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TO: Chief Fiscal Officers of All State Agencies
FROM: Joe DiRocco *JD* Manager, Contract/Voucher Division
DATE: December 19, 1991
SUBJECT: The Architectural, Engineering, and Land Surveying
Qualifications Based Selection Act

Public Act 87-673, which takes effect January 1, 1992, contains new requirements for acquiring architectural, engineering, and land surveying services, including a certification that must be incorporated in contracts for such services. A copy of this Act is attached for your information.

Pursuant to Section 60 of this law, any state contract for architectural, engineering, and land surveying services executed on or after January 1, 1992, must have the following statement, or words of similar meaning, as a provision of the contract:

All parties to this contract certify that the provisions of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act were complied with.

The above certification must be included as a provision of the contract. It may not be stamped or otherwise affixed to the contract after signing. It may be included on a separate sheet after contract execution if all parties to the contract sign that separate sheet. Contracts not in compliance are subject to return.

If you have any questions concerning this matter, please call me at (217) 782-3608.

JD:rrr

Attachment

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Job #23870

12/91 - 300 copies

1 AN ACT concerning procurement of architectural, 47
 2 engineering, and land surveying services by the State of 48
 3 Illinois. 49

4 Be it enacted by the People of the State of Illinois, 52
 5 represented in the General Assembly: 53

6 Section 1. Short title. This Act may be cited as the 56
 7 Architectural, Engineering, and Land Surveying Qualifications 57
 8 Based Selection Act.

Clerk of the House

9 Section 5. State policy on procurement of architectural, 60
 10 engineering, and land surveying services. It is the policy 61
 11 of State agencies of this State to publicly announce all 62
 12 requirements for architectural, engineering, and land 63
 13 surveying services, to procure these services on the basis of
 14 demonstrated competence and qualifications, to negotiate 64
 15 contracts at fair and reasonable prices, and to authorize the 65
 16 Department of Professional Regulation to enforce the 66
 17 provisions of Section 65 of this Act.

John Quinn

18 Section 10. Federal requirements. In the procurement of 69
 19 architectural, engineering, and land surveying services and 70
 20 in the awarding of contracts, a State agency may comply with 71
 21 federal law and regulations including, but not limited to, 72
 22 Public Law 92-582 (Federal Architect-Engineer Selection Law, 73
 23 Brooks Law, 40 U.S.C. 541) and take all necessary steps to 74
 24 adapt its rules, specifications, policies, and procedures 75
 25 accordingly to remain eligible for federal aid.

Originated in the House of Representatives

26 Section 15. Definitions. As used in this Act: 78
 27 "Architectural services" means any professional service 80
 28 as defined in Section 5 of the Illinois Architecture Practice 81
 29 Act of 1989.

30 "Engineering services" means any professional service as 83

PUBLIC ACT 87-673
[Signature]

1 defined in Section 4 of the Professional Engineering Practice 84
2 Act of 1989 or Section 5 of the Structural Engineering 85
3 Licensing Act of 1989.
4 ✓ "Firm" means any individual, sole proprietorship, firm, 87
5 partnership, corporation, association, or other legal entity 88
6 permitted by law to practice the profession of architecture, 89
7 engineering, or land surveying and provide those services. 90
8 "Land surveying services" means any professional service 92
9 as defined in Section 5 of the Illinois Professional Land 93
10 Surveyor Act of 1989.
11 "Project" means any capital improvement project or any 95
12 design, study, plan, survey, or new or existing program 96
13 activity of a State agency, including development of new or 97
14 existing programs that require architectural, engineering, or 98
15 land surveying services.
16 ✓ "State agency" means any department, commission, council, 100
17 board, bureau, committee, institution, agency, university, 101
18 government corporation, authority, or other establishment or 102
19 official of this State.
X 20 Section 20. Prequalification. A State agency shall 105
21 establish procedures to prequalify firms seeking to provide 106
22 architectural, engineering, and land surveying services or 107
23 may use prequalification lists from other State agencies to 108
24 meet the requirements of this Section.
X 25 Section 25. Public notice. Whenever a project requiring 111
26 architectural, engineering, or land surveying services is 112
27 proposed for a State agency, the State agency shall provide 113
28 no less than a 14 day advance notice published in a 114
29 professional services bulletin or advertised within the
30 official State newspaper setting forth the projects and 115
31 services to be procured. The professional services bulletin 116
32 shall be mailed to each firm that has requested the 117
33 information or is prequalified under Section 20. The 118

