

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2
4179 SLAB SB 195 - SB 204 1059



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

S B

195



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

OK 195

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that makes a number of relatively minor changes to AS 08 and AS 44.19 concerning various boards, commissions, and councils. The most important change made by the bill is making uniform the length and limitations of terms for all occupational licensing boards and commissions in AS 08. This will not only increase the efficiency of the appointment process but, more importantly, will also improve the access of the public to service on the boards.

The bill also includes a variety of other changes to the statutes governing particular boards and occupations to eliminate problems, ambiguities, conflicts, and outdated cross references. These changes have been requested by the particular boards, commissions, or councils themselves, by the attorney general's office, by the division of occupational licensing in the Department of Commerce and Economic Development, or by the division of governmental coordination in the Office of Management and Budget. They are explained briefly in the following section-by-section outline.

I urge favorable consideration of this bill to improve the effectiveness and the efficiency of our boards, commissions, and councils, and of our occupational licensing system.

SECTION-BY-SECTION OUTLINE

Section 1 of the bill adds to the listing of boards in AS 08.01.010 occupations for which licensing is required, but for which there is no board.

Sections 2, 3, 8, 27, 28, 29, and most of the repeals in

sec. 36, all make uniform the length of and limits upon terms of members of the various occupational licensing boards.

Sections 4 and 5 of the bill amend AS 08.01.050 and 08.01.070 to clarify the respective administrative duties of the Department of Commerce and Economic Development and the occupational licensing boards.

Section 6 of the bill makes several amendments to AS 08.01.100 concerning renewal, lapse and reinstatement of occupational licenses. First, it deletes the word "biennial," regarding renewals, in AS 08.01.100(a). Second, it amends AS 08.01.100(b) to give the Department of Commerce and Economic Development authority to set the late renewal penalty fee by regulation after consultation with the appropriate board. That penalty fee is currently set, by statute, at only \$10. The same amendment to AS 08.01.100(b) is included in sec. 3 of HB 78, also introduced at my request.

The third change made to AS 08.01.100 by sec. 6 of this bill is the addition of a new subsec. (c) to require that any applicable continuing education requirements must be satisfied before a license may be renewed.

Section 7 of the bill adds three new sections to AS 08.01 authorizing the Department of Commerce and Economic Development to issue citations for unlicensed practice of professions for which a license is required. These provisions are nearly identical to those added by sec. 5 of HB 151, concerning construction contractors, which was also recently introduced at my request.

Section 9 of the bill adds a new subsection to AS 08.20.130 to authorize the Board of Chiropractic Examiners to appoint a committee to administer examinations in much the same way as does the Board of Dental Examiners under AS 08.36.130.

Section 10 of the bill amends AS 08.20.160 to tighten the issuance of temporary chiropractor licenses to only those who actually meet certain statutory qualifications, not to those who are merely "apparently" qualified.

Section 11 of the bill amends AS 08.24.090(b) by adding an exemption from collection agency license requirements for process servers appointed by Alaska courts.

Section 12 of the bill amends AS 08.40.070 to change the

SB195

Board of Electrical Examiners' inspection authority to include work by unlicensed persons, not just those who are licensed.

Section 13 of the bill amends AS 08.40.130 to require that electrical administrators must actively supervise work for which they act as an administrator and to require that administrators notify the Department of Commerce and Economic Development when they change their contractor affiliation.

Section 14 of the bill amends AS 08.40.190 to add an explicit exclusion for the state from the application of AS 08.40. The state is currently implicitly excluded according to two attorney general's informal opinions, 1983 Inf. Op. Att'y. Gen. (Dec. 20); 166-249-84 and 1979 Inf. Op. Att'y. Gen. (June 27); A66-510-79.

Section 15 of the bill amends AS 08.48.331 to add communications, telecommunications, or broadcast engineers to those who are listed as exempt from AS 08.48. These categories of engineers have always been assumed to be exempt, but recently some questions have been raised. Inclusion in the listing under AS 08.48.331 will make specific that exemption.

Section 16 amends AS 08.62.040(a) by adding a paragraph to clarify the power of the Board of Marine Pilots to adopt pilotage fees. The language of a 1980 amendment to this subsection was unintentionally ambiguous in this regard.

Sections 17, 18, 21, and 24 of the bill amend four sections in AS 08.64, concerning the Medical Board, to delete cross-references to AS 08.64.200(1), a residency requirement that was repealed in 1983.

Sections 19, 20, 22, 23, and 25 of the bill amend five sections of AS 08.64 concerning medical licensing. Section 19 changes the shortest allowable deadline for application to take the medical license exam from 40 to 120 days before the exam. This corresponds to the deadline set by the Medical Board in 12 AAC 40.015. Section 20 deletes mention of an oral exam in AS 08.64.220(a) because only a written exam is given. Section 22 amends AS 08.64.255 to require an interview for all applicants for licensure, not just applicants for licensure by endorsement. Section 23 deletes AS 08.64.260(b), (c), and (d) concerning retaking parts of the exam, to conform with a recent change in the format of exam by the National Federation of State Medical Boards, Inc. Finally, sec. 25

of the bill clarifies that licenses issued by the medical board must be renewed every four years.

Section 26 of the bill amends AS 08.70.040 to change the required frequency of meetings of the Board of Nursing Home Administration from twice a year to as often as necessary.

Sections 30 -- 33 of the bill amend statutes in AS 08.98 concerning the Board of Veterinary Examiners to clarify and tighten the requirements for licenses and temporary permits.

Sections 34 and 35 of the bill amend AS 44.19 155(a) and (d) to enlarge the pool of eligible members on the Coastal Policy Council from just municipal mayors and assembly or council members, nominated by municipalities, to include other residents of a region who are nominated by coastal resource service area boards. This removal of unnecessary restrictions on council membership will improve the access of the public to serve on the council, and will provide better representation of regions in the unorganized borough.

