larr S. Cash, AIA

jb

March 1, 1984

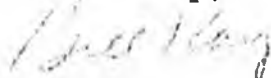
Arthur R. Jacobs  
7060 Saturn Circle  
Anchorage, Alaska 99504

Dear Mr. Jacobs:

This is to acknowledge receipt of your correspondence of February 25 concerning House Bill 211, relating to contracts for architectural engineering and land surveying services.

Please be assured that I will contact Senator Eliason and see if there are any problems with the bill.

Sincerely,



Bill Ray  
Senator  
District C

Anchorage 25 February 1984

Senator Bill Ray  
Alaska State Legislature  
Pouch V (MS3100)  
Juneau 99811

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

Dear Senator Ray:

The subject bill, which passed the House during the past session and is now, and has been since last Spring, in Senator Eliason's Labor and Commerce committee, will mandate a uniform procedure for the selection of architects, engineers, and land surveyors thruout all public agencies in the State.

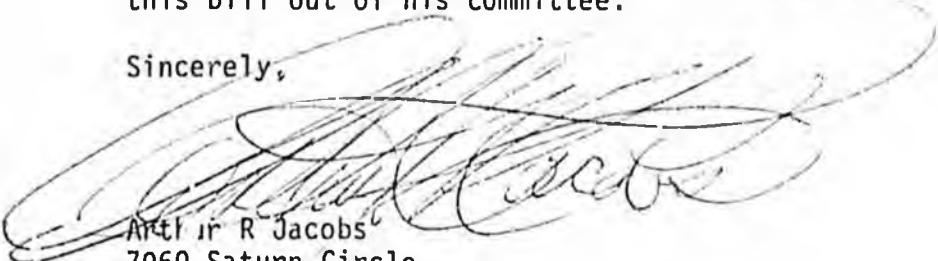
This bill is really a "consumer protection" measure, in that it is a safeguard against the misuse of public funds; and the procurement of professional service thru the bidding process can truly be a misuse of public funds.

Unlike construction bidding, wherein the bidders each have a full set of construction plans and specifications, telling them, in considerable detail, all the requirements they will be expected to meet, it is not possible to so define the extent of professional services that each architect or engineer will see the same picture. It is, instead, much like the story of the four blind men who were asked to describe an elephant. Each of the men had a different description, based on what he could feel.

The only really successful way to secure professional services is thru the competitive negotiation process, wherein the respondent firms are ranked in order of their experience and staff capabilities prior to any fee negotiations. This procedure assures the public that the most highly rated firm will be considered first, at least. It may not be possible, because of budget restraints, or time considerations, to consummate an agreement with that first-choice firm, but the attempt will have been made, and the next-rated firm will then be considered. Wouldn't you, as a taxpayer, prefer that approach to the "blind men and elephant" approach?

I urge you to talk with Senator Eliason and encourage him to move this bill out of his committee.

Sincerely,



Arthur R. Jacobs  
7060 Saturn Circle  
Anchorage 99504



engineers  
planners  
economists  
scientists

February 29, 1984

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

Dear Senator Eliason:

I am writing to urge your support of HB 211, "An Act relating to contracts for architectural, engineering, and land surveying services; and providing for an effective date."

The key provision of this bill is that political subdivisions of the state would be required to select architects, engineers, and land surveyors "on the basis of demonstrated competence and professional qualifications"--a policy which the federal government and 29 other states have enacted because it is in the public's best interests. There are numerous valid reasons why this is so; mainly, because the alternative selection process (competitive bidding) is so contrary to the public's best interests.

Alaskan architects and engineers have been working on formulation and passage of this bill for three years. The bill has passed the House and is presently in the Senate Labor and Commerce Committee. As borne out by a recent poll, 90 percent of the architectural and engineering profession (both in the public and private sectors) support this bill. Your assistance in moving it ahead for a Senate vote will be greatly appreciated by all of us.

Sincerely,

A handwritten signature in cursive script that reads "Dan M. Rowley".

Dan M. Rowley, P.E.  
Vice President and  
Alaska Regional Manager

bja:tue:516  
Enclosure

P.S. Enclosed is a copy of a November 1983 article from the Magazine Consulting Engineer, "Facing the Realities of Competitive Bidding." I would recommend it to you for your reading and an explanation of the issues that are involved.



# Facing the Competitive

David Lakamp

It happens every 10 years or so. There is a downturn in the economy, work grows scarce, and architects and engineers begin to find new virtues in old taboos. This time it is competitive bidding. But before we rush to embrace it as the wave of the future, or even resign ourselves to it as yet another of the inevitable burdens of professional life, it may be worthwhile to elevate our horizons just a bit. Then, perhaps, we will be in a better position to uncover reasonable ways to deal with competitive bidding, if not with it we must.

Take quality. Some who would advise you on how to bid insist that, where competitive bidding is concerned, the quality of your work is not an issue. Why would they take this position knowing, as they do, that whatever perception of quality you might have, it is one of the driving forces in professional life? They are simply being realistic. Quite apart from the obvious, they know that whenever quality comes into conflict with economic or political forces, it is usually quality that suffers first.

Quality is one of these elusive concepts, difficult to define and often most clearly (or at least most universally) perceived in its absence. It is basically an elitist notion, one that differentiates without equivocation between what is good and what is not. In an egalitarian society, it is easy to argue successfully that elitist notions must give way where there are more compelling social goals to be served — the protection of unwary clients, for example, against the anticompetitive practices of the professions.

We have a history of abandoning quality only to regret it later. We seem to be willing to absorb enormous costs

rather than struggle with the intense discomfort that comes of attempting to address issues of quality as a part of national debates. Only after the unanticipated consequences begin to sneak up on us do we discover we do not like them very much.

## A Recent Analogy

Consider the accusatory finger now being pointed at public education in the United States, confirming what has been painfully obvious to parents for many years. We are threatened by — and it seems finally prepared to admit — "a rising tide of mediocrity" in our public schools. This is not news to most of us.

What is news is that at last we may be willing to acknowledge and begin to deal with the hidden costs of sacrificing quality in pursuit of remedies for a wide range of very real social ills. We have discovered that by discrediting the essential need to differentiate between what is good and what is not, we gained something of a hollow victory.

It will take years to unravel the mess we created. Our task is made all the more difficult by the fact that, largely through its own contribution to the process of change, a once-honored teaching profession has lost most of its credibility with the public.

What does all this have to do with competitive bidding among engineers and architects? Simply this: The hidden danger is that competitive bidding will first erode and eventually destroy public confidence and trust. What the profession stands to lose in the long run is the unique advantage it enjoys with society as the result of a contract deeply embedded in the Common Law.

The public is willing to acknowledge the fact that your services require the application of professional skill and judgment in situations in which the end result is some-

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*Mr. Lakamp is Managing Principal of Professional Practice Associates, liability loss prevention consultants to engineers and architects, Palo Alto, California*

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# Realities of Bidding

times uncertain. It recognizes that you may make mistakes, and it generally will not hold you liable for those mistakes so long as you exercise a reasonable degree of care in what you do. This is why it is so very difficult to prove negligence.

For your part, as a professional there is an obligation to place the public interest ahead of your own, to do everything you can to keep the public safe from harm. Your concern with the quality of your work and the quality of the built environment is one of the indications the public has that you are meeting your end of the bargain.

Now comes competitive bidding and advice on learning how to bid to "insure your firm's future." Consider this advice in terms of the social contract you entered when you accepted your license to practice, a contract that makes you responsible for the public health, safety, and welfare.

You are cautioned not to do more than the minimum design job, because clients who ask you to compete solely on the basis of price do not deserve any better. You are advised to bid only what you see, even if you know important requirements may be omitted — this, presumably, so you can pounce upon changes later and leverage your fee. You are counseled, where there is no scope, to underscope the project. Otherwise someone slicker than you is likely to walk away with the job. It begins to sound more like a formula for disaster than a pathway to financial success.

About one thing, however, these advisors are absolutely right: There is no room for quality in all this. Nor is there room to meet the obligation you have to safeguard the public interest. Yet, if you fail to do so, and some will, how long do you think the public is going to be willing to continue to distinguish between what you do as a professional and what every other business enterprise does

in placing a product on the market or in hiring itself out to do work for a price?