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1 professional services bulletin shall include a description of 118
 2 each project and shall state the time and place for 119
 3 interested firms to submit a letter of interest and, if 120
 4 required by the public notice, a statement of qualifications.

5 Section 30. Evaluation procedure. A State agency shall 123
 6 evaluate the firms submitting letters of interest and other 124
 7 prequalified firms, taking into account qualifications; and 125
 8 the State agency may consider, but shall not be limited to 126
 9 considering, ability of professional personnel, past record 127
 10 and experience, performance data on file, willingness to meet 128
 11 time requirements, location, workload of the firm and any 129
 12 other qualifications based factors as the State agency may
 13 determine in writing are applicable. The State agency may 130
 14 conduct discussions with and require public presentations by 131
 15 firms deemed to be the most qualified regarding their 132
 16 qualifications, approach to the project and ability to 133
 17 furnish the required services.

18 A State agency shall establish a committee to select, 135
 19 firms to provide architectural, engineering, and land 136
 20 surveying services. A selection committee may include at 137
 21 least one public member nominated by a statewide association 138
 22 of the profession affected. The public member may not be 139
 23 employed or associated with any firm holding a contract with
 24 the State agency nor may the public members' firm be 140
 25 considered for a contract with that State agency while 141
 26 serving as a public member of the committee.

27 In no case shall a State agency, prior to selecting a 143
 28 firm for negotiation under Section 40, seek formal or 144
 29 informal submission of verbal or written estimates of costs 145
 30 or proposals in terms of dollars, hours required, percentage 146
 31 of construction cost, or any other measure of compensation.

32 Section 35. Selection procedure. On the basis of 149
 33 evaluations, discussions, and any presentations, the State 150

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1 agency shall select no less than 3 firms it determines to be 151
2 qualified to provide services for the project and rank them 152
3 in order of qualifications to provide services regarding the 153
4 specific project. The State agency shall then contact the 154
5 firm ranked most preferred to negotiate a contract at a fair 155
6 and reasonable compensation. If fewer than 3 firms submit
7 letters of interest and the State agency determines that one 156
8 or both of those firms are so qualified, the State agency may 157
9 proceed to negotiate a contract under Section 40. The 158
10 decision of the State agency shall be final and binding.

11 Section 40. Contract negotiation. 161

12 (a) The State agency shall prepare a written description 163
13 of the scope of the proposed services to be used as a basis 164
14 for negotiations and shall negotiate a contract with the 165
15 highest qualified firm at compensation that the State agency 166
16 determines in writing to be fair and reasonable. In making 167
17 this decision, the State agency shall take into account the
18 estimated value, scope, complexity, and professional nature 168
19 of the services to be rendered. In no case may a State 169
20 agency establish a maximum overhead rate or other payment 170
21 formula designed to eliminate firms from contention or 171
22 restrict competition or negotiation of fees.

