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1 IN THE HOUSE

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CS FOR HOUSE BILL NO. 211 (L&C) am

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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

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

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

11 Sec. 36.98.041. ARCHITECTURAL ENGINEERING AND LAND SURVEYING
12 CONTRACTS. (a) Notwithstanding the provisions of AS 36.98.010(3) and
13 AS 36.98.040, the state shall select persons or firms for the perfor-
14 mance of architectural, engineering, or land surveying services and
15 award contracts for these services at fair and reasonable prices only
16 on the basis of demonstrated competence and qualification for the type
17 of professional services required.

18 (b) In awarding a contract for the services of an architect,
19 engineer, or land surveyor registered under AS 08.48 the state shall
20 select the person or firm best qualified to perform the desired work
21 on the basis of demonstrated competence and professional qualifica-
22 tions. An attempt shall be made to negotiate a contract with the
23 person or firm selected at a price that is fair and reasonable.
24 Before selection and negotiation, the state may not request or con-
25 sider any statement, bid or estimate of fees or charges for architect-
26 tural, engineering, or land surveying services for the proposed proj-
27 ect or request any other submission or action that would violate
28 AS 08.48 or a regulation adopted under AS 08.48.

29 (c) Subject to the criteria in (b) of this section, a particular

1 procedure for the selection of architects, engineers, or land survey-
2 ors or for the award of contracts is not required. The state may
3 publicly rank proposals or offers received in response to a request
4 for services. The state may attempt to negotiate a fair and reason-
5 able price with the contractor best qualified to perform the desired
6 work and to negotiate a fair and reasonable price with other contrac-
7 tors, in order of ranking, if negotiations with the first-ranked
8 contractor are not successful. The state may reject all or part of a
9 proposal.

10 (d) This section does not apply to contracts awarded in an emer-
11 gency if the person responsible for execution of the contract on
12 behalf of the state certifies in writing that an emergency exists.

13 (e) In this section "state" includes political subdivisions of
14 the state and agencies of the state and its political subdivisions.

15 * Sec. 2. AS 36.98.080 is amended by adding a new paragraph to read:

16 (6) "emergency" means a condition of imminent danger to the
17 public health, safety or welfare or a condition that requires immedi-
18 ate action to prevent harm to a person or property.

19 * Sec. 3. AS 37.05.240 is amended by adding a new subsection to read:

20 (c) A contract for architectural, engineering, or land surveying
21 services shall be awarded in accordance with AS 36.98.041.

22 * Sec. 4. AS 37.05.230 is amended by adding a new paragraph to read:

23 (11) requests for and acceptance of bids or other proposals
24 for architectural, engineering, or land surveying services shall
25 comply with AS 36.98.041.

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

29 * Sec. 6. This Act takes effect immediately in accordance with

Fast-tracked airport job pays off



New terminal (arrow), and airfield paving at Baltimore-Washington International are coming in cheap and fast.

In what it calls a super fast-track operation, a construction manager expects to bring in an airport terminal wing almost three months early and more than 10% under budget.

The Ralph M. Parsons Co., Pasadena, Calif., was informed of the project, an expansion promised Piedmont Airlines at Baltimore-Washington International Airport, on a Saturday last February. Two days later Maryland's State Aviation Administration (SAA) informed the firm that it had been selected as CM. And five days later Parsons and SAA, using only schematic plans, were interviewing design-constructors.

The highest ranked firm, The Whiting-Turner Contracting Co., Baltimore, was asked to submit a negotiable proposal, using what Charles C. Lutman, a Parsons' vice president and the project manager, calls "cartoons" instead of final designs. Parsons and Whiting then haggled, with SAA acting as intermediary, over specific cost items and settled on a fixed-ceiling-cost design-build contract covering a range of \$8.7 million to \$8.9 million. Whiting will get half of any savings below \$8.7 million.

Quick start. Whiting poured foundations in March right behind the designer, subcontractor Greiner Engineering Sciences, Inc., Baltimore. With plans being produced almost like as-built drawings, the design work kept one jump ahead of construction during the whole job.

Besides the 128,000 sq ft of terminal work, Parson's super-

vised conventionally bid construction contracts for 342,000 sq ft of apron and taxiway—won by Marbro Co., Inc., Beltsville, Md., for \$5.3 million—and fabrication and installation of 12 airplane loading bridges—won by Jetway Division, Ogden, Utah, for \$2.6 million.