Section 36 of the bill repeals a number of provisions in AS 08, most of which are specific provisions concerning the terms of office of members of particular boards, commissions, and councils which are no longer necessary or appropriate because of the new uniform provisions, enacted by secs. 1 -- 3 of the bill, for all boards, commissions, and councils authorized under AS 08. For your convenience in considering these repeals, they are listed, below along with the board or profession they affect:

- AS 08.04.040 -- Board of Public Accountancy
- AS 08.13.020 -- Board of Barbers and Hairdressers
- AS 08.20.025
and 030 -- Board of Chiropractors
- AS 08.36.020
and 025 -- Board of Dental Examiners
- AS 08.40.020 -- Board of Electrical Examiners
- AS 08.48.021 -- Board of Architects, Engineers,
and 041 and Land Surveyors
- AS 08.54.020 -- Guide Licensing and Control Board
- AS 08.62.020 -- Board of Marine Pilots
- AS 08.64.020
and 040 -- Medical Board

pk 195

- AS 08.68.020
030, & 050 -- Board of Nursing
- AS 08.70.020 (b)
and (c) -- Board of Nursing Home Admini-
strators
- AS 08.71.045 -- Board of Dispensing Opticians
- AS 08.72.020
025, & 030 -- Board of Examiners in Optometry
- AS 08.80.020
and 105 -- Board of Pharmacy
- AS 08.86.020
and 025 -- Board of Psychologist and Psycho-
logical Associates Examiners
- AS 08.88.021 -- Real Estate Commission
- AS 08.98.020
and 025 -- Board of Veterinary Examiners

The remaining repeals contained in sec. 36 are

(1) of AS 8.40.190(b)(7), an exemption of low voltage work from the electrical administrator license requirements, which the Board of Electrical Examiners has determined is no longer appropriate;

(2) of AS 08.54.142, 08.54.144, 08.54.146, 08.54.170(c), and 08.54.240(5) requiring a separate license for transporting big game and hunters. The division of occupational licensing in the Department of Commerce and Economic Development, the Guide Licensing and Control Board, the division of game in the Department of Fish and Game, and the division fish and wildlife protection in the Department of Public Safety, all agree that the transporting license is unnecessary and redundant;

(3) of AS 08.64.370(5), an exemption from the medical licensing requirements for residents and interns which the Medical Board has determined is in conflict with AS 08.64.272, providing for temporary permits for the same persons and for students; and

(4) of AS 08.84.065(d), concerning temporary permits for foreign trained physical therapists, to eliminate the different treatment of these applicants from others.

Section 35 of the bill is a transition provision that states that no provision of the bill is intended to affect the unexpired term of a current board, commission, or council member.

OK 195

Please join with all of the affected boards, commissions, and councils in this effort to improve the efficiency and effectiveness of their operation and to streamline their statutes.

Sincerely,

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

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 195
 Title: An Act making miscellaneous amendments to Boards, Commissions & Councils
 Sponsor: Rules Committee
 Requestor: Governor
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.
 Program Category Affected: Consumer Protection
 BRU, Program or Subprogram(s) Affected: Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE		-0-	-0-	-0-	-0-	-0-
----------------	--	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

The bill will standardize limitations and terms of office for board members from the various individual board statutes to a central licensing statute under AS 08.01 (Centralized Licensing Act). The bill is also intended to eliminate the fragmentation in the different board statutes and to revise language which have caused conflicts, problems and ambiguities.

Prepared By: Jennifer Strickler, Management Analyst Phone: 465-2144

Division: Occupational Licensing Date: February 13, 1985

Approved by Commissioner: Loren H. Lounsbury Date: 2/14/85

Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

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

7/1/84



RECORDS CERTIFICATION

I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James A. Smith
Signature of Camera Operator

11/24/89
Date

S B

1 0 9

MAR 26 1985

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
DON CLOCKSIN
L.S. KURTZ, JR.
JUDGE (Ret.) THOMAS B. STEWART
FREDERIC E. BROWN
WILSON L. CONDON

ALASKA STAFF
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878
OFFICE LOCATION:
ROOMS 5 AND 8
110 SEWARD ST.
JUNEAU, ALASKA 99801

EXECUTIVE SECRETARY
TAMARA BRANDT COOK

MEMORANDUM

TO: Senate Labor and Commerce Committee
✓ Senator Fred Zharoff, Chairman
Senator Richard Eliason, Vice Chairman
Senator Don Bennett
Senator Bill Ray
Senator John Sackett

FROM: Dick Regan, Research Director
Alaska Code Revision Commission

DATE: March 26, 1985

RE: HB 246/SB 199, Alaska Corporation Code

Please note that the House Judiciary Committee is hearing HB 246, a general revision of the state's business corporation laws, at 1:30 p.m., on Friday of this week, March 29th, in Room 124 of the Capitol.

The bill is introduced in both houses. In the Senate it is SB 199 that is before your committee.

Both the bill and the detailed commentary on it in House and Senate Joint Journal Supplement No. 8 run to over 200 pages. Attending the House Judiciary hearing would provide some background and overview of the bill that could simplify your review.

We hope you attend or send a staff member.

Professor Daniel Wm. Fessler has been consultant and draftsman for the code revision commission on the bill. He will be here on Thursday, March 28th. I will be glad to schedule times for legislators to meet with him. Our telephone: 4873.

DR:chw

MAR 18 1985

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
DON CLOCKSIN
L.S. KURTZ, JR.
JUDGE (Ret.) THOMAS B. STEWART
FREDERIC E. BROWN
WILSON L. CONDON

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878
OFFICE LOCATION:
ROOMS 5 AND 8
110 SEWARD ST.
JUNEAU, ALASKA 99801
MEMORANDUM


EXECUTIVE SECRETARY
TAMARA BRANDT COOK

TO: Senator Fred Zharoff, Chairman
Senate Labor and Commerce Committee

FROM: Dick Regan, Research Director
Alaska Code Revision Commission

DATE: March 18, 1985

RE: SB 197 on recording;
SB 198 on security interests in real property;
SB 199 on corporations



I know Senator Rodey has suggested to you that the Labor and Commerce Committee and the Judiciary Committee might work out an approach to the referenced bills--possibly joint hearings or waiver of the Labor and Commerce referrals. However, I do not know what your response to Senator Rodey has been.

The bills are introduced in both houses. In the House they have a single referral, to Judiciary. Joint House/Senate Journal Supplements numbered 6, 7 and 8 explain the bills and are attached for reference.

The bills have been introduced before, but committees have been unable or unwilling to give them the time they require. Senator Rodey's familiarity with the bills could be useful.

They are technical bills and can be time-consuming. That is especially true of the corporations code SB 199/HB 246. The bill is a hefty one; it seems having the consultant/draftsman to the commission available for questions at a hearing is necessary if the hearing is to be meaningful. This creates scheduling problems that make joint hearings the only practical solution, or so it seems to me.

The House Judiciary Committee chaired by Rep. Mike M. Miller has scheduled the corporations code HB 246 (SB 199) for hearing at 1:30 p.m., on March 29th when the commission's consultant and draftsman, UC Davis law professor Dan Fesler, will be here for a commission meeting. We hope you and Senator Rodey

will consider whether you can work with Rep. Miller toward making that a joint hearing. If there is not a joint hearing with House Judiciary on March 29th, perhaps a Senate committee hearing could be scheduled the following Monday, April 1.

I will be available to your committee or to any joint committee on SB 197 (recording) and SB 198 (security interests in real property) at your convenience. Commissioner Jerry Kurtz who has worked with the security interests bill from its inception would be available most April dates and would be an especially valuable witness on that bill. He has extensive experience representing both plaintiffs and defendants in foreclosures.

I will be happy to discuss these matters with you. Our telephone number in Juneau is 465-4878.