23 (b) If the State agency is unable to negotiate a 173
24 satisfactory contract with the firm that is most preferred, 174
25 negotiations with that firm shall be terminated. The State 175
26 agency shall then begin negotiations with the firm that is 176
27 next preferred. If the State agency is unable to negotiate a
28 satisfactory contract with that firm, negotiations with that 177
29 firm shall be terminated. The State agency shall then begin 178
30 negotiations with the firm that is next preferred. 179

31 (c) If the State agency is unable to negotiate a 181
32 satisfactory contract with any of the selected firms, the 182
33 State agency shall re-evaluate the architectural, 183
34 engineering, or land surveying services requested, including

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1 the estimated value, scope, complexity, and fee requirements. 184
 2 The State agency shall then compile a second list of not less 185
 3 than 3 qualified firms and proceed in accordance with the 186
 4 provisions of this Act.

5 (d) A firm negotiating a contract with a State agency 189
 6 shall negotiate subcontracts for architectural, engineering, 190
 7 and land surveying services at compensation that the firm 191
 8 determines in writing to be fair and reasonable based upon a 192
 9 written description of the scope of the proposed services.

10 Section 45. Small contracts. The provisions of Sections 195
 11 25, 30, and 35 do not apply to architectural, engineering, 196
 12 and land surveying contracts of less than \$25,000.

13 Section 50. Emergency services. Sections 25, 30, and 35 200
 14 do not apply in the procurement of architectural, 201
 15 engineering, and land surveying services by State agencies 202
 16 (i) when an agency determines in writing that it is in the 203
 17 best interest of the State to proceed with the immediate 204
 18 selection of a firm or (ii) in emergencies when immediate 206
 19 services are necessary to protect the public health and
 20 safety, including, but not limited to, earthquake, tornado, 207
 21 storm, or natural or man-made disaster. 208

22 Section 55. Firm performance evaluation. Each State 211
 23 agency shall evaluate the performance of each firm upon 212
 24 completion of a contract. That evaluation shall be made 213
 25 available to the firm who may submit a written response, with
 26 the evaluation and response retained solely by the agency. 214
 27 The evaluation and response shall not be made available to 215
 28 any other person or firm and is exempt from disclosure under 216
 29 the Freedom of Information Act.

30 Section 60. Certificate of compliance. Each contract 219

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Only 25, 30, 35 don't apply to contracts under 25,000 - but 60 does!

1 for architectural, engineering, and land surveying services 221
 2 by a State agency shall contain a certificate signed by a 222
 3 representative of the State agency and the firm that the
 4 provisions of this Act were complied with. 223

5 Section 65. Scope. No person, corporation, or 226
 6 partnership licensed or registered under the Illinois 227
 7 Architecture Practice Act of 1989, the Professional 228
 8 Engineering Practice Act of 1989, the Structural Engineering
 9 Licensing Act of 1989, or the Illinois Professional Land 229
 10 Surveyor Act of 1989 shall engage in any act or conduct, or 230
 11 be a party to any contract, or agreement, in violation of the 231
 12 provisions of this Act.

13 Section 70. Enforcement. Any contract or agreement made 234
 14 in violation of this Act after the effective date of this 235
 15 Act, except a supplement or extension of an existing 236
 16 contract, is void and unenforceable, and the Comptroller and 237
 17 Treasurer of the State of Illinois shall not process any 238
 18 payment claims or checks for any contract or agreement made
 19 in violation of this Act.

20 Section 75. Nothing in this Act shall be deemed to 241
 21 prohibit a State agency from contracting for a design/build 242
 22 project.

23 Section 80. Affirmative action. Nothing in this Act 245
 24 shall be deemed to prohibit or restrict agencies from 246
 25 establishing or maintaining affirmative action contracting 247
 26 goals for minorities or women, or small business setaside 248
 27 programs, now or hereafter established by law, rules and 249
 28 regulations, or executive order.

29 Section 95. The Freedom of Information Act is amended by 252
 30 changing Section 7 as follows:

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(Ch. 116, par. 207) 255

1 Sec. 7. Exemptions. 257

2 (1) The following shall be exempt from inspection and 259

3 copying:

4 (a) Information specifically prohibited from 261

5 disclosure by Federal or State law or rules and 262

6 regulations adopted under those laws pursuant-thereto.