The SAA-CM-contractor team pushed to the first deadline. SAA had promised Piedmont that two terminal gates would be open for use by July 15. Piedmont was able to use five. The second target date, Jan. 1, 1984, for completion of all 13 gates, looks as if it will be bested by almost two months—Lutman predicts an Oct. 10 finish date. All that remains is the punch list of final alterations and corrections.

Costs reined. Tight scheduling and close supervision not only helped bring the job in early, but saved on escalation and cost-plus items, holding cost growth on all three contracts to about 1.8%. The project had originally been budgeted for \$20.9 million and is projected to come in at \$12.5 million, including CM and preliminary design fees.

SAA officials point out that the job has gone so well not only because it had a good CM but because it also had selected good contractors—one of the advantages of being able to negotiate a design-build job. T. James Truby, SAA administrator, adds that the very tight schedule helped everyone work as a team. He says, "People were forced to concentrate their energies on getting the job done."

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.

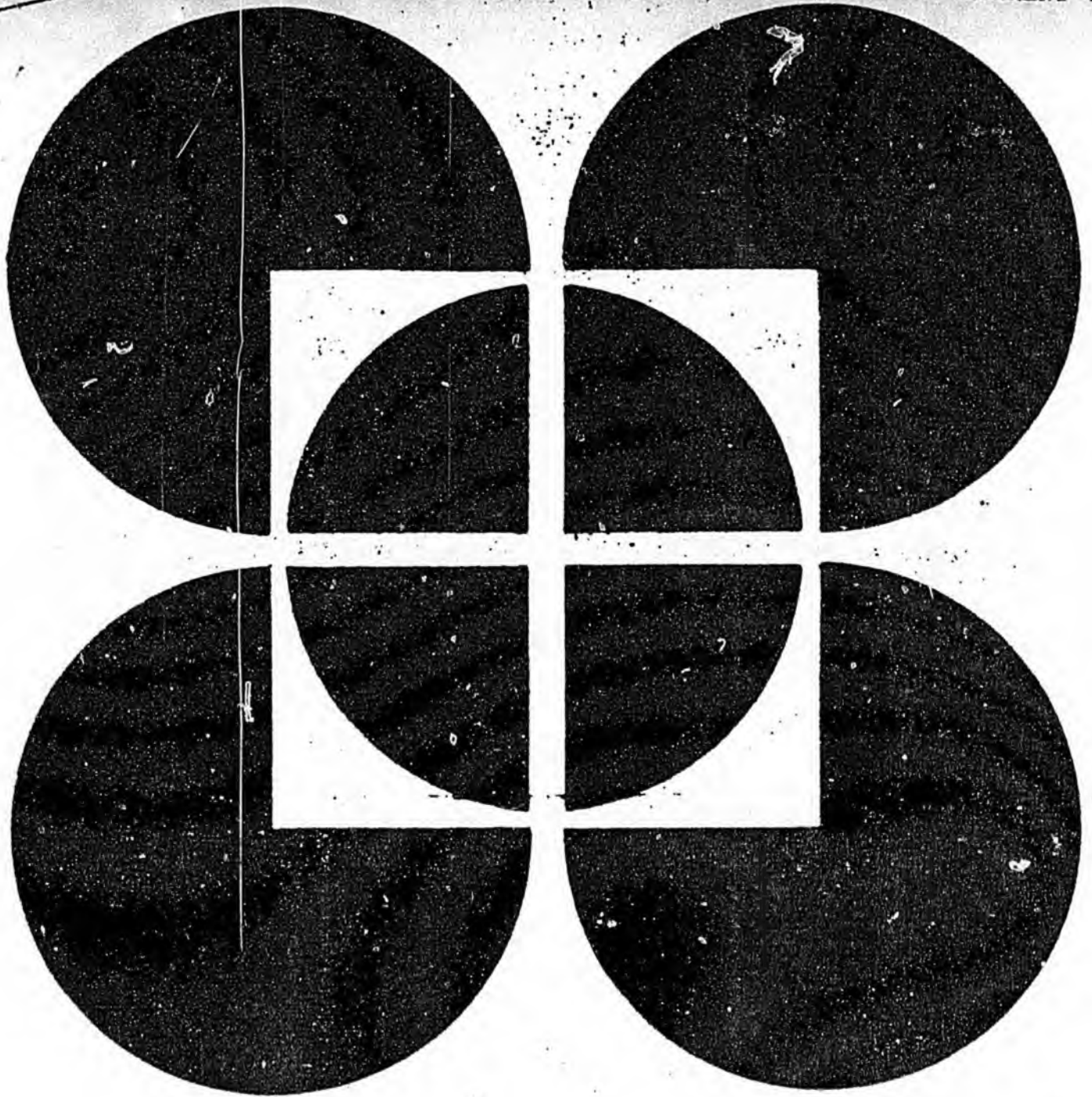
³86 Stat 1279.

