

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING THE SELECTION
PROCESS FOR ARCHITECTS AND ENGINEERS FOR
CAPITAL PROJECTS FOR THE STATE AND ITS
POLITICAL SUBDIVISIONS
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 36

**COMMONWEALTH OF VIRGINIA
Richmond
1980**

I. INTRODUCTION

Recognizing that the Commonwealth and its political subdivisions make sizeable expenditures for the procurement of architects and engineers for capital projects and that there has been a lack of uniformity in this selection process, the 1979 General Assembly adopted a resolution charging a joint subcommittee with an investigation of alternative methods of selection. This resolution states:

HOUSE JOINT RESOLUTION NO. 275

Requesting a joint subcommittee to study the selection process for architects and engineers for capital projects for the State and its political subdivisions.

WHEREAS, the selection process for qualified architects and engineers for capital projects for the State and its political subdivisions is a major concern when considering the rising cost of capital expansion, New Federalism and the increasing complexity of technology; and

WHEREAS, there exists no standard procedure for the selection of architects and engineers for the State or its political subdivisions; and

WHEREAS, since there is no standard procedure, the three most important criteria—notice of project, quality of work of architects and engineers, availability for work—are not always considered in the selection process; and

WHEREAS, the American Bar Association has developed a Model Procurement Code aimed at modernizing the purchasing process for State and local governments to increase the return on tax dollars and enhance the ethical standards governing public and private participants in the public purchasing policy; and

WHEREAS, it is in the best interests of the State and its bodies politic to investigate the Model Procurement Code for its potential benefits for the Commonwealth; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That there is hereby established a joint subcommittee to study the selection process for architects and engineers for capital projects for the State and its political subdivisions. The joint subcommittee shall consider the present methods of selection and the American Bar Association Model Procurement Code.

The membership of the joint subcommittee shall be composed of the following, each appointed by the Chairmen of the respective Committees: two members of the House Committee on Appropriations; two members of the House Committee on Counties, Cities and Towns; two members of the House Committee on Rules; one member of the Senate Committee on Finance; two members of the Senate Committee on Rules; one member of the Senate Committee on Local Government. The members of the joint subcommittee shall elect a chairman from among the membership. Three citizen members shall be appointed by the chairman of the joint subcommittee.

All agencies, officers, and employees of the Commonwealth and of its political subdivisions shall assist the joint subcommittee, as requested.

The joint subcommittee shall report its findings and recommendations to the Governor and the General Assembly on or before November one, nineteen hundred seventy-nine.

Robert E. Washington of Norfolk, a member of the House of Delegates of Virginia, was elected Chairman of the Joint Subcommittee. Also appointed from the House were Robert B. Ball, Sr. of Richmond, Calvin W. Fowler of Danville, John D. Gray of Hampton, Joseph A. Johnson of Arlington, and C. Hardaway Marks of Hopewell.

Appointed to serve from the Senate were J. Harry Michael, Jr., of Charlottesville, Frank W. Nolen of New Hope, Lawrence Douglas Wilder of Richmond and Edward E. Willey of Richmond.

Additionally, three citizen members were selected to serve on the Joint Subcommittee. They were P. Porcher Gregg, an engineer from Norfolk, Julian Q. Moffett, Director of Management Services in the City of Staunton and John E. Wilson, an architect from Richmond.

Public hearings were held in Richmond, Roanoke, and Charlottesville. The Subcommittee received testimony from private architects and engineers, representatives of various professional societies, local government officials and numerous State officials including H. Douglas Hamner, Director of General Services, who gave assistance to the Subcommittee throughout its study.

II. FINDINGS AND CONSIDERATIONS

A number of factors relating to the process of consultant selection for capital projects were reviewed. Among the considerations leading to the Subcommittee's recommendations were:

A. Factors Suggesting the Need for a Uniform State Policy.

1. In a comprehensive study of the capital outlay process in Virginia released in October, 1978, the Joint Legislative Audit and Review Commission found numerous deficiencies in State architect-engineer selection procedures. The absence of statewide legal or administrative procurement guidelines has led to questionable selection practices which, the study concluded, are likely to stifle competition, lower design standards, and increase costs.

JLARC recommends that public agency selection procedures be clearly defined and carefully monitored to insure greater uniformity and encourage more competition. To enhance the incentive to lower costs, the study also urges compensation methods be reviewed to control project costs more effectively.