7 (b) Information that which, if disclosed, would 264

8 constitute a clearly unwarranted invasion of personal 267

9 privacy, unless the such disclosure is consented to in

10 writing by the individual subjects of the such 268

11 information. The disclosure of information that bears on 269

12 the public duties of public employees and officials shall

13 not be considered an invasion of personal privacy. 270

14 Information exempted under this subsection (b) shall 271

15 include but is not limited to:

16 (i) files and personal information maintained 273

17 with respect to clients, patients, residents, 274

18 students or other individuals receiving social, 275

19 medical, educational, vocational, financial, 275

20 supervisory or custodial care or services directly

21 or indirectly from federal agencies or public 276

22 bodies;

23 (ii) personnel files and personal information 278

24 maintained with respect to employees, appointees or 281

25 elected officials of any public body or applicants

26 for those such positions;

27 (iii) files and personal information 283

28 maintained with respect to any applicant, registrant 284

29 or licensee by any public body cooperating with or 285

30 engaged in professional or occupational 286

31 registration, licensure or discipline; 287

32 (iv) information required of any taxpayer in 289

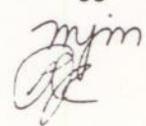
33 connection with the assessment or collection of any 290

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1	tax unless disclosure is otherwise required by State	290
2	statute; and	
3	(v) information revealing the identity of	292
4	persons who file complaints with or provide	293
5	information to administrative, investigative, law	294
6	enforcement or penal agencies.	
7	(c) Records compiled by any public body for	296
8	administrative enforcement proceedings and any law	297
9	enforcement or correctional agency for law enforcement	298
10	purposes or for internal matters of a public body, but	299
11	only to the extent that disclosure would:	300
12	(i) interfere with pending or actually and	302
13	reasonably contemplated law enforcement proceedings	303
14	conducted by any law enforcement or correctional	
15	agency;	
16	(ii) interfere with pending administrative	305
17	enforcement proceedings conducted by any public	306
18	body;	
19	(iii) deprive a person of a fair trial or an	308
20	impartial hearing;	
21	(iv) unavoidably disclose the identity of a	310
22	confidential source or confidential information	311
23	furnished only by the confidential source;	
24	(v) disclose unique or specialized	313
25	investigative techniques other than those generally	314
26	used and known or disclose internal documents of	315
27	correctional agencies related to detection,	
28	observation or investigation of incidents of crime	316
29	or misconduct;	
30	(vi) constitute an invasion of personal	318
31	privacy under subsection (b) of this Section;	319
32	(vii) endanger the life or physical safety of	321
33	law enforcement personnel or any other person; or	322
34	(viii) obstruct an ongoing criminal	324
35	investigation.	

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1 (d) Criminal history record information maintained 326
2 by State or local criminal justice agencies, except the 327
3 following which shall be open for public inspection and 328
4 copying:
5 (i) chronologically maintained arrest 330
6 information, such as traditional arrest logs or 331
7 blotters;
8 (ii) the name of a person in the custody of a 333
9 law enforcement agency and the charges for which 334
10 that person is being held;
11 (iii) court records that which are public; 336
12 (iv) records that which are otherwise 338
13 available under State or local law; or
14 (v) records in which the requesting party is 340
15 the individual identified, except as provided under 341
16 part (vii) of paragraph (c) of subsection 1 of this 342
17 Section 7-(c)-(vii)-of-this-Act.
18 "Criminal history record information" means data 344
19 identifiable to an individual and consisting of 345
20 descriptions or notations of arrests, detentions, 346
21 indictments, informations, pre-trial proceedings, trials, 347
22 or other formal events in the criminal justice system or 348
23 descriptions or notations of criminal charges (including 349
24 criminal violations of local municipal ordinances) and 350
25 the nature of any disposition arising therefrom, 351
26 including sentencing, court or correctional supervision, 353
27 rehabilitation and release. The term does not apply to 354
28 statistical records and reports in which individuals are 355
29 not identified and from which their identities are not 356
30 ascertainable, or to information that is for criminal 357
31 investigative or intelligence purposes.
32 (e) Records that relate to or affect the security 359
33 of correctional institutions and detention facilities. 360
34 (f) Preliminary drafts, notes, recommendations, 362
35 memoranda and other records in which opinions are 363