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

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

BACKGROUND (con't)

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

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

BACKGROUND (con't)

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

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

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

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

Feasibility of Competitive Bidding

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

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

CONCLUSIONS

General

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

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

§5-501

*Part E—Architect-Engineer and Land Surveying Services***§5-501 Architect-Engineer and Land Surveying Services.**

(1) *Applicability.* Architect-engineer and land surveying services shall be procured as provided in this Section except as authorized by Section 3-204 (Small Purchases), Section 3-205 (Sole Source Procurement), and Section 3-206 (Emergency Procurements).

(2) *Policy.* It is the policy of this [State] to publicly announce all requirements for architect-engineer and land surveying services and to negotiate contracts for architect-engineer and land surveying services on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(3) *Architect-Engineer Selection Committee.* In the procurement of architect-engineer and land surveying services, the Chief Procurement Officer or the head of a Purchasing Agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. [The Chief Procurement Officer or the head of a Purchasing Agency, the Procurement Officer, and [the State Architect]] shall comprise the Architect-Engineer Selection Committee for each architect-engineer and land surveying services contract over [\$_____]. The Selection Committee for architect-engineer and land surveying services contracts under this amount shall be established in accordance with regulations promulgated by the Policy Office. The Selection Committee shall evaluate current statements of qualifications and performance data on file with the [State], together with those that may be submitted by other firms regarding the proposed contract. The Selection Committee shall conduct discussions with no less than three firms regarding the contract 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 the Selection Committee, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(4) *Negotiation.* The Procurement Officer shall negotiate a contract with the highest qualified firm for architect-engineer or land surveying services at compensation which the Procurement Officer determines in writing to be fair and reasonable to the [State]. In making this decision, the Procurement Officer shall take into account the estimated value, the scope, the complexity, and the professional nature of the services to be rendered. Should the Procurement Officer be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the Procurement Officer determines to be fair and reasonable to the [State], negotiations with that firm shall be formally terminated. The Procurement Officer shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the Procurement Officer shall formally terminate negotiations. The Procurement Officer shall then undertake negotiations with the third most qualified firm. Should the Procurement Officer be unable to negotiate a contract at a fair and reasonable price with any of the selected firms, the Procurement Officer shall select additional firms in order of their competence and qualifications, and the Procurement Officer shall continue negotiations in accordance with this Section until an agreement is reached.

COMMENTARY:

(1) This Section applies to procurement of all services within the scope of architecture, professional engineering, or land surveying as defined by the laws of the State whether or not construction is involved.

(2) The surveying section is made engineer or different re these reason engineer or

(3) It is the price be estimates of veyor shoul the architec requires the

(4) If the of other cor tions with o of the archi difference b and the pro considered.

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(2) The principal reasons supporting this selection procedure for architect-engineer and land surveying services are the lack of a definitive scope of work for such services at the time the selection is made and the importance of selecting the best qualified firm. In general, the architect-engineer or land surveyor is engaged to represent the [State's] interests and is, therefore, in a different relationship with the [State] from that normally existing in a buyer-seller situation. For these reasons, the qualifications, competence, and availability of the three most qualified architect-engineer or land surveying firms are considered initially, and price negotiated later.