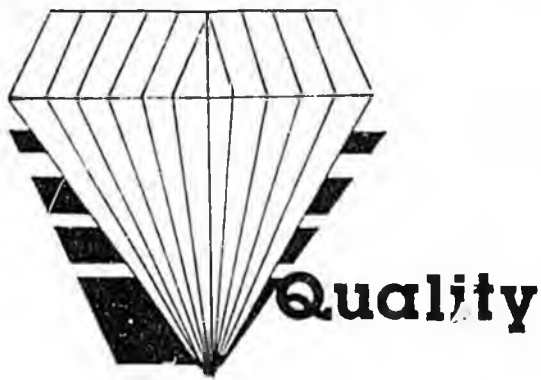
Is your next job worth this much risk in the long run? Probably not. But it is difficult to take the risk seriously when there are immediate and pressing issues of financial survival to be dealt with. The inclination is to discount the risk, to assume "it can't happen here," and to make decisions with far-reaching implications based on a field of vision that extends only as far as the next financial report. This is the model of Corporate America, and before we wax enthusiastic about how well it works, we should take a closer look.

## Selling Less for More

Somewhere along the line a genius appeared on the Detroit scene. Rising costs and increased competition from foreign automobile manufacturers were the burning issues of the day. This particular genius had a solution: "Let's cheat on quality and pretend it's not so." The underlying assumption was that Madison Avenue could be relied upon to control the buying decisions of the American public forever.

We all know the result: A steady erosion in market share, a major corporation driven to the edge of bankruptcy, and the largest automobile manufacturer in the world turning to the Japanese for help in recapturing the credibility it once had. Less, it turned out, was indeed less.

Yet not even the obvious was sufficient to restrain the remaining competitor from one last try. It proclaimed its new-found dedication to quality by announcing it had produced a 40 percent improvement in a single year — a claim, judging from the brevity of its lifespan, that probably said more about how low the company had allowed quality to fall than it did about the "new and improved"



OR

Price



product. It simply was not believable. So it can happen here and it can happen in just a few short years. Quality goes first, then the public confidence and trust.

#### Assessing Short-Term Consequences

None of this is going to come about overnight. That explains why it is so difficult to evaluate the costs of making concessions that may seem to be the only reasonable way to pull yourself out of yet another economic downturn. There are, however, more immediate, completely predictable consequences of competitive bidding that, should you decide to bid, and should you decide to follow the advice you have been given, you might as well be prepared to face.

One of the assumptions underlying reliance on price as the principal criterion for selection of an engineer or architect is that it is the only appropriate way to keep you honest. You, in other words, are an adversary whose fuzzy-headed priorities, rank inefficiency, or consummate greed (it does not matter which) will lead you to take advantage of your clients if they are foolish enough to let you get away with it. Being prudent business people, this is something they are not about to let you do.

Think, for a moment, about the inherent risks involved in a project where you start out knowing your relationship with your client already is rotten — that it lacks the

essential element of trust you know you must have to bring an incredibly complex and difficult undertaking to a successful conclusion. The risks are substantial.

The problem has little to do with negligence. At their core, few professional liability claims really do. It has to do with the increased likelihood of conflict and the decreased likelihood that you will be in a position to do anything to keep it from escalating out of control. If you are not believable before you start work on a project, there is no reason to assume you suddenly will be when it comes time to explain why an extra is justified, whether the extra is yours or the contractor's.

Can you really accept the notion that clients who insist on bidding in the first place are going to graciously approve changes in the scope of your work to accommodate requirements they neglected to specify? Can you picture them stepping forward to assume responsibility for the end product of "minimum design?" Not without a fight.

Long before you have to face the consequences of a loss of public confidence, you are likely to have to put your deductible on the line many times over. And on the line with it will be the disruption of your practice that comes with litigation, the professional reputation you have worked so hard to establish over the years, and the morale of your professional staff.

This brings us back to the issue of quality, for your reputation depends on it and, however elusive a concept it might be, it is important both to you and to your staff. There are real costs involved in these considerations, costs that have to be taken into account in your evaluation of how your firm is going to respond to the rising tide of voices heralding a new day of tighter management, greater efficiency, and more realistic pricing for professional services.

#### Coping with Change

The conclusion that most readily might be drawn from all this is a simple one. Bidding is likely to prove to be a dangerous misadventure. It ought to be avoided. Nevertheless, it would be unrealistic not to recognize that, for some, competitive bidding has become a fact of professional life.

Is it possible to accommodate the increasing pressures for price competition without sacrificing quality and professionalism in the end? Many argue it is not.

Others are not so sure. The jury still is out on the long-range consequences and it will be for some time to come. But the immediate consequences loom large and for those who have elected to compete on the basis of price, the question is: How can the inherent risks be minimized? Certainly not through minimum design. Here are some alternative suggestions you might consider if you feel you have no choice but to bid:

- *Bid only on projects where there is a clearly defined scope of work.* The idea that you can bid against an inadequate scope and somehow recover it all later is naive. You have a legal obligation to perform at the prevail-

ing standard of care whether or not you get paid for your efforts. Most owners know this and, if they do not, their attorneys do. Your client could well be predatory enough, even foolish enough, to refuse to authorize work you know is required, but it is not going to absolve you of your professional responsibilities, nor of liability, in the event something should go wrong. Where there is no scope, or if you know it to be inadequate, you might be far better off to seek to define it for the owner on a time-and-materials basis. This way at least you will be paid for your work and you may have an inside track on the project. If the owner refuses, there may not be a project worth bringing in.

- *Bid only on projects where your experience would favor your selection in the absence of price competition.* Your budget is likely to be as tight as you can make it. If you are not among the most qualified firms for the project, you cannot live within a budget tight enough to be competitive. Knowing this, why bid?

- *Select your clients carefully.* You may be able to live with clients who prequalify engineers and architects and then take price into account as one of the factors governing their selection. But where price is the determining factor, bidding is a serious mistake. There is nothing you can do that someone else cannot offer to do for less, and someone else probably will. Clients who use the price of professional services as the principal basis for selection generally deserve what they get from the someone else out there. They are not going to pay for what you know you must deliver, at least not the first time through.

- *Evaluate your competition.* You can take a certain amount of comfort in the knowledge that those you are competing against operate with the same high standards you do. The rules of the game are relatively clear. Where, however, the competition includes firms you believe to be less than scrupulous in their dealings or less than professional in their performances, you might as well back off at the outset. You are going to get sand-bagged anyway.

- *Plan to use the most competent and qualified people you have.* They are the most productive, and even if they command the highest salaries, you will be better off in the end. It makes no sense to add the risk of cost overruns, born of inexperience, to an already difficult and uncertain undertaking. You can count on your best people to deliver what they promise; betting on the inexperienced is a risky gamble, at best.

- *Define your work with great precision.* Involve the people who will work on the project in the preparation of a thorough and detailed project plan. You will need it to estimate your costs and to manage the project. Then use your plan as a basis for defining your work in writing. You will have to be very specific about what it is you are going to do for your client and what it is you are not. The goal is not so much to position yourself for extras as it is to do everything you can to create realistic expectations and eliminate the possibility of later misunderstandings.

Recognize, too, that bidding is an expensive undertaking. It entails costs once built into your projects that you now are likely to have to absorb in your overhead. Unless you are prepared to absorb these costs, you are not prepared to bid.

- *Make detailed cost estimates.* There is little room for uncertainty and no room for error. If you have a clearly defined scope of work, prepare a detailed project work plan, and rely on the judgment of your most competent and experienced people, you just may be able to determine what your costs will be with a fair degree of accuracy. If not, don't guess. It is someone else's project.

---

### *Perhaps there are situations in which competitive bidding in some form may prove to be tolerable.*

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- *Know when to walk away and be prepared to do it.* It is a difficult thing to keep in mind when meeting the payroll is your most urgent concern, but the fact is not everyone with a project dancing about in his head is a client. Be wary of the unsophisticated, the underfinanced, the avaricious. Some clients and some projects are destined to fail. You can smell them coming — usually long before you commit energies and resources that might better be applied elsewhere. Go elsewhere. You have too much at stake not to.