DR:chw

Enclosures

cc: Sen. Pat Rodey

Rep. Mike M. Miller

ALASKA STATE SENATE

PATRICK RODEY
SENATOR

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3793
(907) 475-3754



MEMORANDUM

TO: Senator Fred Zharoff, Chairman
Senate Labor and Commerce Committee

FROM: Senator Patrick M. Rodey *PR*

DATE: March 7, 1985

RE: SB 197 on recording;
SB 198 on security interests in real property;
SB 199 on corporations

As you know, three bills drafted by the code revision commission are referred to your Labor and Commerce Committee, then to Judiciary. Enclosed are the bill numbers for the bills in both Senate and House, their referrals, and numbers of the journal supplements where commentaries are printed.

I am generally familiar with the bills since I have been a member of the commission as it worked on them. For economy of effort and time on these technical bills, I ask if Labor and Commerce wishes to hold joint hearings on them with the Judiciary Committee or wishes to waive the Labor and Commerce referrals. Given other demands on our respective committees and the commitment of committee time that is required on the bills, it seems joint hearings or waiver would avoid costly duplication of effort.

The corporations code bill, SB 199, will be a special problem for any committee that holds hearings. Careful committee work requires the participation of the draftsman for the commission, a UC Davis law professor whose schedule must be considered. Possible hearings outside of Juneau are another consideration. Yet another consideration is possible coordination with the House Judiciary Committee on joint hearings.

Please let me know your wishes on these three bills.

PMR:chw
Enclosure

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
DON CLOCKSIN
L.S. KURTZ, JR.
JUDGE (Ret.) THOMAS B. STEWART
FREDERIC E. BROWN
WILSON L. CONDON

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878
OFFICE LOCATION:
ROOMS 5 AND 8
110 SEWARD ST.
JUNEAU, ALASKA 99801

EXECUTIVE SECRETARY
TAMARA BRANDT COOK

MEMORANDUM

TO: Senator Fred Zharoff, Chairman
Senate Labor and Commerce Committee

FROM: Dick Regan, Research Director
Alaska Code Revision Commission *Dick Regan*

DATE: March 19, 1985

RE: Treatment of proxies in corporation
code bill, SB 199

I am looking at the section of SB 199 that you read from when we talked this morning (proposed AS 10.05.418). The sentence you were reading continues with the following underlined clause:

A proxy continues in full force and effect until revoked by the person executing it, except as provided in this section.

The sentence that precedes that sentence limits the validity of a proxy to eleven months as the general rule. Subsection (e) then narrowly limits the use of an exception. There is an explanation of the section at pp. 98-99 of the commentary (Joint House and Senate Journal Supplement No. 8).

I'm sure my answer to your question on proxies was misleading. I think that is a good illustration of why the presence of the draftsman of the bill at committee hearings is a practical necessity. Others of us must first admit our limitations and then answer questions about the specific provisions of the bill as best we can. But generally we will not have an authoritative answer until we have researched a question.

The first chance for a hearing with Professor Fessler as a witness is at 1:30 p.m., March 29, assuming your Labor and Commerce Committee (or Senator Rodey's Judiciary Committee if the Labor and Commerce Committee referral is waived) arrange a joint hearing with the House Judiciary Committee on the identical House bill, HB 246 on March 29.

I will be glad to research and respond to any specific questions you may have on SB 199.

As I mentioned, I believe waiver or joint hearings are the practical way to deal with this bill and with the other two code revision commission bills we discussed, SB 197 (recording) and SB 198 (security interests in real property).

DR:chw

cc: Rep. Mike M. Miller
Sen. Patrick M. Rodey

ALASKA CODE REVISION COMMISSION



APR 2 1985

COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
DON CLOCKSIN
L.S. KURTZ, JR.
JUDGE (Ret.) THOMAS B. STEWART
FREDERIC E. BROWN
WILSON L. CONDON

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878
OFFICE LOCATION:
ROOMS 5 AND 8
110 SEWARD ST.
JUNEAU, ALASKA 99801
MINUTES

EXECUTIVE SECRETARY
TAMARA BRANDT COOK

February 8, 1985
Room 205, Assembly Building
Juneau, Alaska
CONTACT: 465-3672

PRESENT: Chairman John W. Abbott (pre-
siding), Jerry Kurtz, Judge Tom
Stewart, Rep. Don Clocksin, Jim
Baldwin, Sen. Pat Rodey, Fred
Brown

ABSENT: Wil Condon

ALSO PRESENT: Dan Fessler, Craig Stowers,
Dick Regan, Tam Cook and
Catherine Walsh

The February 8, 1985 Alaska Code Revision Commission meeting was called to order at 9:15 a.m. Roll call followed.

As the first order of business, Chairman Abbott welcomed aboard new commissioner Rep. Don Clocksin and presented to members a bit of his background.

Without objection the minutes of the November 29-30, 1984 meeting were unanimously approved.

The next item for consideration was the Sunset report. Dick Regan referred to his memorandums on the four different recommendations suggested in the audit. Judge Stewart moved that the commission not seek legislation with respect to contracting powers. After some discussion, an amended motion passed that subsection (c) be rewritten and then the main motion passed unanimously. Don Clocksin moved that the commission express its agreement with the recommendation in the audit report that the Legislative Council appoint the public members of the commission. Pat Rodey seconded the motion and it carried unanimously. There was a consensus to approve the move of the ACRC office to the Legislative Affairs Agency as long as it would be cost effective. The commission also approved the concept regarding noninterruption of terms and appointments. The commission did not agree to the name change recommendation. Dick's response language will be used with some wording changes.

The meeting was then turned over to Professor Fessler for consideration of the Alaska Nonprofit Corporations Code and the decisions to be made with respect to religious corporations, government funded nonprofits, and the very small nonprofit corporations. Professor Fessler recommended the Wyoming statute as the model to start from in drafting sections on religious corporations. The commission agreed to begin with a bare bones model and then add to it. Dan will draft a provision for discussion.

Following the lunch break, the commission returned to the record for a brief discussion of budget and contract status. Don Clocksin informed members that there will be a 20 percent cut in the LAA budget. The \$15,000 nonprofit contract was explained to members: \$10,000 of ACRC money and \$5,000 from the Department of Law. The for profit contract money is exhausted. There remains in the cooperatives contract a balance of \$30,450. Senator Rodey offered to send a letter to Billy Berrier to justify further work on the ACC. The travel and per diem category of the budget was also discussed. Dick Regan asked whether the money in the cooperatives contract could be carried over to FY 86. Tom Judson of the Department of Law's administrative services section explained that the legislature would have to change the lapse date. Professor Fessler will continue working on the co-op project but will emphasize work on the nonprofit corporation draft through June 30, 1985. Fred Brown moved to add \$4,600 into the travel/per diem category. Without objection the motion passed unanimously. Jerry Kurtz moved to encumber \$6,000 for an ACC contract. The motion passed without objection.