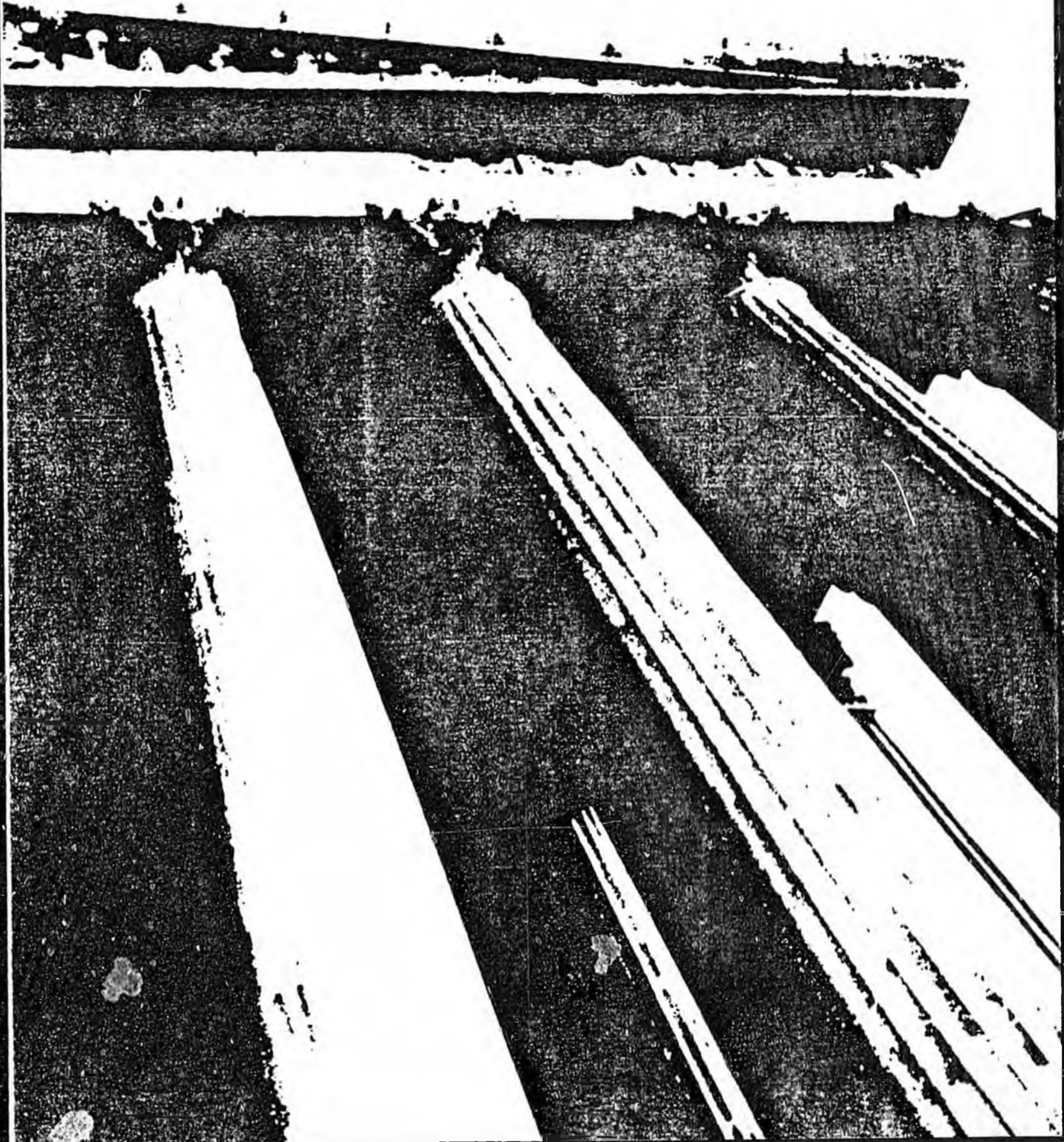
(3) It is considered more desirable to make the qualification selection first and then to discuss the price because both parties need to review in detail what is involved in the work (for example, estimates of man-hours, personnel costs, and alternatives that the architect-engineer or land surveyor should consider in depth). Once parameters have been fully discussed and understood and the architect-engineer or land surveyor proposes a fee for the work, the recommended procedure requires the [State] to make its own evaluation and judgment as to the reasonableness of the fee.