Perhaps there are situations in which competitive bidding in some form may prove to be a tolerable, if far from ideal, alternative to the traditional selection process. If so, there clearly are others in which it poses both immediate and distant dangers. The dark side of competitive bidding is that it is altogether too easy for the weak, the foolhardy, and the unscrupulous few to blur the distinctions between what may be tolerable and what certainly is devastating — all by way of rationalizing fundamentally unacceptable practices in the name of better management.

### **Whose Interests Are Served?**

Quality is an issue. It may be the only relevant issue, for your commitment to the quality of your work is inseparable from the profession's commitment to protect the public from harm.

The great challenge of competitive bidding lies not in finding more effective and efficient ways to manage your practice. There are too many other forces already pushing you in that direction to avoid it, even if you wanted to. The challenge lies in determining whether honesty of purpose and intensity of effort are going to continue to dominate professional life, or whether the future is to be given over to those who would substitute unenlightened self-interest for the interests of both the profession and the public. This is a challenge only you can meet. ΔΔ

MSG 84-00019098 PRTY 1 02/29/84 15:18:31 ORIG: LA00 IN= 0004 OUT= 0140  
FROM: KAREN, ANC LIO TO: POM- JUNEAU INFO  
TARGET: LJHK SUBJ: POM

---

TO: ALL SENATORS

FROM: FRED WALATKA  
3933 BORLAND  
ANCHORAGE, AK. 99503  
248-1666

THE ALASKA ARCHITECTURAL AND ENGINEERING COMMUNITY NEEDS YOUR SUPPORT FOR HB 211. AS YOU KNOW, THIS BILL CURRENTLY RESIDES IN YOUR LABOR AND COMMERCE COMMITTEE.

A RECENT POLL INDICATES MORE THAN 90% OF OUR COMMUNITY SUPPORTS CONTRACTING FOR ARCHITECTURAL AND ENGINEERING SERVICES.

*Horse*  
*Manure*

MSG 84-00019171 PRTY 1 02/29/84 16:14:28 ORIG: LA00 IN= 0006 OUT= 0154  
FROM: KAREN, ANC LIO TO: POM - JUNEAU INFO  
TARGET: LJHK SUBJ: POM

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TO: ALL SENATORS

FROM: MARY DAVIS  
3407 W. 80TH  
ANCHORAGE, AK. 99502  
H. 243-2389; W. 243-0727

SHERRY BELANGER  
618 E. 75TH, APT. D  
ANCHORAGE, AK. 99502  
H. 349-7808; W. 243-0727

RETAIN HAIRDRESSERS STATE BOARD. AS OUTLINED IN SB 435.

Anchorage 25 February 1984

Senator Richard Eliason  
Alaska State Legislature  
Pouch V (MS3100)  
Juneau 99811

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

Dear Senator Eliason:


I am writing to urge you to move the subject bill out of your committee, where it has been since last Spring.

This bill is really a "consumer protection" measure, in that it is a safeguard against the misuse of public funds; and the procurement of professional services thru the bidding process can truly be a misuse of public funds.

Unlike construction bidding, wherein the bidders each have a full set of construction plans and specifications, telling them, in considerable detail, all the requirements they will be required to meet, it is not possible to so define the extent of professional services that each architect or engineer sees the same picture. It is much like the story of the four blind men who were asked to describe an elephant. Each of them had a different description, depending on which part of the animal he felt.

The only really successful way to secure professional services is thru the competitive negotiation process, wherein the respondent firms are ranked in order of their experience and staff capabilities prior to any fee negotiations. This procedure assures the public that the most highly rated firm is considered first, at least. It may not be possible, because of budget restraints, to consummate an agreement with that first-choice firm, but the attempt will have been made. Wouldn't you, as a taxpayer, prefer that to the "blind men and elephant" approach?

Sincerely,



Arthur R Jacobs  
7060 Saturn Circle  
Anchorage 99504



February 20, 1984

Senator Dick Eliason  
Pouch V  
Juneau, Alaska 99811

Dear Senator Eliason:

A recent bulletin from the Alaska Municipal League (February 10th), has urged members to write you in opposition to moving HB 211 out of committee. This is the bill which essentially parallels the federal Brooks law, and bars selection of architects and engineers for public contracts solely on the basis of price.

Our firm, as you would assume, supports HB 211, and I will not repeat all of the arguments you have probably heard already on this subject.

For your information, however, I am enclosing a brief recent article which summarizes the effect that bidding has had on the pool of consultants willing to do public contract work in other states where bidding is the rule.

Bidding for professional services is already a fact of life in Alaska, and I can tell you where it is leading based upon our own firm's experience.

First, it is losing work for Alaskans to lower 48 consultants, many of whom do not know what they are getting into and end up defaulting on contracts, losing money, or otherwise performing poorly. Cases in point are some recent Bureau of Land Management contracts for boundary surveys of Sealaska selections.

Second, it is creating a lot of unhappy customers, many of whom expect the same level of service as before, and feel they are being "nickel and dimed" to death because the consultant must now insist on extra payment for the items he deleted from his scope of work in order to be the low bidder.

**POOL ENGINEERING, INC.**  
CONSULTING ENGINEERS AND SURVEYORS

1225 TONGASS AVE., KETCHIKAN, ALASKA 99901 (907) 225-6626  
2950 NORTHUP WAY, BELLEVUE, WASHINGTON 98004 (206) 822-6464

Third, project definition by public clients prior to bid is often horrible to nonexistent, with the result that no two consultants are really bidding on the same scope. Consultants must try to read between the lines in terms of what is wanted, and generally only consultants who have done a great deal of pre invitation marketing really know what is wanted. Increased proposal and marketing costs have added to our overhead, and we now focus more intensely on a much smaller market sector and bid on fewer projects.

Finally, the focus on cost virtually always overrides qualifications in the consultant selection process. In particular, for small municipalities and school districts with limited procurement expertise, one consultant looks much like another, and it is hard to resist award to the low bidder.

Our own firm is not likely to get out of public contracting entirely, but we are working hard to increase our private client base to reduce our dependence on public work.

If bidding for professional services remains a way of life, I think you will see the following impacts:

1. If the slow economy continues, you should see a significant short term reduction in prices as cut throat or uninformed bidders seek public contracts.

If the economy improves, more consultants will look elsewhere for work but you will still see a price reduction.

2. Many consultants are going to get burned on public contract jobs financially by bidding too optimistically. If this does not force them out of business, it will probably force them out of public contracting.
3. There will be some horror stories as level of service declines and consultants reduce level-of-effort. Mistakes and errors will multiply as a result of cost pressures. If you think the design professions have problems now, you "ain't seen nothin" yet.

The end result will probably be public pressure to "do something" about quality, through tougher licensing, increased litigation, and more restrictive contracting requirements.

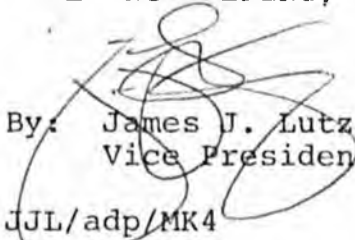
Senator Dick Eliason  
Page -3-  
February 20, 1984

This is going to drive even more professionals out of public contracting, reducing the pool of competitors, and increasing the demand for more in-house government design staffs. In the end, the public cost will go up, which is not the goal that opponents of h9 211 are seeking.

HB 211 is perceived as a piece of self serving legislation by its opponents, and its financial benefit to consultants is undeniable. I hope, however, this does not obscure the fact that a great deal more is at issue here, and that the public will also benefit from this legislation.

Sincerely,

POOL ENGINEERING, INC.

  
By: James J. Lutz, P.E.  
Vice President

JJL/adp/MK4

cc: Bob Ziegler  
Ron Wendte  
Jack McBride

Enclosure

## BUSINESS PRACTICES

(continued from page one)

Phil Scott of Holt Fatter Scott has sought productivity improvements by carefully examining hiring practices, by a regular meeting process to review and correct problems, and by assigning problem-solving to staff members. Matrix Technologies has developed an employee relations committee with the goal of finding methods to improve productivity.