At this point members scheduled the forthcoming meeting. It will be held in Juneau on Friday and Saturday, March 29-30, 1985.

The commission returned to consideration of the ANCC and government funded nonprofit corporations. After some discussion on basic minimal reporting requirements and legal status, the commission chose to adopt Professor Fessler's recommendation number 1 on page 23 of Working Paper #3. Following a brief recess, the commission returned to the record to consider the very small nonprofit organizations with volunteer staff. Craig Stowers discussed with the commission the alternatives provided in Part IV of Working Paper #3 on reporting, finance and quorum requirements. The commission provided informal drafting guidance but deferred formal votes until a draft is before it at its next meeting.

There being no further business to come before the meeting, it was recessed at 4:55 p.m.

Respectfully submitted,

Catherine H. Walsh
Catherine H. Walsh, Secretary
Alaska Code Revision Commission

CHW:s

cc: Members, Alaska Legislative Council

Warren Endicott, Executive Director
Legislative Affairs Agency

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
DON CLOCKSIN
L.S. KURTZ, JR.
JUDGE (Ret.) THOMAS B. STEWART
FREDERIC E. BROWN
WILSON L. CONDON

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878
OFFICE LOCATION:
ROOMS 5 AND 8
110 SEWARD ST.
JUNEAU, ALASKA 99801

EXECUTIVE SECRETARY
TAMARA BRANDT COOK

MINUTES

February 9, 1985
Room 205, Assembly Building
Juneau, Alaska
CONTACT: 465-3672

PRESENT: Chairman John W. Abbott
(presiding), Fred Brown,
Rep. Don Clocksin, Jim
Baldwin, Judge Tom Stewart

ABSENT: Sen. Pat Rodey, Jerry Kurtz,
Wil Condon

ALSO PRESENT: Prof. Dan Fessler, Craig
Stowers, Forrest Paulson,
Tam Cook, Dick Regan and
Catherine Walsh

The February 9, 1985 Alaska Code Revision Commission meeting was called to order at 9:20 a.m. Roll call followed and a quorum was present.

As the first order of business, the commission began consideration of Working Paper No. 1 on cooperatives. Chairman Abbott welcomed Forrest Paulson, President of the Alaska Commercial Fishing and Agricultural Bank, to the meeting. Mr. Paulson explained to the members that his bank is a cooperative subject to chapter 15. Professor Fessler started going through his working paper. It was noted that for the present we are dealing with a general cooperatives statute excluding electrical and telephone cooperatives. The topics for discussion were members role and impact; qualifications for membership; due process rights; capital stock to nonmembers and antitrust implications; the Clayton Act amendment and the Capper-Volstead Act. Dick Regan was requested to call upon the House Research Agency for assistance with respect to cooperatives issuing capital stock to nonmembers. Other items receiving consideration were proxies, quorum requirements; inspection rights; annual/biennial reports; derivative cause of action; management; director removal; filling unexpired terms; meeting by electronic means and officers.

Following the lunch break, the commission returned to the record to finalize consideration of Professor Fessler's Working Paper No. 1 on cooperatives. Further discussed were distributions; determination of net proceeds; generally accepted accounting principles; organic changes; and conversions of corporations into cooperatives. Dick was requested to research the history of sec. 450 to see if a corporation has ever been converted to a cooperative under the section.

Drafting guidance was given but formal votes were not taken on the sections pending receipt of a draft. Professor Fessler for his part will provide a paste-up draft bill for review at the next meeting.

The next item on the agenda was miscellaneous business. Soliciting for the position of research director was discussed. A draft advertisement will be prepared for circulation in Fairbanks, Anchorage and Juneau. Review of any resumes will be on the forthcoming meeting agenda.

Fiscal notes on the commission's bills were considered. The agenda for March 29-30 was set with consideration of the Administrative Procedure Act on Friday and cooperatives on Saturday.

Jim Baldwin moved to adjourn the meeting at 3:10 p.m., and without objection the motion passed unanimously.

Respectfully submitted,

Catherine H. Walsh

Catherine H. Walsh, Secretary
Alaska Code Revision Commission

CHW:s

cc: Members, Alaska Legislative Council
Warren Endicott, Executive Director
Legislative Affairs Agency



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/24/89
Date

SB

204

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P.O. BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2700

March 9, 1985

Michael Thill
Professional Assistant
Labor and Commerce Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Michael:

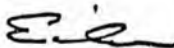
Just a note for your file to advise that AS 36.98, which is proposed for amendment in Senate Bill 204 (An Act relating to contracts for architectural, engineering, and land surveying services), falls outside of the Department of Labor's jurisdiction. The Departments of Administration and Transportation and Public Facilities are responsible for administration of this particular chapter.

I would also mention that although Senate Bill 204 would permit a contracting agency to set aside the Alaska bidder preference provisions of AS 37.05.230(1), the employment preference requirements of AS 36.10.010 would still apply to architectural, engineering, and surveying work on public construction projects. Therefore, this is not of concern to the Department.

Accordingly, the Department of Labor has no comments to offer on the amendments proposed in Senate Bill 204.

Thank you.

Sincerely,



Eileen Plate
Legislative Liaison

VERNON AKIN AND ASSOCIATES

CONSULTING ENGINEERS

P.O. BOX 1081

JUNEAU, ALASKA 99802

PHONE (907) 586-6622

March 13, 1985

Dear Legislator and Friend:

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

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

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

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

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

Letter, SB 204

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

Cordially

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

Vernon Akin

Alaska State Legislature



SENATOR

ARLISS STURGULEWSKI

Chairman, Senate Resources Committee

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

Member, Senate Community and Regional Affairs Committee

2957 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99503

While in Juneau

POUCH V

JUNEAU, ALASKA 99811

(907) 465-3818

Senate

MEMORANDUM

March 21, 1985

TO: Members, Senate Community & Regional Affairs Committee

FROM: Senator Arliss Sturgulewski

RE: Senate Bill 204

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

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

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

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

Alaska State Legislature

SENATOR

ARLISS STURGULEWSKI

Chairman, Senate Resources Committee

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

Member, Senate Community and Regional Affairs Committee



2957 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99508

White-n Juneau

POUCH V

JUNEAU, ALASKA 99811

(907) 465-2818

Senate

M E M O R A N D U M

March 21, 1985

TO: Members, Senate Community & Regional Affairs Committee

FROM: Senator Arliss Sturgulewski

RE: Attached amendment

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

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

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

A M E N D M E N T

Offered in the SENATE

By Sturgulewski

TO: SB 204

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

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

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

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

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

Reletter the following paragraph accordingly.