2. A recent survey by the VAGAC Subcommittee on Architectural Procurement Policies indicated that less than one-third of the cities, counties and school superintendents polled have any type of standard selection procedures. Moreover, less than one-half of the cities and counties maintain current architect files. Of eighty-five architectural firms surveyed, approximately sixty percent are not satisfied with present local government selection methods. Most of these firms believe a publication on procurement policies would be useful.
3. Various professional societies (including the Virginia Society of Professional Engineers, the American Institute of Architects, the Consulting Engineers Council of Virginia and the Virginia Association of Surveyors) agreed that current Virginia selection procedures are inadequate. They favored the establishment of uniform legislative guidelines which would apply, not only to State agencies, but also to procurement at the local government level.
4. The Director of General Services appeared before the Joint Subcommittee and expressed his Department's interest in formalizing selection methods and installing a fixed-fee system.
5. Recognizing the need for and benefits to be derived from a standardized selection procedure, a few local government units have already moved to upgrade procurement practices by revisions to city and county ordinances.
6. Finally, a survey released in November, 1978, by the Department of General Services indicated that some professional firms have received an inordinate number of Virginia capital project contracts. (See Appendix A)

B. Alternative Selection Procedures for Consideration

There are basically three significant concepts which can be used in the selection process:

1. Competitive Bidding

For the most part, competitive bidding is not used in this country, either on the federal or state level. Some of the more frequently voiced arguments, pro and con, are set forth below.

FOR:

- (1) Bidding gives public officials the discretion to choose the "lowest and/or best bid" just as is done in other contract-awarding situations. Price need not be the sole criterion.

- (2) Bidding enables state officials to save tax money by accepting low bids which meet quality standards.
- (3) Not bidding effectively eliminates price competition which may violate antitrust provisions of federal law. [See *National Society of Professional Engineers vs. U.S.* , 98 S.Ct. 1355 91978]
- (4) Not bidding invites corruption at worst and political favoritism at best in awarding state contracts.

AGAINST:

- (1) The public health, safety and welfare makes it imperative that the government obtain the best consultant services. A competitive bidding process sacrifices quality to lower cost.
- (2) The actual cost of professional services is a relatively small amount in comparison with the total project cost.
- (3) Bidding for consultant work will drive many small firms out of business.
- (4) State officials should not concentrate on the cheapest design job, but rather seek a design which holds down or reduces construction and life-cycle costs.
- (5) To competitively bid, there must be a detailed specification which often is not available until the client and the professional sit down together to work out the scope of the project.

2. Design Competition

Under this system, the field of consultants is narrowed to the top two or three who are deemed to be most qualified based on experience, previous performance, complexity of the project and other appropriate factors. These firms are then requested to submit conceptual designs.

After evaluation of these designs by the agency involved, the consultants submit price proposals on their designs. Final selection is based on a combination of both price and design merit.

3. Competitive Negotiation (Commonly called the Traditional Method)

The specific steps necessary to carry out the competitive negotiation process can vary widely from jurisdiction to jurisdiction. However, the basic objective remains the same – to assist the involved agency in locating the three or four firms which are most qualified to undertake the project at hand, and then attempt, through negotiation, to engage the firm which will provide for the execution of the creative and technical work required at a fair and reasonable cost.

This method of selection is by far the most commonly used system, both on the federal and state level. Moreover, most new state procurement legislation employs some variation of competitive negotiation (e.g. North Carolina and Nebraska) as does the American Bar Association's Model Procurement Code.

The ABA's recently drafted Model Code is an attempt to assist states and local governments in formulating architect-engineer legislation and to encourage uniformity of selection procedures nationwide.

The Code recommends the following procedure for use in selection of architect-engineer services:

- (1) The State publicly announces all requirements for architectural and engineering services and the chief procurement officer encourages firms to submit qualifications and performance data annually.
- (2) An architect-engineer selection committee composed of a chief procurement officer, a project procurement officer and the state architect is established.
- (3) The selection committee evaluates current qualifications and performance and selects at least three most qualified firms with which to negotiate.

- (4) The procurement officer negotiates with the highest qualified firm first, considering value, scope, complexity and the professional nature of the required services. If no satisfactory agreement can be reached as to price with the most qualified firm, the procurement officer enters into negotiations with the second rated firm and so on.