Often, firms rely on computers to enhance productivity, although many managers find improvements don't equal the promises of computer vendors. Bill Tackabery, a principal of Psomas Engineers in Costa Mesa, California is one of these managers. This 120-person civil, structural and land planning firm makes extensive use of automated systems. Tackabery finds that although computers are a great help, individual contributions to productivity (and profit) improvement are more important.

Regular training programs, good information and control systems and standardization of procedures contribute to improved productivity. Nearly every firm interviewed noted they are making regular attempts to impress the importance of high productivity on their employees and managers.

### COMPETITIVE BIDDING:

Competitive bidding situations, however disguised, are becoming a way of life for most design firms. Some public sector clients often use bidding as a method of selecting design services. And in 1984, even more private sector clients will utilize some form of competitive bidding. As Bill Aden of the 30-person Blacksburg, Virginia civil/survey firm of Draper-Aden Associates points out, even clients simply

requesting a fee estimate are engaging in a form of competitive bidding when using that estimate for comparison with other design firms.

Aden notes that often, clients think they are getting the best job at the lowest price when all too often, this isn't true. Although not a problem for his firm, the product delivered by the low bid A/E may suffer in an effort to preserve a profit margin. Fred Sielback, Jr. of 48-person civil and survey firm Christian Spring Sielback & Associates agrees. From his experience with his Billings, Montana-based firm, he finds that competitive bidding doesn't do anyone any good in that clients don't always know what they are buying. He also noted that bidding almost always creates an advisory relationship between the client and design firm.

Every person interviewed has recently participated in some form of competitive bidding. Some firms were involved in this process as a result of the type of work they seek. Lockwood, Kessler & Bartlett, a 140-person Syosset, New York, multi-disciplined engineering firm seeks mostly public sector work. Nearly all of their projects require submission of a fee estimate. Even firms like Whistler-Patri & Associates, most of whose clients are in the private sector, find a requirement for a fee quote in 7 out of 10 jobs.

### COMPUTERS:

Next month, THE PROFIT CENTER will present its third article in this series of interviews with firm managers. Their current utilization of computers and 1984 hardware and software acquisition plans will be discussed. In addition, much of the March issue will be devoted to the subject of computer usage in design firms.

TPC

## PROFESSIONAL LIABILITY

(continued from page three)

TABLE THREE

DEDUCTIBLE AMOUNT	PERCENT
\$5,000 or less	33
\$5,001-\$10,000	38
\$10,001-\$25,000	19
\$25,001-\$100,000	9
over \$100,000	1
	<u>100</u>

Table Four presents the limits of coverage carried by firms.

TABLE FOUR

LIMITS OF COVERAGE (in \$000's)	PERCENT
\$250 or less	12
\$250-\$499	16
\$500-\$999	23
\$1,000-\$2,499	42
\$2,500-\$9,999	5
\$10,000 and up	2
	<u>100</u>

ACEC also reports that during 1983, of claims reported in the survey, the average settlement cost was \$21,500 per claim. The average legal cost reported was \$7,725 per claim for a total cost of \$29,225. Of total claims reported, 76% were settled out of court, 3% through arbitration and 21% by court judgment.

Additional information on the AIA survey may be obtained from:

William Hooper, Director  
Practice Division  
The American Institute of Architects  
1735 New York Avenue, N.W.  
Washington, D.C. 20006  
(202) 626-7532

Information on the ACEC survey may be

obtained from:

Bruce Vogelsinger, Managing Director  
Administrative and Professional Services  
American Consulting Engineers Council  
1015 15th Street, N.W.  
Washington, D.C. 20005  
(202) 347-7474 TPC

## COMPETITIVE BIDDING

Who wins in competitive bidding situations? No one, according to a report prepared by Nora Lea Reefe of Consultant Management Services, Inc. In an analysis of competitive bidding in Maryland and Georgia, the report, originally prepared in 1981, notes that almost 75% of consulting engineers in Washington, D.C. who have worked for Maryland since 1974, are no longer seeking work from the state. This clearly narrows the pool of qualified firms available to the state and may seriously affect the ability of Maryland to complete required projects.

In addition, 56% of firms surveyed suffered a financial loss on projects in Maryland. From a purely economic standpoint, the value of competitive bidding has been called into question by the analysis in this report. Copies may be obtained for \$20 from:

Consultant Management Services, Inc.  
5445 Mariner Street #210  
Tampa, FL 33609  
(813) 870-0859

### AIA STUDY:

The American Institute of Architects is currently conducting a study of competitive bidding in Maryland and competitive negotiation in Florida. This two-part study is expected to be completed and released by April or May. TPC

# TRYCK NYMAN & HAYES

Head Office / 740 I Street Anchorage, Alaska 99501 / 907-279-0543 / Cable TNHANCAK / Telex 090-25332

ENGINEERS / PLANNERS / SURVEYORS

0000.0

February 6, 1984

The Honorable "Dick" Eliason  
P. O. Box 143  
Sitka, AK 99835

Dear Dick:

At our most recent consulting engineer council meetings, we were told that you are holding H.B. 211. That bill is patterned after the Federal Government Brooks bill which establishes a uniform procedure for selection of consulting engineering firms. This procedure is currently required for consultant selection on federal projects. (That procedure is currently mandated by law in 29 states and is utilized as policy by several other states.) I am sure that you have heard different sides to this story, but irrespective I believe that there is some common sense that supports my view.

There are no instances that I am aware of where the owner (city) has benefited from low bid or adversary relationships with their hired consultants. Most competent engineering firms serve as an extension of their clients' staff, and I believe that the bottom line works out much better for the owner where there is this sort of relationship.

I have never heard of an owner or firm calling for bids when hiring a staff person. I suspect that you may have a different point of view on this, but I wanted to let you know my view with the hope that you will consider both sides.

Dick, in spite of our apparent different viewpoints on this, I know that you are one of the better "common sense" legislatures and I hope that you will continue to serve our state because our legislature needs more people like you.

Very truly yours,

TRYCK, NYMAN & HAYES



Frank E. Nyman, P.E.  
Senior Partner

:inn

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CONSULTING ENGINEERS  
COUNCIL OF ALASKA



3812 SPENARD ROAD  
ANCHORAGE, ALASKA 99503  
(907) 277-5605

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May 25, 1983

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

Subject: CS HB 211

Dear Senator Eliason:

You have before you House Bill 211, which has passed the House after considerable testimony and deliberation. The bill, in its present form, is acceptable to the professional community as a whole, and represents a framework in which the parties subject to the contents of the bill can provide regulation for its use and implementation.

Twenty-one states have currently adopted laws calling for the selection of Architect/Engineers based on qualifications, and another twenty either prohibit or exempt Architect/Engineers from a general bidding requirement. One state only, Maryland, requires a price bidding procedure for selection of its professionals.

There are those who, due to their lack of understanding of what goes into the design process, advocate that price before negotiation, should be a criteria for selection. We emphasize that experience, innovation, alternatives and capabilities cannot be directly measured in terms of dollars as they apply to the design process. The professional A/E's today very definitely compete on the basis of their qualifications. There has been no mystery to users of professional services in utilizing the heretofore traditional methods of selection (by most agency users in Alaska) which we believe have served this state and 43 others quite well for many decades. There are many doubts as to the effectiveness of the Maryland experiment; however, even if we credit Maryland, in their effort as being inconclusive as a measure of effectiveness (which is the best that we can do), the system they are using has not proven to be advantageous over the traditional methods. Therefore, we believe that it is incorrect for this state to consider any attempt to get in step with the only state which is out of step, when the rest of the group (48) effectively marches on.