March 5, 1985

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

Dear Senator Sturgulewski:

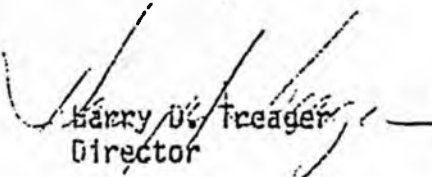
Re: Senate Bill #204

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

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

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

Sincerely,


Harry D. Treadwell
Director

HDT/1t2354t-1
030435a

cc: Loren H. Lounsbury, Commissioner

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

Original sponsors: Sturgulewski and Rodey

1 IN THE SENATE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

2

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

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

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

9

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

10

* Section 1. AS 36.90 is amended by adding a new section to read:

11

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

15

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

18

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

21

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

24

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

25

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

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

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

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

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

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

1 correlates price with points scored.

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

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

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

9

SENATE COMMUNITY & REGIONAL AFFAIRS
STANDING COMMITTEE
April 18, 1985
3:32 p.m.

Members Present: Senator Edna DeVries, Chair
Senator Frank Ferguson
Senator Jack Coghill
Senator Arliss Sturgulewski

COMMITTEE CALENDAR

CSHB 253 (C&RA) An Act allowing municipalities to exempt land from property taxes and from special assessments for fire protection service and fire protection facilities; and providing for an effective date.

CSHB 72 (C&RA) An Act relating to municipal government; and providing for an effective date.

SB 204 An Act relating to contracts for architectural, engineering, and land surveying services; and providing for an effective date.

WITNESS REGISTER

Linda Anderson
Lobbyist
Fairbanks North Star Borough
130 Seward Street, #304
Juneau, Alaska 99801
586-1608
Position Statement: Testified in support of CSHB 253 (C&RA).

Scott Burgess
Executive Director
Alaska Municipal League
105 Municipal Way, Suite 301
Juneau, Alaska 99801
586-1325
Position Statement: Stated Alaska Municipal League does not have a position on SB 204.

Melissa Fouse, Legislative Aide
Senator Arliss Sturgulewski's Office
Alaska Legislature
Pouch V
Juneau, Alaska 99811
465-3818
Position Statement: Testified on amendments to SB 204.

Richard Ritter
Alaska Chapter, American Institute of Architects
800 Glacier Avenue
Juneau, Alaska
586-1371
Position Statement: Testified in support of SB 204.

John J. Simpson
Director
Standards & Technical Services
Department of Transportation and Public Facilities
Pouch Z
Juneau, Alaska 99811
465-2951
Position Statement: Testified that the department supported
Committee Substitute for SB 204.

PREVIOUS ACTION

There was no previous committee action on CSHB 72 (C&RA).

SB 204 was previously heard by the committee on March 21, 1985 and on April 16, 1985.

CSHB 253 (C&RA) was previously heard by the committee on April 2, 1985.

ACTION NARRATIVE

Tape #1, Side A
Number 000

Chair DeVries called the meeting to order at 3:32 p.m. All committee members were present except Senator Vic Fischer.

CSHB 253 (C&RA)

Number 009

Linda Anderson, Lobbyist, Fairbanks North Star Borough, commented on problems with CSHB 253 (C&RA) expressed by the state assessor at the last committee meeting--possible municipal revenue sharing and equal protection problems. She said there would be no negative effect to municipalities if they chose local option under the bill. She stated the assessors were still opposed to the bill and their opposition was a policy matter.

Number 029

Senator Sturgulewski said she did not object to the bill going forward, but she would have no recommendation on moving the bill out of committee. She said she could see some problems in application and shifting of costs even though it gives local option.

Number 037 Senator Coghill moved passage of CS for HB 253 (C&RA) with individual recommendations and asked unanimous consent. It was so ordered.

CSHB 72 (C&RA)

Number 047 Chair DeVries called the committee's attention to the memorandum prepared by committee staff and said she would like committee members to consider amending CSHB 72 (C&RA) to conform to the Senate companion bill, CS SB 142, passed by Senate Community & Regional Affairs.

Number 071 Senator Coghill moved that CSHB 72 (C&RA) be amended to conform to the committee's action on SB 142 and asked unanimous consent. The amendment was adopted.

Number 153 Senator Sturgulewski moved an amendment to CSHB 72 (C&RA) amended, that brings back to current law the matter of requiring unincorporated communities and second class communities to go through first class and prohibiting them from going directly to Home Rule. She asked unanimous consent. Without objection the amendment was adopted.

Number 181 Senator Coghill moved passage of CS HB 72 (C&RA) amended with individual recommendations and asked unanimous consent. It was so ordered.

SB 204

Number 208 Senator Sturgulewski commented on concerns with the original version of the bill and the proposed amendments dealing with them.

Number 217 Scott Burgess, Executive Director, Alaska Municipal League, said he was not prepared to state the League's position on the bill. Municipalities often use people to check plans and they're not registered. He thought there may be situations where a person is hired to do what may be called "architectural and engineering or land surveying" services. He suggested that operative language might should be "as required by the contract".

Number 246 Melissa Fouse, Aide to Senator Sturgulewski, explained the location of the amendment dealing with "design build", page 3, (f).

Number 258 Senator Sturgulewski commented on concerns with the bill dealing with a state registration

requirement; design build, local hire and differences between architects and the Department of Transportation in cases where price may be considered a factor. She said the substitute bill corresponds with what the House has done and the wording used in the House bill.

Number 280

Richard Ritter, Alaska Chapter, American Institute of Architects, said he supported the proposed substitute bill.

Number 308

John Simpson, Division of Standards and Technical Services, Department of Transportation and Public Facilities, said the department could support the substitute bill.

Number 337

Richard Ritter commented on the problem of architects and engineers who are not registered in the state doing work in Alaska.

Number 348

John Simpson said his department has required Alaska registration because people being used should have arctic engineering experience.

Number 359

Senator Sturgulewski moved passage of Committee Substitute for SB 204 with individual recommendations and asked unanimous consent. It was so ordered.

Number 379

Meeting was adjourned at 4:04 p.m.

Alaska State Legislature

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



2957 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99508

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

Senate

M E M O R A N D U M

18 April 1985

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

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

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

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

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

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

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

Original sponsors: Sturgulewski and Rodey

IN THE SENATE

BY THE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

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

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

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

* Section 1. AS 36.90 is amended by adding a new section to read:

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

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

(2) a partnership that is not qualified under AS 08.48.25 to provide the architectural, engineering, or land surveying service required by the contract; or

(3) a corporation that is not authorized under AS 08.48.24 to offer the architectural, engineering, or land surveying service required by the contract.

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

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

Handwritten scribbles and initials on the left margin, including a large 'S' and 'M'.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

agency shall award a contract for those services at fair and reasonable compensation as determined by the state agency, after consideration of the estimated value of the services to be rendered, and the scope, complexity, and professional nature of the services.