C. Fee Structures

There were found to be a variety of methods to determine compensation for the services of architects and engineers. A summary of the various types (as compiled by the American Consulting Engineers Council) follows:

1. Lump Sum or Firm Fixed-Fee is commonly used when all of the project aims and required services (scope of project) are generally well defined and can be mutually agreed upon during negotiation.
2. Salary Cost Times a Multiplier (plus direct non-salary expenses) may be used for preliminary services where many of the factors and aims are still to be determined. This method includes compensation based upon all direct payroll costs (salaries, fringe benefits, payroll taxes, social security contributions) times a multiplier which compensates for overhead and pre-tax profit, plus direct non-salary expenses (travel, communications, supplies, added specialists or consultants utilized). Sometimes an estimated maximum or fee ceiling is established as a part of this method.
3. Cost Plus a (Predetermined) Fixed Fee may be used in situations involving research, studies, investigations, experimental work, estimates for alternative types of construction and other similar services. With this method, the "cost" includes all direct payroll, direct non-payroll, and overhead (indirect) costs. The "fixed fee" is a fixed lump amount agreed upon during negotiation to cover any non-reimbursable costs, pre-tax profit, and readiness to serve. The "fixed price" does not change regardless of variations in "cost".
4. Percentage of Estimated Construction Cost has been used when it is difficult to anticipate total project scope and cost or when the project cannot be fully defined in advance. Under the percentage method, the compensation is determined by points on a curve. The larger the construction cost, the lower the percentage for the A-E services.
5. Cost Per Unit is occasionally used when the fee may be based upon portions of the work (such as in highway design where the fee can be stated as "so much per mile").
6. Per Diem may be employed when the work is personal, of a limited time duration, or somewhat irregular. This could include consultation in highly specialized areas, such as appraisals, feasibility studies, investigation of conditions, collection of data, or court or public hearing testimony, to name a few.

Where fees are based on a percentage of costs, the previously mentioned JLARC report recommends that compensation be based only on the initial construction budget. The report reasons that there is less incentive to keep expenses to a minimum where the fee is calculated on the final project costs.

D. To Whom Shall Selection Procedures Apply?

The Subcommittee considered several options as to which governmental units shall be covered by legislation:

1. State agencies only
2. Political subdivisions (cities, counties and towns)
3. Various State authorities
 - (a) Those appointed by the Governor's office
 - (b) Those appointed locally

The proposals submitted by the Virginia Society of Professional Engineers and the American Institute of Architects called for inclusion of political subdivisions, State authorities and State districts. However, only one of the four states with recent procurement statutes which were reviewed by the Joint Subcommittee covered local subdivisions, and none extended their coverage to state authorities.

E. Method of Implementation

Several alternatives were available for achieving a uniform application of desirable selection procedures:

- (1) Administratively, using existing authority
- (2) Black letter law on the State level
- (3) Statutory directive in the form of broad guidelines directing appropriate agencies to formulate procedures which will achieve stated goals.

III. RECOMMENDATIONS

The Subcommittee offers the following recommendations:

A. A broad statutory framework, clearly setting forth the General Assembly's purpose in establishing architect-engineer selection guidelines, should be provided which directs the Department of General Services to administratively promulgate detailed regulations consistent with the stipulated guidelines.

B. A centralized list of authorized projects and consultant selections should be maintained for public inspection by the Division of Engineering and Buildings.

C. The legislative guidelines should be made mandatory only for designated agencies of the Commonwealth, and should not be required of county, city or town units of local government.

IV. REASONS FOR RECOMMENDATIONS

The Subcommittee concludes that, in general, good, workable procedures have been developed by the Department of General Services for use by State agencies in administering building projects. To insure a continuation of these high standards and to apply them to the selection process, the Subcommittee is of the opinion that it would be in the Commonwealth's best interest to formalize a framework of consultant selection procedures so that worthwhile policies will have a degree of permanency and uniformity.

To enhance ethical standards in consultant selection and to maximize distribution of State capital project contracts among professional consultants, the Subcommittee feels that a centralized notice system should be established. Listings of authorized projects for which consultants are needed and of those consultants chosen for capital project services should be held open to the public.

The Subcommittee believes that compliance with legislative guidelines should be required only of State agencies to avoid imposing an undue financial strain on small units of local government which do not have adequate staffing to adhere to such guidelines. While compulsory legislation is not advisable, a statutory framework for State agencies would provide guidance of a voluntary nature for localities.