We believe that Architectural and Engineering services should be obtained through a selection process that ascertains the

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PRESIDENT  
VICE PRESIDENT  
SECRETARY  
TREASURER

W E Stege, CREWS, MACINNES & HOFFMAN/VITRO  
C.W Tryck, TRYCK, NYMAN & HAYES  
A R Jacobs, ANDERSEN-BJORNSTAD-KANE-JACOBS  
S E Clark, ARCTIC ENVIRONMENTAL ENGINEERS

Senator Dick Eliason, Chairman  
May 25, 1983  
Page 2

qualifications and capabilities of interested A/E's to design public works projects. Fair and reasonable fees should be established by negotiation after selection and discussion of the scope of work. It is not in the best interest of the public and, in some cases, public safety to attempt to obtain these services prior to selection by either price proposals or competitive bidding. This concept does not provide appropriate consumer safeguards. Rather, it encourages poor use of public funds, since the importance of value received, initially, is subjugated to money spent. The risk of any selection on the basis of a lowest common denominator when the stakes are the highest, as they are here in Alaska, seems to us to be just converse to the results that must be achieved when considering, on the average, the higher difficulty of design for projects to be built in Alaska.

Many of the benefits of A/E services must be measured against final construction and operating costs of the facility or structure, costs that are not clearly determined until after the A/E services have been completed and, in fact, in operation. Injecting price in an initial selection may lower the initial A/E fee, which must translate directly to less time spent on the design, and consequently will surely then lower the quality of the final product. Price competition (as in bidding) can only inhibit the ability of the A/E to provide full cost-saving services. This will be a direct result due to inadequate compensation for innovative and thorough work. It further may even cause more talented A/E firms not to offer their services, thus further lowering the overall quality of the services available to the agency. The public cannot be well served by this approach.

We believe the process of competitive selection for Architect/-Engineer firms in the State of Alaska makes even more sense than the same considerations in any of the other 49 states. As you are all aware, our state has more unique and diverse needs than any of the other 49. Alaska has many varied climatological zones and sensitive environmental factors that must be considered during the design of any project. The environmental problems are significant enough and are further complicated by operation costs, maintenance complexities, and costs (especially in Bush areas), earthquake probability, foundation factors, severe cold and extreme operational limits. In order for these problems to be met effectively, the only rational method from which to make a selection of an A/E firm is by addressing the qualifications of the responding firms and selecting the highest ranked firm on the basis of those qualifications. Only then, based on the quality and experience of the selected A/E firm, can the project design objective be effectively met and the public resources most effectively protected.

Senator Dick Eliason, Chairman  
May 25, 1983  
Page 3

We believe that House Bill 211 provides for those measures and protection, insuring that the public need, through the use of competitive selection, will be most successfully met. I urge your positive consideration of House Bill 211.

Respectfully Submitted,

*Walter E. Steige*  
*By RTO*

Walter E. Steige, P.E.  
CECA President

WES/wlf

Alaska State Legislature



REPRESENTATIVE

FOUCH V  
JUNEAU, ALASKA 99811

ROBERT H. "BOB" BETTISWORTH

211 CUSHMAN STREET  
FARBANKS, ALASKA 99701

DATE: March 5, 1984

TO: Senator Richard Eliason, Chairman  
Senate Labor & Commerce Committee

FROM: *RHB* Rep. Robert Bettisworth

SUBJECT: CSHB 211 (L&C)am

I have received support for the passage of the above referenced legislation. I understand that this bill has legislative support as well.

At this time, I would like to request that the bill be scheduled for hearings before your Committee. If you have any problems with the legislation, I would be happy to offer my assistance.

NOTE REGARDING THE FOLLOWING FRAME(S) ON MICROFILM:  
COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES.  
TITLE PAGE ONLY HAS BEEN FILMED.

## SENATE PROPOSES MAJOR CHANGES TO AE/LS BOARD

by Don Dent

One often wonders what inspires people to follow certain courses of action. It may be belief in a tenet, inspiration, or honest concern based on information received. It may be from a completely negative standpoint.

For whatever reasons, the AE's and the Registration Board have received more than their share of attention the past two years, ranging from a frivolous attack by the Department of Justice, a continuing adversarial and non-cooperative attitude by the State Attorney General and the Governor, to stonewalling and buttonholing a bill in Legislative committee.

Last month, I reported briefly that SB 438, for the extension of the termination date of the Registration Board, was in for passage—a formality in compliance with the Sunset statutes.

The latest edition of SB 438 is that Senator Eliason's committee, Labor and Commerce, held hearings on the bill on March 8th (notice of which was received here on March 13th). The Committee went the "extra mile" in its deliberations by proposing a Committee Substitute which includes amendments to four sections of AS 08.48. The Committee recommendation of the Substitute was a unanimous "do pass." Referral is to the Rules Committee. This would put the bill in position for an early floor action. The effect of this substitute bill would be to:

1. Extend the Board to June 30, 1988;
2. Remove one engineer member from the Board and replace with a public member (This reduced the effectiveness of the Board and would allow licensure decisions and determinations by the non-professional);
3. Reduce the term of appointment of Board members to four years (This would allow the Governor to "politicize" the Board. Present six-year term is to reduce politicizations, and to maintain continuity. Not so with a four-year term);

4. Limit terms on the Board to two consecutive terms with a four-year gap to lapse before any reappointment;

5. Remove state residency requirement for any public member (Allows Governor to "politicize" the Board);

6. Institute requirement for proof of continued competence for license renewal (This has been proven as restricting number of licensees in the profession, in restraint of trade, and is not cost effective on a mandatory basis).

\*\* The extension of the Board for an additional four years, and the limitation of Board membership to two terms are acceptable and reasonable proposals.

The other proposals, it appears to me, to be negative and, ultimately, destructive. The Administration continues to show its disregard for competent advice given by people in the profession. It shows no grasp of the lack of cost effectiveness by such proposals, while preaching economy in the Board's operation—a Board that pays its way. A reduction in the Board's budget of 76%, a 400%-plus increase in statutory requirements of Board workload, a proposed, substantial, licensing fee increase being sought by Central Licensing, and the intended geographical diffusion of Board members, indicates a lack of comprehension by the Administration.

The Board President's response to, and explanation of, these suggested changes in May, 1983, to the Legislative Audit Division, clarified the Board's position. The result of the "public hearing" by the L&C Committee does not appear to have taken those responses into account.

The Governor's intention to politicize and reduce the Board to an ineffectual body would be served if this bill in its present form were to pass. The Design Professions are, once again, being backed against the wall by this "either/or" situation.

On other matters:

HB 211 is still being held in Senator Eliason's Committee.

SB 345, in regard to "Responsible Charge" changes in AS 08.48, is still in Senate State Affairs. Senator Faiks has indicated that there would be a Sponsor Substitute for this bill. She should be contacted about this.

\*\*Late Flash\*\* CS SB 438 (L&C) was considered in Rules Committee on March 14th, with floor action in the Senate on March 15th, passing 19 to 0 as is. Will now go to House, probably Labor & Commerce committee. Contact of the Majority members of that committee is urged. They are John Cowdery, Chairman, Walt Furnace, Rick Uehling, Sam Pestinger, and John Ringstad. This bill needs wholesale revision.