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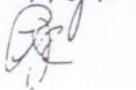
1 expressed, or policies or actions are formulated, except 364
 2 that a specific record or relevant portion thereof shall
 3 not be exempt when the record is publicly cited and 365
 4 identified by the head of the public body. The exemption 366
 5 provided in this paragraph subsection (f) extends to all 367
 6 those records of officers and agencies of the General 369
 7 Assembly that which pertain to the preparation of 370
 8 legislative documents.

9 (g) Trade secrets and commercial or financial 372
 10 information obtained from a person or business where the 373
 11 such trade secrets or information are proprietary, 374
 12 privileged or confidential, or where disclosure of the 375
 13 such trade secrets or information may cause competitive 376
 14 harm, including all information determined to be 377
 15 confidential under Section 4002 of the Technology
 16 Advancement and Development Act. Nothing contained in 378
 17 this paragraph (g) subsection shall be construed to 380
 18 prevent a person or business from consenting to
 19 disclosure.

20 (h) Proposals and bids for any contract, grant, or 382
 21 agreement, including information which if it were 383
 22 disclosed would frustrate procurement or give an 384
 23 advantage to any person proposing to enter into a
 24 contractor agreement with the body, until an award or 385
 25 final selection is made. Information prepared by or for 386
 26 the body in preparation of a bid solicitation shall be 387
 27 exempt until an award or final selection is made.

28 (i) Valuable formulae, designs, drawings and 389
 29 research data obtained or produced by any public body 390
 30 when disclosure could reasonably be expected to produce
 31 private gain or public loss. 391

32 (j) Test questions, scoring keys and other 393
 33 examination data used to administer an academic 394
 34 examination or determined the qualifications of an
 35 applicant for a license or employment. 395

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1 (k) Architects' and engineers' plans for buildings 397
2 not constructed in whole or in part with public funds and 398
3 for buildings constructed with public funds, to the 399
4 extent that disclosure would compromise security.
5 (l) Library circulation and order records 401
6 identifying library users with specific materials. 402
7 (m) Minutes of meetings of public bodies which 404
8 meetings-are closed to the public as provided in the Open 405
9 Meetings Act, approved-July-11, 1957, as amended, until 406
10 such-time-as the public body makes the such minutes 407
11 available to the public under pursuant-to Section 2.06 of 408
12 the Open Meetings Act.
13 (n) Communications between a public body and an 410
14 attorney or auditor representing the such public body 411
15 that would not be subject to discovery in litigation, 412
16 and materials prepared or compiled by or for a public
17 body in anticipation of a criminal, civil or 413
18 administrative proceeding upon the request of an attorney 414
19 advising the public body, and materials prepared or 415
20 compiled with respect to internal audits of public
21 bodies.
22 (o) Information received by a primary or secondary 417
23 school, college or university under its procedures for 418
24 the evaluation of faculty members by their academic 419
25 peers.
26 (p) Administrative or technical information 421
27 associated with automated data processing operations, 422
28 including but not limited to software, operating 423
29 protocols, computer program abstracts, file layouts,
30 source listings, object modules, load modules, user 424
31 guides, documentation pertaining to all logical and 425
32 physical design of computerized systems, employee 426
33 manuals, and any other information that, if disclosed,
34 would jeopardize the security of the system or data 427
35 contained therein or the security of materials exempt 428

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[Faint handwritten marks]

1 under this Section. 428.