V. RECOMMENDED LEGISLATION

A BILL to amend the Code of Virginia by adding in Chapter 32 of Title 2.1 an article numbered 7, consisting of sections 2.1-548.1 through 2.1-548.5 pertaining to consultant selection.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 32 of Title 2.1 an article numbered 7, consisting of sections numbered 2.1-548.1 through 2.1-548.5 as follows:

Consultant Selection

§ 2.1-548.1. Intent and Purpose.—The General Assembly intends by this article to standardize selection procedures for professional consultants for State capital projects among the various State agencies so as to encourage the selection of the most qualified and competent consultants at fair and reasonable rates, enhance ethical standards in the selection process, and maximize distribution of State capital project contracts among professional consultants.

§ 2.1-548.2. Definitions.—As used in this article:

(a) “Agency” means any instrumentality, department, institution or other unit of the State government, including the Commonwealth itself, which is authorized to expend State funds for capital projects. The term does not encompass the Department of Highways and Transportation or units of local government on the county, city or town level and other local or regional governmental authorities including sanitary or other districts.

(b) “Firm” means any individual, partnership, corporation, association, or other entity licensed to practice professional services in this Commonwealth.

(c) “Professional services” means the “practice of architecture,” the “practice of land surveying” and the “practice of engineering,” as those terms are defined in § 54-17.1 of the Code of Virginia.

§ 2.1-548.3. Adoption of rules and regulations.—The Department of General Services is directed to adopt and promulgate rules and regulations governing the selection process for professional consultants for State capital projects. Such rules and regulations shall be designed to effectuate the general purposes of this article and shall be consistent with the guidelines set forth in § 2.1-548.4 and § 2.1-548.5.

§ 2.1-548.4. Guidelines for selection process; selections committee; public notice; fee schedule.—Using criteria set forth in the rules and regulations promulgated by the Department of General Services, each agency having capital projects pending shall establish a professional consultant selection committee. Each selection committee shall, in accordance with such rules and regulations:

(1) Encourage firms to submit annually to individual agencies and institutions a statement of qualifications and performance data. Such agencies and institutions shall maintain a list of all such firms which have a current statement on file.

(2) Publicly announce those larger capital projects with estimated construction costs at a level to be established by the Department of General Services, but in no event shall such level be higher than \$500,000.

(3) For each proposed project, evaluate the qualifications of prequalified firms or the qualifications of those firms responding to a public announcement and select the firm deemed qualified to perform the required services.

Compensation shall be determined by the fee schedule or other appropriate provisions set forth in the regulations to be promulgated.

§ 2.1-548.5. Maintenance of centralized lists of projects and consultant selections.—The Director of General Services shall direct the Division of Engineering and Buildings to maintain a list of all authorized State capital projects covered by this article and to maintain a list of all professional consultants with whom the State has contracted for capital project services over the previous two bienniums. Both lists shall be held open to public inspection.

Respectfully submitted,

Robert E. Washington, Chairman
Frank W. Nolen, Vice-Chairman
Robert B. Ball, Sr.

Calvin W. Fowler
P. Porcher Gregg
John D. Gray
Joseph A. Johnson
C. Hardaway Marks
J. Harry Michael, Jr.
Julian Q. Moffett
Lawrence Douglas Wilder
Edward E. Willey
John E. Wilson

APPENDIX A

**ALLOCATION OF VIRGINIA CAPITAL
PROJECT FUNDS TO ARCHITECT-ENGINEER FIRMS
(July 1, 1974 - November 20, 1978)**

TOTAL VALUE ALL CONTRACTS: \$ 452,521,887

Number of Firms Awarded Contracts: 128

		Amount of Work	% of Total Value
A. Out-of-State Firms:	8	\$ 81,442,165	18%
B. In-State Firms:	120	371,079,722	82%
(a) 18 Firms Received Of These Firms:		260,238,466 or	70.13%
9 Received		192,712,909 or	51.93%
4 Received		116,962,917 or	31.52%
2 Received		70,718,858 or	19.06%
(b) The Remaining			
102 Firms Received		110,841,256 or	29.87%

Source: Survey of Architectural and Engineering Consultants. (11-20-78)

**Division of Engineering and Buildings,
Department of General Services**