## PROFESSIONALS URGED TO BECOME INVOLVED

by Woodrow Johansen

You as a professional and your professional organization together with the Board of Architects, Engineers and Land Surveyors are in litigation with the United States Department of Justice over the clause in your Code of Ethics preventing competitive bidding for Professional Services. We as professional organizations, do not agree with the stand taken by the Department of Justice and the result is a review and possible hearing in the Federal Court of District Judge von der Heydt in Anchorage any time after February 1, 1984. We are not hopeful of a favorable ruling by this Court. We, therefore, are making a concerted effort to pass House Bill No. 211 — The Mini Brooks Bill — now before the Labor and Commerce Committee of the House. This Bill outlines a procedure

Continued on page 3

Alaska Professional  
Design Council  
P.O. Box 103115  
Anchorage, AK 99510

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RICHARD ELIASON

# CALENDAR OF EVENTS

## APRIL 1984

- 3 APDC Board Meeting  
5:30 p.m., Federal Building  
Room C 122
- 6 ASPE Fairbanks  
12:00 noon, Travelers Inn  
Rampart Room
- 10 AIA Fairbanks
- 11 PEPP Anchorage  
7:00 a.m., Denny's  
Northern Lights
- 11 ASCE/ASPE Juneau
- 12 Intern Architects  
7:30 p.m., Lane, Knorr, Plunkett  
Office, 600 Barrow Street
- 13 AIA Anchorage
- 14 ASPE Anchorage  
12:00 noon, Beef and Sea
- 17 ASCE Anchorage  
12:00 noon, Travelers Inn  
Rampart Room
- 20 ASCE Fairbanks  
12:00 noon,  
International Banquet House
- 26 ASPLS Anchorage  
12:00 noon, Beef and Sea

## MAY 1984

- 1 APDC Board Meeting
- 4 ASPE Fairbanks
- 8 AIA Fairbanks
- 9 ASCE/ASPE Juneau
- 9 PEPP Anchorage
- 10 Intern Architects
- 11 AIA Anchorage
- 12 ASPE Anchorage
- 15 ASCE Anchorage
- 18 ASCE Fairbanks
- 31 ASPLS Anchorage

## ACKNOWLEDGMENTS

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WIRUM & CASH,  
Architects

ELLERBE ALASKA

MAYNARD AND PARTCH

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# PROFESSIONAL SERVICES DIRECTORY



3134 Street, Suite 2  
Anchorage, Alaska 99501  
Telex: 0907516R

Anchorage  
Barrow

Leland A. Johnson, P.E.  
President Telephone (907) 276-0511  
Home (907)

**KBA** INC.

Consultants in Mechanical Systems

Kurt Hittingmaier, P.E.

Wx (907) 561-1127  
HAM (907) 145-1215

3900 Arctic Blvd., Suite 204  
Anchorage, Alaska 99503

2502 West Northern Lights Blvd. Anchorage, Alaska 99503



Telephone (907) 248-3888  
Telex 26 485

Gary R. Bock, P.E.  
President

**OceanTech**  
Engineering  
Construction  
Project Management

To: APDC Member

The Consulting Engineers Council of Alaska, the American Institute of Architects, and the Alaska Society of Professional Engineers, with the support of other Engineering and Land Surveying organizations, has been working to secure the passage of HB 211 by the Alaska State Legislature. Some legislators have raised a question as to how widespread support is for this legislation among the professions.

A copy of HB 211 is enclosed.

HB 211, if enacted, would require that all agencies and political subdivisions of the State acquire professional architectural, engineering and land surveying services on the basis of professional qualifications, in a manner similar to that mandated for the U. S. Government by the Brooks Bill.

Could you take a few minutes of your time to complete this questionnaire and return it to APDC? (Please fold and staple once.) The results of this survey will assist your society officers when this legislation is considered by the Alaska State Senate in 1984. Please return by January 6, 1984.

Thank you for your response.

---

With regard to the adoption of HB 211 by the State of Alaska, are you?

In Favor                       Opposed                       Indifferent

Are you currently licensed in the State of Alaska to practice?

Architecture                       Land Surveying  
 Engineering                       None

Do you frequently or regularly do professional work for the State of Alaska or its political subdivisions, on a contractual basis?

Yes                       No

Are you employed by a government agency, in a position where your duties include the selection of consultants and/or the administration of consultant contracts?

Yes                       No

## VERNON AKIN AND ASSOCIATES

CONSULTING ENGINEERS

P.O. BOX 1081

JUNEAU, ALASKA 99802

PHONE (907) 586-6022

March 13, 1984

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.

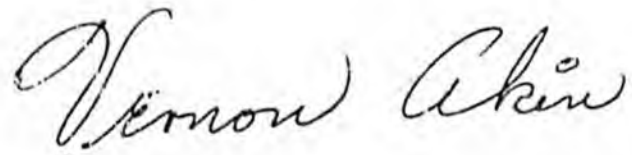
Some proponents of the bidding feature say that it will result in lower design costs. They are not evaluating correctly. Time costs money. The more time expended the more the cost. The only way lower design costs can be obtained is by spending less time on the design. But who suffers for this less time? 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.

House bill 211 has passed the House committees and is now being held in the Senate Labor and Commerce committee. 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. House bill 211 is patterned after 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 last year 21 states have adopted this policy with similar legislation. I strongly recommend that you do your utmost to get this HB 211 out of committee and vote favorably for its 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 centered on the page.

Vernon Akin

# ALASKA STATE SENATE

JOE P. JOSEPHSON  
DISTRICT G - ANCHORAGE  
1526 F STREET  
ANCHORAGE, ALASKA 99501  
(907) 277-4419

WHILE IN JUNEAU  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4907  
(907) 465-4525

COMMITTEES  
HEALTH, EDUCATION & SOCIAL SERVICES (CHAIR)  
JUDICIARY (VICE-CHAIR)  
FINANCE  
MAJORITY CAUCUS (CHAIR)

April 11, 1984

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

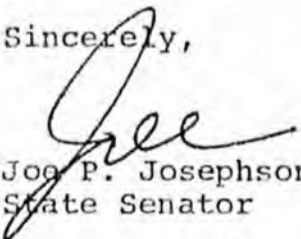
Dear Senator Eliason:

Many of my constituents have contacted me about HB 211, "An Act relating to contracts for architectural, engineering, and land surveying services; and providing for an effective date." In their communications, they urged me to request that the matter be considered by your Committee and brought out of Committee so that the Rules Committee may calendar the bill.

Before making that request, I wanted to study the issue for myself and reach my own conclusion. I have now done that. I support HB 211. In the event that you have been wondering what other senators may be thinking on the subject, I wanted to take this opportunity to share my views with you.

With best wishes, I am

Sincerely,



Joe P. Josephson  
State Senator

JPJ:rak

March 12, 1984

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

Dear Senator Eliason,

As a licensed Architect practicing in Alaska, I'm writing to urge your support for HB 211. This bill would codify the procedure for the selection of architects and engineers by the State and local governments. It would use qualifications rather than price alone as the prime criteria for selection.

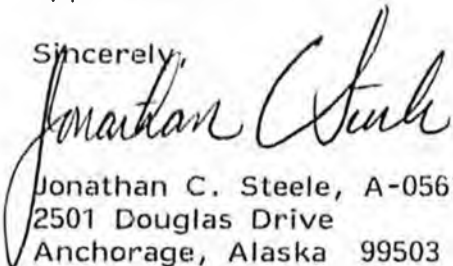
The architectural and engineering community has been working on this bill for three years. The bill has passed the House and currently resides in the Senate Labor and Commerce Committee. Your support for this bill is necessary to bring it out of committee.

The Federal government and twenty-nine other states have enacted similar legislation.

For further information on this legislation, please refer to the material previously provided to your office.

Your support and assistance in passage of this bill will be greatly appreciated.

Sincerely,



Jonathan C. Steele, A-05616  
2501 Douglas Drive  
Anchorage, Alaska 99503

JCS/nnl

March 12, 1984

Senator Don Bennett  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99811

Dear Senator Bennett,

As a licensed Architect practicing in Alaska, I'm writing to urge your support for HB 211. This bill would codify the procedure for the selection of architects and engineers by the State and local governments. It would use qualifications rather than price alone as the prime criteria for selection.

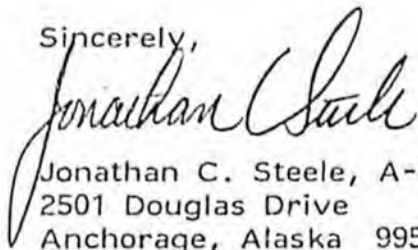
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The Federal government and twenty-nine other states have enacted similar legislation.

For further information on this legislation, please refer to the material previously provided to your office.

Your support and assistance in passage of this bill will be greatly appreciated.