2 (q) Documents or materials relating to collective 430

3 negotiating matters between public bodies and their 431

4 employees or representatives, except that any final 432

5 contract or agreement shall be subject to inspection and

6 copying.

7 (r) Drafts, notes, recommendations and memoranda 434

8 pertaining to the financing and marketing transactions of 435

9 the public body. The records of ownership, registration, 436

10 transfer, and exchange of municipal debt obligations, and 437

11 of persons to whom payment with respect to these such 438

12 obligations is made.

13 (s) The records, documents and information relating 440

14 to real estate purchase negotiations until those 441

15 negotiations have been completed or otherwise terminated.

16 With regard to a parcel involved in a pending or actually 442

17 and reasonably contemplated eminent domain proceeding 443

18 under Article VII of the Code of Civil Procedure, 444

19 records, documents and information relating to that

20 parcel shall be exempt except as may be allowed under 445

21 discovery rules adopted by the Illinois Supreme Court. 446

22 The records, documents and information relating to a real 447

23 estate sale shall be exempt until a sale is consummated.

24 (t) Any and all proprietary information and records 449

25 related to the operation of an intergovernmental risk 450

26 management association or self-insurance pool or jointly 451

27 self-administered health and accident cooperative or

28 pool.

29 (u) Information concerning a university's 453

30 adjudication of student or employee grievance or 454

31 disciplinary cases, to the extent that such disclosure

32 would reveal the identity of the student or employee and 455

33 information concerning any public body's adjudication of 456

34 student or employee grievances or disciplinary cases, 457

35 except for the final outcome of the such cases.

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1	(v) Course materials or research materials used by	459
2	faculty members.	
3	(w) Information related solely to the internal	461
4	personnel rules and practices of a public body.	462
5	(x) Information contained in or related to	464
6	examination, operating, or condition reports prepared by,	465
7	on behalf of, or for the use of a public body responsible	466
8	for the regulation or supervision of financial	467
9	institutions or insurance companies, unless disclosure is	
10	otherwise required by State law.	468
11	(y) Information the disclosure of which is	470
12	restricted under Section 5-108 of the Public Utilities	471
13	Act.	
14	(z) Manuals or instruction to staff <u>that</u> which	473
15	relate to establishment or collection of liability for	474
16	any State tax or <u>that</u> which relate to investigations by a	475
17	public body to determine violation of any criminal law.	
18	(aa) Applications, related documents, and medical	477
19	records received by the Experimental Organ	478
20	Transplantation Procedures Board and any and all	479
21	documents or other records prepared by the Experimental	
22	Organ Transplantation Procedures Board or its staff	480
23	relating to applications it has received.	
24	(bb) Insurance or self insurance (including any	482
25	intergovernmental risk management association or self	483
26	insurance pool) claims, loss or risk management	484
27	information, records, data, advice or communications.	
28	(cc) Information and records held by the Department	486
29	of Public Health and its authorized representatives	487
30	relating to known or suspected cases of sexually	488
31	transmissible disease or any information the disclosure	
32	of <u>that</u> which is restricted under the Illinois Sexually	489
33	Transmissible Disease Control Act.	
34	(dd) Information the disclosure of which is	491
35	exempted under Section 7 of the Radon Mitigation Act.	492

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1 (ee) Firm performance evaluations under Section 55 494
 2 of the Architectural, Engineering, and Land Surveying 495
 3 Qualifications Based Selection Act.
 4 (2) This Section does not authorize withholding of 497
 5 information or limit the availability of records to the 498
 6 public, except as stated in this Section or otherwise 499
 7 provided in this Act.
 8 (Source: P.A. 86-251; 86-870; 86-1028.) 501

9 Section 100. This Act takes effect January 1, 1992. 504

10 Michael J. Madigan 508
 11 Speaker, House of Representatives 509
 12 Philip J. Cook 511
 13 President of the Senate 512

APPROVED

This 23rd day of September, 1991 A.D.
Jim Edgar
 GOVERNOR