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

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

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

(e) The consideration of price under (d) of this section as a factor in the selection of architectural, engineering, and land surveying services may not exceed 20 percent of the scoring formula used in evaluating proposals. The state agency shall base the evaluation

previously established schedule that correlates

TECHNICAL CLAUSE

price with
~~objectively with the points scored.~~

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

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

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

~~DEF. -
New sections~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

SENATE COMMUNITY & REGIONAL AFFAIRS
STANDING COMMITTEE
April 16, 1985
3:40 p.m.

Members Present: Senator Edna DeVries, Chair
Senator Frank Ferguson
Senator Vic Fischer
Senator Arliss Sturgulewski

COMMITTEE CALENDAR

- SB 270 An Act relating to the durational residency requirement for a candidate for a home rule charter commission; and providing for an effective date.
- SB 204 An Act relating to contracts for architectural, engineering, and land surveying services; and providing for an effective date.

WITNESS REGISTER

Jenny Logsdon, Aide
Senator Kerttula's Office
Alaska Legislature
Pouch V
Juneau, AK 99811
465-4967
Position Statement: Testified in support of SB 270.

John J. Simpson
Director
Standards & Technical Services
Department of Transportation and Public Facilities
Pouch Z
Juneau, AK 99811
465-2951
Position Statement: Testified in opposition to SB 204.

Bob Link
Director
General Services & Supply
Department of Administration
Pouch C
Juneau, Alaska 99811
465-4750
Position Statement: Opposed SB 204.

PREVIOUS ACTION

There was no previous action on SB 270 to report. SB 204 was heard by the committee on March 21, 1985.

ACTION NARRATIVE

Tape #1, Side A,
Number 000

Chair DeVries called the meeting to order at 3:40 p.m. All members of the committee were present except Senator Coghill, who was out of town.

Number 008

Jenny Logsdon, Aide to Senator Kerttula, testified that the proposed committee substitute for SB 270 would change the residency requirement for candidates for a charter commission from 3 years to one year.

Number 052

Senator Sturgulewski said she thought a 3 year requirement would be challenged.

Number 058

Senator Sturgulewski moved passage of CS for SB 270 with individual recommendation and asked unanimous consent. Without objection, it was so ordered.

SB 204

Number 098

John Simpson, Department of Transportation & Public Facilities, testified that the bill covers a wide range of projects and he felt all state projects should not be excluded from considering price.

Number 143

Senator Sturgulewski, as a sponsor of the bill, said she was attempting to find a way to accommodate differences in state contracts in the bill.

Number 172

Senator Vic Fischer commented that the Legislature had previously amended resident hire law and it did not apply to architects and engineers.

Number 192

Bob Link, Department of Administration, said the department opposed the original bill, but was less opposed to the substitute bill. He felt the bill takes the department's flexibility away in awarding contracts. The bill totally locks out consideration of price in awarding contracts.

- Number 252 Richard Ritter, Alaska Chapter, American Institute of Architects, testified in support of SB 204. He commented that under an Attorney General's opinion architects and engineers are not protected by Alaska hire law. He said the University of Alaska has a tacit policy of going out of state for design work.
- Number 350 Senator Sturgulewski read a proposed amendment which required that state contract work be done by Alaska registered architects and engineers.
- Number 376 Senator Sturgulewski and Senator Vic Fischer discussed the exclusion of municipalities in the committee substitute.
- Number 416 Senator Sturgulewski said she felt the committee substitute bill required additional work on the matters discussed concerning state registered requirement; local hire and design build.
- Number 436 The meeting was adjourned at 4:15 p.m.

Bannister
4/10/85

not adopted

Original sponsors: Sturgulewski and Rodey

1
2 IN THE SENATE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

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

4 IN THE LEGISLATURE OF THE STATE OF ALASKA

5 FOURTEENTH LEGISLATURE - FIRST SESSION

6 A BILL

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

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

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

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

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

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

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

1
2 state agency may include price as a factor in the selection of archi-
3 tectural, engineering, and land surveying services when all of the
4 following conditions exist:

5 (1) the architectural, engineering, or land surveying
6 services required by the contract are repetitive;

7 (2) the contract does not require design work;

8 (3) the state agency has thoroughly defined the scope of
9 the project and the architectural, engineering, or land surveying
10 services required by the contract.

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

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

17 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
18 10.070(c).

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

Page 1 of 1

REQUEST

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

FISCAL DETAIL

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
----------------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
----------------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

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

Prepared By: Robert J. Link *RL* ^A

Division: General Services & Supply

Phone: 465-2250

Date: March 7, 1985

Approved by Commissioner: Lisa Rudd *LR*

Agency: Department of Administration

Date: 3/18/85

Distribution (by Agency preparing fiscal note):


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

Position Paper
SB 204

The Department of Administration is opposed to this bill.

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


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



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

3/16/85

Date



Commissioner Lisa Rudd
Department of Administration

3/18/85

Date

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
 Bill/Resolution No.: SB 204
 Title: An Act Relating to Contracts for Arch., Engr. & Land Surveying Services
 Sponsor: Sturgulewski, Rodey
 Requestor: _____
 Date of Request: 3/18/85

FISCAL DETAIL
 Agency Affected: DOT&PF, DEC, DNR, DOA
 Program Category Affected: Design, Construction, Lands, General Services
 BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

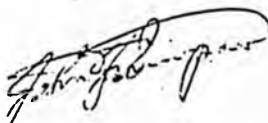
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

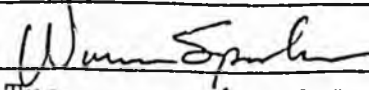
POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

See Attachment

Prepared By: John J. Simpson 
 Division: Standards & Technical Services Phone: 465-2951
 Date: 3/19/85

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

Distribution (by Agency preparing fiscal note):

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

7/1/84

Analysis - S B 204

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

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

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



Dept. of Transportation & Public Facilities

Position Paper

BILL NO: SB 204

APPROVED: R. J. Knapp
Commissioner

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

DATE: 3-21-85

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

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

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

(d) Notwithstanding any other provisions of this section, the State may include price as a factor in selecting AE&LS' services when, in the judgment of the State, the scope, nature, and amount of services required are sufficiently defined so as to reasonably enable proposing firms or individuals to compete with a substantially equal understanding and/or interpretation of the services required. In order to include price as a factor in selection, the State must have at least one person involved in the evaluation of proposals who is registered in the State of Alaska in the primary Architectural, Engineering or Land Surveying discipline of the contract.

For further information call Susan Fleischhauer at 465-3900.

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

Alaska State Legislature



Senate

2957 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99508

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

SENATOR

ARLISS STURGULEWSKI

Chairman, Senate Resources Committee

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

M E M O R A N D U M

March 21, 1985

TO: Members, Senate Community & Regional Affairs Committee
FROM: Senator Arliss Sturgulewski
RE: Senate Bill 204

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

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

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

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

Alaska State Legislature

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



2957 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99508

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

Senate

MEMORANDUM

March 21, 1985

TO: Members, Senate Community & Regional Affairs Committee

FROM: Senator Arliss Sturgulewski

RE: Attached amendment

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

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

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

A M E N D M E N T

Offered in the SENATE

By Sturgulewski

TO: SB 204

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

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

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

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

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

Reletter the following paragraph accordingly.