Sincerely,



Jonathan C. Steele, A-05616  
2501 Douglas Drive  
Anchorage, Alaska 99503

cc: Senator Richard I. Eliason

JCS/nnl

HB

211

#2



# Matanuska-Susitna Borough

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

BOROUGH ATTORNEY'S OFFICE

May 10, 1983

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

? Jones?  
what

Dear Senator Kerttula:

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

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

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

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

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

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

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

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

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

Sincerely,



Steven H. Morrisett  
Borough Attorney

er

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

# City of Soldotna

BOX 409

PHONE 262-9107

SOLDOTNA, ALASKA 99669



CITY OF OPPORTUNITY

February 14, 1984

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

Dear Senator:

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

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

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

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

Sincerely,

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

Justin G. Maile  
Mayor

JGM/pb



## THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT - 586-5242

May 26, 1983

Senate Labor & Commerce Committee  
Pouch V  
Juneau, Alaska 99811

File: Legislature 1983 - House Bill 211

Gentlemen:

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

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

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

Re: House Bill 211  
May 26, 1983  
Page Two

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

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

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

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

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

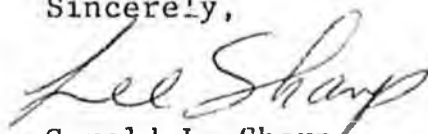
Some argue that in bidding, professionals will underbid and will then cut corners in their work and thus produce an unsafe, or perhaps

Re: House Bill 211  
May 20, 1983  
Page Three

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

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

Sincerely,



Gerald L. Sharp  
City-Borough Attorney

GLS:jr

cc: Mayor and Assembly  
Manager  
Ginny Chitwood, AML

Suggested by: Administration

CITY OF KENAI .

RESOLUTION NO. 83-89

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

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

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

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

WHEREAS, HB 211, which provides, in part:

"The state [or local government] may not request or consider any statement, bid or estimate of fees or charges for architectural, engineering or land surveying services for the proposed project [before selecting the successful contractor.]"

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

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

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



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

"The Friendly City"

May 27, 1983

James A. Poor  
Mayor

Perry D. Lovett,  
Manager

Donna M. Sherby,  
Clerk / Treasurer

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

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

RE. HB 211

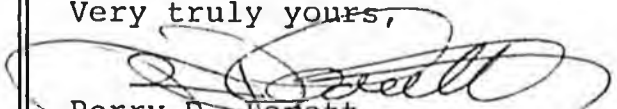
Dear Senator Eliason:

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

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

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

Very truly yours,



Perry D. Lovett  
City Manager

cc: Mayor Jim Poor



OFFICIAL BUSINESS

# ALASKA STATE LEGISLATURE - SENATE

## COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASON  
CHAIRMAN

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

June 3, 1983

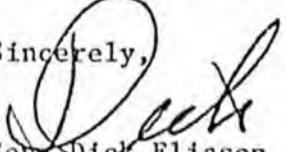
Perry D. Lovett, City Manager  
City of Cordova  
P. O. Box 1210  
Cordova, Alaska 99574

Dear Perry:

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

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

Sincerely,

  
Sen. Dick Eliason

# CITY OF SKAGWAY

GATEWAY TO THE GOLD RUSH OF '98"

P. O. BOX 415 SKAGWAY, ALASKA 99840

907-983-2297

February 13, 1984

Senator Richard I. Eliason  
Pouch V  
Juneau, Alaska 99811

Dear Senator Eliason;

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

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

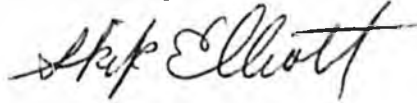
Furthermore, classifying survey work along with architectural design and engineering is truly arbitrary. Although many poor surveyors exist, the level of skill and technical expertise required to become a good surveyor does not at all come close to the requirements necessary to become an engineer or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

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

Senator Richard I. Eliason  
Page 2

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

Sincerely,

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

Skip Elliott  
City Manager

cc Alaska Municipal League



THE HEART OF THE MATANUSKA VALLEY

## CITY OF PALMER

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

February 16, 1984

The Honorable Richard Eliason  
Pouch V  
Juneau, Alaska 99811

RE: HB 211 - Professional Services Contracts

Dear Senator Eliason,

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

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

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

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

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

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

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

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

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

Should you have any questions, please contact me.

Yours truly,

---

David L. Soulak  
City Manager, City of Palmer

cc: AML  
Senator Jalmar Kerttula

A & E PROPOSALS  
J. H. REMODEL

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

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

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

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



THE HEART OF THE MATANUSKA VALLEY

## CITY OF PALMER

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P.O. BOX 1368 • PHONE (907) 745-3271  
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February 16, 1984

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Should you have any questions, please contact me.

Yours truly,

---

David L. Soulak  
City Manager, City of Palmer

cc: AML  
Senator Jalmar Kerttula



# *Kodiak Island Borough*

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

February 15, 1984

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

Re: House Bill 211

Dear Senator Eliason:

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

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

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

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

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

Page 2

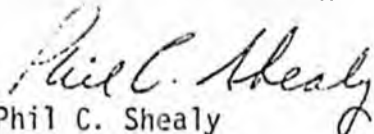
It is also interesting to note in the above examples that the highest price proposed was a firm which at that time was retained by the Borough to do other school projects. It is incomprehensible to me that with the range in prices indicated in these actual examples that the Borough would be in any position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

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

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

Sincerely,

KODIAK ISLAND BOROUGH

  
Phil C. Shealy  
Borough Manager

Enclosures (3)

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

mdd

KODIAK ISLAND BOROUGH  
RESOLUTION NO. 83-68-R

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

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

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

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

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

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

"The State (or local government) may not request or consider any statement, bid or estimate of fees or charges for architectural, engineering or land surveying services for the proposed project (before selecting the successful contractor.)"

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

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

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


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

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

KODIAK ISLAND BOROUGH

ATTEST:

By   
Borough Mayor, Secretary

By   
Borough Clerk

## J. II. REMODEL

<u>FIRM</u>	<u>THEATRE CONS.</u>	<u>ACOUST. CONS.</u>	<u>EDUC. SPECS.</u>	<u>CONST. CONT. AWARD</u>	<u>PHASE 1 COST</u>	<u>PHASE 11 COST</u>	<u>TOTAL COST</u>
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Sundberg Assoc.	Boulangier	Chaudiere	Boulangier	17 April 1983	405,000	223,644	628,644

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

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

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

City of Soldotna  
BOX 409                      PHONE 262-9107  
SOLDOTNA, ALASKA 99669



February 14, 1984

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

Dear Senator:

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

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

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

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

Sincerely,

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

Justin G. Maile  
Mayor

JGM/pb



# City and Borough of Sitka

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

February 14, 1984

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

Dear Dick:

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

Sincerely,

Fermin Gutierrez  
Administrator

cc: Alaska Municipal League

# CITY OF SKAGWAY

GATEWAY TO THE GOLD RUSH OF '98"  
P. O. BOX 415 SKAGWAY, ALASKA 99840  
907-983-2297

February 13, 1984

Senator Richard I. Eliason  
Pouch V  
Juneau, Alaska 99811

Dear Senator Eliason;

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

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

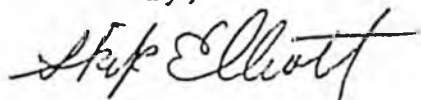
Furthermore, classifying survey work along with architectural design and engineering is truly arbitrary. Although many poor surveyors exist, the level of skill and technical expertise required to become a good surveyor does not at all come close to the requirements necessary to become an engineer or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

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

Senator Richard I. Eliason  
Page 2

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

Sincerely,

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

Skip Elliott  
City Manager

cc Alaska Municipal League



## THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

LAW DEPARTMENT - 586-5242

May 26, 1983

Senate Labor & Commerce Committee  
Pouch V  
Juneau, Alaska 99811

File: Legislature 1983 - House Bill 211

Gentlemen:

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

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

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

Re: House Bill 211  
May 26, 1983  
Page Two

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

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

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

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

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

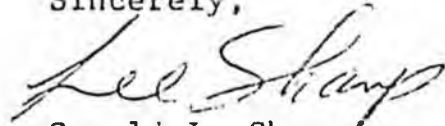
Some argue that in bidding, professionals will underbid and will then cut corners in their work and thus produce an unsafe, or perhaps

Re: House Bill 211  
May 26, 1983  
Page Three

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

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

Sincerely,



Gerald L. Sharp  
City-Borough Attorney

GLS: jr

cc: Mayor and Assembly  
Manager  
Ginny Chitwood, AML



# Matanuska-Susitna Borough

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

May 10, 1983

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

Dear Senator Kerttula:

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

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

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

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

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

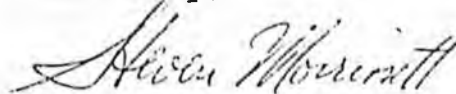
The state can eliminate competition in its purchasing procedures if the Legislature chooses. It can also prohibit competition in local government contracts. House Bill 211 proposes to do exactly that. It specifically provides that "the state [or local government] may not request or consider any statement,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

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

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

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

Sincerely,



Steven H. Morrisett  
Borough Attorney

er

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



# Matanuska-Susitna Borough

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

BOROUGH ATTORNEY'S OFFICE

May 6, 1983

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

Dear Ron:

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

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

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

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

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

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

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Sincerely,



Steven H. Morrisett  
Borough Attorney

er

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

Attachment: Copy HB211

# THE CITY AND BOROUGH OF JUNEAU

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

April 27, 1983

House Judiciary Committee  
Pouch V  
Juneau, Alaska 99811

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

Ladies and Gentlemen:

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

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

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

House Judiciary Committee

Re: H.R. 211

April 27, 1983

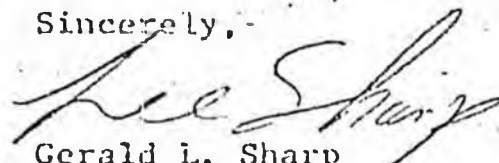
Page Two

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

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

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

Sincerely,



Gerald L. Sharp  
City-Borough Attorney

CLS:jr

cc: Mayor and Assembly  
Manager

# UNITED STATES CODE ANNOTATED

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

Cumulative Annual Pocket Part

*For Use In 1983*

Replacing prior pocket part in back of volume

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

For close of Notes of Decisions  
See page III

CURRENT LAWS AND LEGISLATIVE HISTORY

Consult

United States Code  
Congressional and Administrative News

ST. PAUL, MINN.  
WEST PUBLISHING CO.

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

(e) Redesignated (d).

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

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

chapter, accompanied by appropriate recommendations.

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

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

#### SUBCHAPTER IV—RECONSTRUCTION FINANCE CORPORATION PROPERTY

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

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

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

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

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

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

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

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

##### § 541. Definitions

As used in this subchapter

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

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

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

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

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

Library Reference  
United States  
C.J.S. United

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

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

(June 30, 1949, c. 288, Title IX, § 902, as added Oct. 27, 1972, Pub.L. 92-582, 86 Stat. 1278.)

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

##### Library References

United States 35.

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

1. Grant-funded  
Architectural  
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251.

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

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

(June 30, 1949, c. 288, Title IX, § 903, as added Oct. 27, 1972, Pub.L. 92-582, 86 Stat. 1278.)

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

Library Reference  
United States  
C.J.S. United

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

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

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

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

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

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

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

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

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

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

## V—RECONSTRUCTION FINANCE CORPORATION PROPERTY

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

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

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

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

## VI—SELECTION OF ARCHITECTS AND ENGINEERS

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

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

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

Section 542, Act June 30, 1949, c. 288, Title IX, § 901, as added Oct. 27, 1972, Pub.L. 92-582, 86 Stat. 1278.)

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

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

### § 542. Congressional declaration of policy

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

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

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

Notes of Decisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Library References**

United States — 35.

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

**Notes of Decisions**

**L. Factors considered**

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

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

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

**Sec.**

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

602a. Lease-purchase contracts.

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

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

(c) Utilization of funds for payments.

(d) State and local taxes.

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

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

(g) Expiration of contracting authority.

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

612a. Additional definitions.

616. Dwight D. Eisenhower Memorial Bicentennial Civic Center.

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

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

(c) Land acquisition.

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

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

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

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

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

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

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

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

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

(b) In carrying out his duties under subsection (a) of this section, the Administrator shall consult with Governors, area-wide agencies established under the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 14901 et seq.) and Title IV of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231 et seq.), and chief executive officers of those units of government in each area served by an existing or proposed public building, and shall take into account the comments of such other community leaders and members of the public as he deems appropriate.

(Pub.L. 94-541, Title I, § 102, Oct. 18, 1976, 90 Stat. 2505.)

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

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

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

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

**Legislative History and Purpose of Pub.L. 94-541.** Code Cong. and Adm. News, p. 4767.

**Library References.** United States: C.J.S. United States — 35.

**1. Leases.** This section of a building is subject to the provisions of title III of the Federal Property and Administration Management Act of 1949, as amended [41 U.S.C.A. § 251 et seq.] if any such building is owned by the United States.

§ 602a. Lease purchase contracts

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

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

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

**Short Title of 1976 Amendment.** Pub.L. 94-541, Title I, § 101, Oct. 18, 1976, 90 Stat. 2505, provided that: "This title [which enacted sections 601a and 612a of this title and amended sections 490, 606, and 611 of this title] may be cited as the 'Public Buildings Cooperative Use Act of 1976'."

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

# Business

WEDDAYS  
BY JONES

1.06-18.09  
0.66-7.23  
1.60-1.01  
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NYSE  
-17 cents  
1.90-1.17  
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1.58-1.26  
1.47-0.34  
1.66-1.55

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

## Contract bill riles Mat-Su attorney

by Al Campbell  
for The Times

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

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

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

That policy is established by the li-

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

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

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

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

missing an entire building season.

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

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

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

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

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

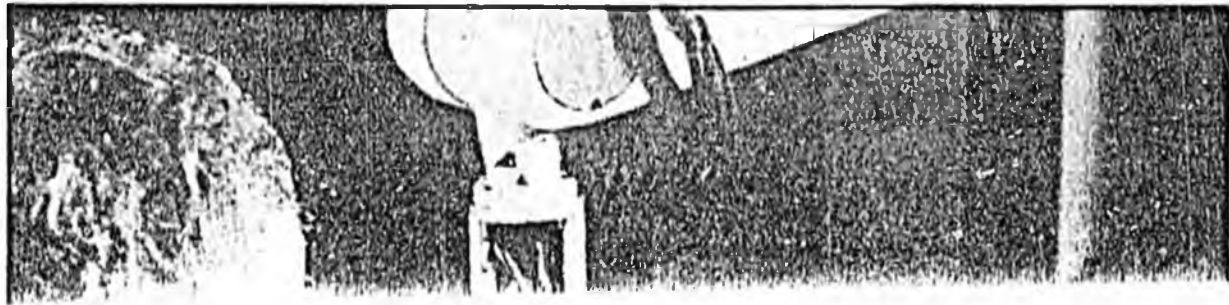
The borough lawyer says the federal government considers the regulation restrictive trade, and clearly illegal.

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

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

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

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



## Forum views current global competition



AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS

*of the National Association of Realtors*



May 24, 1983

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

RE: House Bill 211 Professional Services Contracts

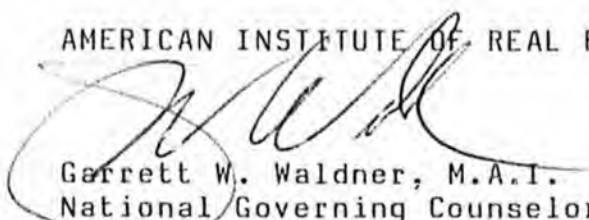
Dear Senator Eliason:

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

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

Sincerely,

AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS



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

GW2/B24/tb



DOUGLAS A. STARK and ASSOCIATES, CONSULTANTS

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

May 27, 1983

561-2332

Senator Jalmar Kerttula  
Pouch V  
Juneau, Alaska 99811

JUN 1 1983

Dear Jay:

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

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

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

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

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

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

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

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

Sincerely,

Doug Stark

# Alaska State Legislature

REPRESENTATIVE  
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CHAIRMAN  
SPECIAL COMMITTEE  
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MEMBER  
TRANSPORTATION  
COMMITTEE

## House of Representatives

### MEMORANDUM

#### DISTRICT 26

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

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

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

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

Thank you for your attention.

AH/r/ml  
Enclosure