(4) If the fee is fair and reasonable, award is made without consideration of proposals and fees of other competing firms. If the fee cannot be negotiated to the satisfaction of the [State], negotiations with other qualified firms are initiated. Thus price clearly is an important factor in the award of the architect-engineer or land surveying services contract under this procedure. The principal difference between the recommended procedure for architect-engineer and land surveyor selection and the procedures used in most other competitive source selections is the point at which price is considered.

(5) If an enacting jurisdiction desires to use a different selection process, then it may consider the following language:

"The Procurement Officer shall negotiate with the highest qualified firms for a contract for architect-engineer or land surveying services at compensation which the Procurement Officer determines in writing to be fair and reasonable to the [State]. In making such determination, the Procurement Officer shall take into account, in the following order of importance, the professional competence of offerors, the technical merits of offers, and the price for which the services are to be rendered."

SELECTING ARCHITECTS FOR PUBLIC PROJECTS



SELECTING ARCHITECTS FOR PUBLIC PROJECTS

**A Guide for
Local, State
and Federal
Officials**

When you embark on a major construction program,

you are committing your agency and the taxpayers to what may be a multi-million-dollar investment in an unknown quantity. While it is possible to define the proposed facility in terms of size, function and certain other requirements, which together make up the functional program for the project, there are many unknowns.

How long and how well will the facility serve its intended purpose? Will it be responsive to its users and the community? Will it lend itself to economical, energy-efficient operation? Will it be a facility that its owners—the public—can be proud of?

The architects you select to design the facility will be a major determinant in answering those questions. Investing in a construction project is unlike purchasing a commodity. Only a known need and a few ideas exist at the outset to define the scope of the project. These ideas and requirements become the basis for the architectural program, the conceptual design, and ultimately, the working drawings and specifications from which the facility will be constructed.

The person primarily responsible for this process is the architect who serves as adviser, coordinator and synthesizer, as well as creative artist. The decisions made by the architect during the design process will largely determine the functional and esthetic, and to some extent, the financial success of the project. With so much at stake, selecting the right architect should not be a casual or off-hand process.

The selection of an architect should be an exciting and gratifying experience. The following guidelines are offered to government officials at all levels who are charged with the responsibility of designer selection.

What selection process works best?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²Copies of SF 254 and 255 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 or calling (202) 783-3238. Cost for SF 254: 25 copies/\$7.50; SF 255: 20 copies/\$8. Enclose payment with order. Visa and MasterCard charges accepted.

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

⁴Appendix D contains the text of section 5-501, Architect, Engineer and Land Surveyor's Services of the American Bar Association Model Procurement Code for State and Local Government.

Bibliography

The American Institute of Architects has published documents which may be of further interest. These are available by writing the Institute, 1735 New York Ave., N.W., Washington, D.C. 20006-5292, or calling (202) 626-7475, or contacting offices of the local AIA chapters in each state and major city (be sure to inquire about the latest edition of these publications):

Owner-Contractor Agreement Form – Stipulated Sum (A101)

Owner-Contractor Agreement Form – Stipulated Sum – Construction Management Edition (A101/CM)

Short Form for Small Construction Contracts – Stipulated Sum (A107)

Owner-Contractor Agreement Form – Cost Plus Fee (A111)

General Conditions of the Contract for Construction (A201)

General Conditions of the Contract for Construction – Construction Management Edition (A201/CM)

General Conditions of the Contract for Furniture, Furnishings and Equipment (A271)

Contractor's Qualification Statement (A305)

Recommended Guide for Bidding Procedures and Contract Awards (A501)

Guide for Supplementary Conditions (A511)

Instructions to Bidders (A701)

Standard Form of Agreement Between Owner and Architect (B141)

Standard Form of Agreement Between Owner and Architect – Construction Management Edition (B141/CM)

Abbreviated Owner-Architect Agreement Form (B151)

Standard Form of Agreement Between Owner and Architect for Designated Services (B161)

Scope of Designated Services (B162)

Standard Form of Agreement for Interior Design Services (B171)

Duties, Responsibilities and Limitations of Authority of the Architect's Project Representative (B352)

Architect's Qualification Statement (B431)

Standard Form of Agreement Between Owner and Architect for Special Services (B727)

Standard Form of Agreement Between Owner and Construction Manager (B801)

Handbook of Architectural Design Competitions (J500)

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).