March 5, 1985

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

Dear Senator Sturgulewski:

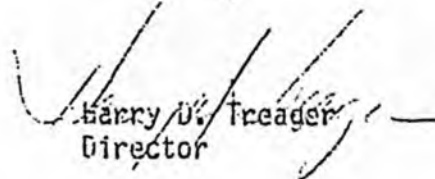
Re: Senate Bill #204

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

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

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

Sincerely,


Harry D. Treadwell
Director

HDT/lt2354t-1
030435a

cc: Loren H. Lounsbury, Commissioner

VERNON AKIN AND ASSOCIATES

CONSULTING ENGINEERS

P.O. BOX 1081

UNNEAU, ALASKA 99802

PHONE (907) 586-6022

March 13, 1985

Dear Legislator and Friend:

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

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

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

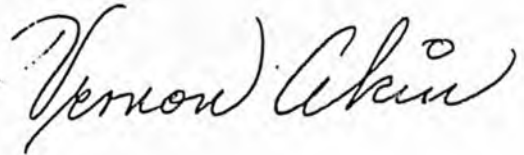
The proponents of the bidding arrangement say there is no competition. This is not correct. Under the present system, which has proven over the many decades to be the best method for the results desired, there is competition. The difference is that qualifications are the primary basis for selection--not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

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

Letter, SB 204

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

Cordially

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

Vernon Akin



5B 2004

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

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

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

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

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

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

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

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

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


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

Alaska
MUNICIPAL
League

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

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

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

FROM: Scott A. Burgess 
Executive Director

DATE: March 21, 1985

SUBJECT: SB 204

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

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



The 700% Solution—A Billion Dollar Ripoff

By Paul J. Andrews

(A commentary in the April 1980 edition of Government Executive addressed the issue of the high cost of architect-engineer services in Federal contracts. The following opinion/commentary is an update on that same issue and was submitted by a longtime (1946-1973) Federal employee who is now retired from Government service but retains a strong interest in Federal expenditures. An attorney, Mr. Andrews spent much of his Federal service in the areas of supply, contracts, claims and compliance.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the services required. The federal or grantee client must accept this price or lose that A/E. The client knows if he goes to the other selected A/E's he will be offered the same industry rates on a take-it or leave-it basis. So, why lose the best qualified A/E?

Statistics bear this out. In 1979, the Department of Defense reported to a House Committee that "It is estimated by the military that less than two percent of contract negotiations are formally terminated with the top-ranked (A/E) firm and negotiations undertaken with the second-most-qualified firm, and almost non-existent when negotiations are undertaken with the third or lesser-ranked firm". In the Military Construction Program in fiscal years 1979, 1980 and 1981 the Navy and Army awarded 480 A/E contracts—474 to the best-qualified firm and 6 to the second (or 98.7 percent to the best-qualified firms). Efforts by the Corps of Engineers to test competitive pricing for A/E services were thwarted by the Department of Defense and Congressional committees on the ground that such tests were forbidden by the Brooks Act.

The Comptroller General continues to issue reports favoring a form of price-competition for A/E services but refrains from raising the subject when testifying on procurement legislation. However, in presenting the views of the Department of Justice on the OFPP draft "Proposal for a Uniform Federal Procurement System", dated February 12, 1982, Assistant Attorney General Robert A. McConnell, in his letter of February 20, 1982, stated that although Justice supported the pro-competitive policy objectives of the proposal, "... we strongly believe it to be deficient in not requiring competitive procurement of architect and engineering services." Justice recommended repeal of the Brooks Act and elimination of "the

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

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

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

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

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

LOW COST LARGEST SELECTION TEMPEST PRODUCTS

All Types of TEMPEST PPL Products Sought For Display and Sale at THE TEMPEST STORE	SPECIAL 10MB Disk Upgrade for UNTEMPEST IBM PC's Installed \$599
ITC PC AT-T Designed to meet NACSIM 5100A ALL Removable Disks	From \$ 6,990
ITC PC XT-T Accredited PPL	From \$ 5,358
TEMPEST OPTIONS: Accredited PPL <ul style="list-style-type: none"> • 1 or 2 IBM 320KB Diskette Drives • 1 or 2 Half-Height 5MB Removable Winchester Disk • 1 or 2 Half-Height 360KB Diskette Drives • 1 10MB Floppy Drive • Math CoProcessor • Memory Expansion • High Resolution Monochrome Graphics • AST MegaPlus • Emulation LINK-UP • RAM Up To 640K 	
ITC PC-T Designed to meet NACSIM 5100A	From \$ 3,990
ITC 20T Printer Accredited PPL	From \$ 4,935
<ul style="list-style-type: none"> • High Speed/Multifunction/Letter Quality/Graph/Graphics/Typesetting • Interfaces for Wang, Delta Data, and IBM TEMPEST PCs 	
ITC 2T Tabletop OCR Accredited PPL	From \$12,831
GS-00K-8401S-6045 For Most Items	All Types of Software Immediate Delivery of Off-the-Shelf Products

THE TEMPEST STORE
Owned by International Technology Corporation
CALL Irene Chaney at 703-893-5149

By Appointment Only
Identification Required
Sales by Purchase Order Only
No Cash Walk-Ins

6861 Elm Street
P.O. Box 6070
McLean, VA 22106

KODIAK ISLAND BOROUGH
RESOLUTION NO. 85-36-R

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

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

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

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

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

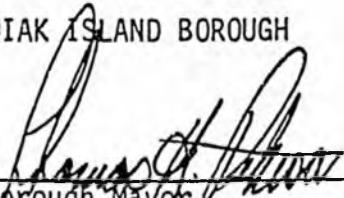
NOW, THEREFORE, BE IT RESOLVED by the Kodiak Island Borough Assembly that Senate Bill No. 204 fail to pass out of committee and not be considered for law, and

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

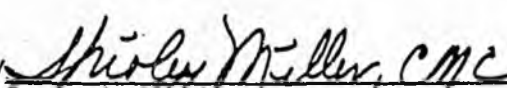
The Honorable Bill Sheffield, Governor of Alaska
The Honorable Edna DeVries, Chairman, Senate C&RA Committee
The Honorable Fred F. Zharoff, State Senate
The Honorable David W. Thompson, House of Representatives

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

KODIAK ISLAND BOROUGH

By 
Borough Mayor

ATTEST:

By 
Borough Clerk

DESIGN PROFESSIONALS

FINANCIAL CORPORATION

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

February 24, 1983

Mr. Jeffrey Rosenblum
121 Wentworth Street
Charleston SC 29401

Dear Mr. Rosenblum:

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

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

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

Mr. Jeffrey Rosenblum
February 24, 1983
Page Two

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

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

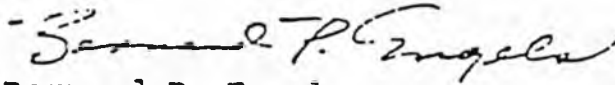
Mr. Jeffrey Rosenblum
February 24, 1983
Page Three

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

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

I hope this information is helpful to you.

Yours truly,



Bernard P. Engels
Senior Vice-President

BPE:dlf

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

TABLE 1

SUMMARY OF STATE LAWS			
<u>States which prohibit competitive bidding for A/E services in Law:</u>			
Tennessee		Texas	
<u>States which exempt A/E services from general bidding requirements:</u>			
California		New Jersey	
District of Columbia		New York - by state	
Hawaii		comptroller's opinion	
Illinois		Ohio	
Kentucky		Oklahoma	
Mississippi-by attorney		Pennsylvania	
general's ruling		Wyoming	
<u>States calling for selection based on qualification:</u>			
(with procedure requiring ranking of firms, negotiation on scope of project and fee with the top firm. If no contract can be reached, negotiations are terminated and taken up with the second ranked firm, etc.)			
California	(1973)	Nebraska	(1978)
Connecticut	(1979)	New Hampshire	(1973)
Colorado	(1979)	New York State	(1980)
Delaware	(1976)	Oklahoma	(1974)
Florida	(1973)	Pennsylvania-building	(1975)
Kansas As and Es	(1977)	construction offices	
Kentucky	(1978)	South Carolina	(1974)
Louisiana	(1975)	Texas	(1971)
Maine	(1979)	Utah	(1980)
Massachusetts	(1975)	Virginia	(1980)
Minnesota	(1975)	Washington	(1981)

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

Appendix A

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

AN ACT

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) is amended by adding at the end thereof the following new title:¹

"TITLE IX—SELECTION OF ARCHITECTS AND ENGINEERS

"Definitions

"Sec. 901. As used in this title—

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

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

"(3) The term 'architectural and engineering services' includes those professional services of an architectural or engineering nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.²

"Policy

"Sec. 902. The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices

"Requests for data on architectural and engineering services

"Sec. 903. In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each

proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

"Negotiation of contracts for architectural and engineering services

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

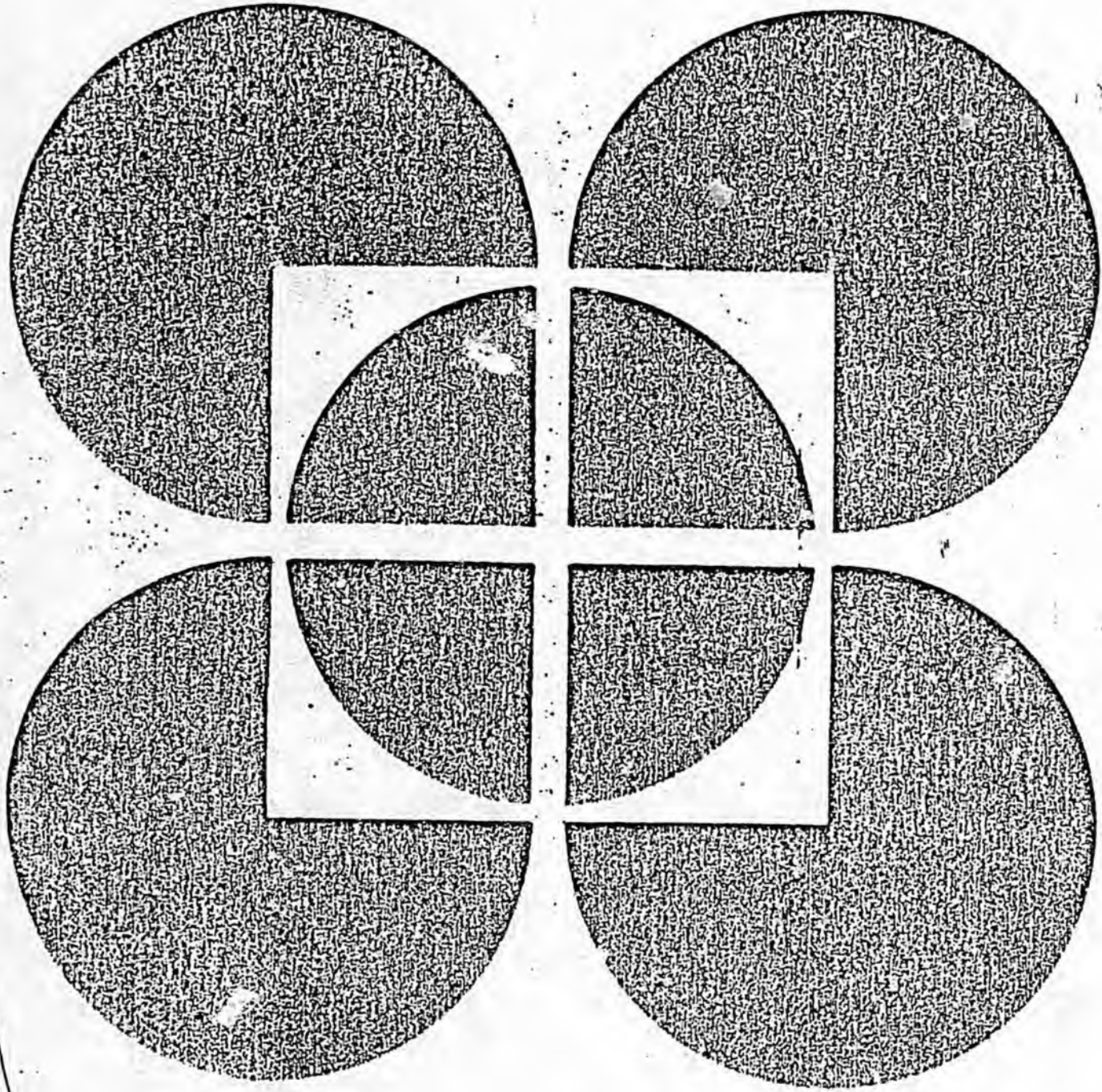
"(b) Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations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

"(c) Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached."³

Approved October 27, 1972.

¹Architects and engineers. Federal selection policy, establishment 63 Stat 377, 82 Stat 1104
²86 Stat. 1278
³86 Stat. 1279

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



REPORT OF THE

GSA SPECIAL STUDY COMMITTEE ON THE
SELECTION OF ARCHITECTS & ENGINEERS

JUNE 1974

BACKGROUND

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

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

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

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

BACKGROUND (con't)

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

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

BACKGROUND (con't)

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

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

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

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

Feasibility of Competitive Bidding

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

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