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2007 Changes in Law Have Architects Smiling

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Changes to Procurement Statutes

In 2007, the Missouri State Legislature made a minor change in the architect-engineer procurement statute that has broad implications. First a bit of background. Since construction contracts in the public sector are usually awarded to the low bidder, the quality of the bid documents and design is of utmost importance. Rather than selecting the lowest price professional design firm for public buildings, bridges and other structures, public bodies should choose the most qualified designer for the project. Just like hiring a doctor or lawyer, it is not the cheapest person who gives the best service, but the most qualified. This philosophy has been written into the procurement laws at the state and federal laws. In 1972, the federal government passed the "Brooks Act" (40 U.S.C. §§ 541-544), named for its sponsor, Texas Senator Jack Brooks. This law requires the federal government to select architects and engineers based on qualifications and level of competency, rather than on price alone. This federal law has been the model for many state procurement laws, known as "mini-Brooks" Acts.

In 1983, Missouri adopted its own version of this law, sections 8.285 to 8.291, R.S.Mo. The statute mandates "qualifications-based selection" (or "QBS" as it is often called) for the state of Missouri and its political subdivisions. Under the law, public bodies are to negotiate design contracts on the basis of competence and qualifications, at fair and reasonable prices. In 1991, the Missouri Attorney General issued an advisory opinion saying that, when procuring design services for public agencies, price or cost is not to be considered in determining which firm is most qualified, but is only to be considered during contract negotiations with the most qualified firm. Op. Atty. Gen. No. 153-91, *Mueller*, 10-18-91. However, a little known loop-hole, affectionately called the "opt out" provision, was added to the Missouri act at the insistence of the Missouri Municipal League. This one paragraph seemed to make the statute inapplicable to any political subdivision of the state which adopted its own formal procedure for the hiring of design professionals. In a lawsuit challenging that section, a trial judge in Jackson County ruled that under the "opt out" provision, a city could hire its architects based on price merely by adopting an ordinance that so allowed. The architects were, understandably, not happy. So on to Jeff City they marched.

By passing SB 322, the Legislature has now clarified that the "opt out" provision does not permit competitive bidding for design services. The 2007 change requires that any political subdivision that "opts out" of the law must nonetheless adopt "a qualification-based selection procedure commensurate with state policy." This change in the law reaffirms the need to follow the QBS process for all political subdivision

projects. The architects are smiling once again in Missouri, as should the tax payers who are now assured of having the most qualified professionals design their roads, bridges and buildings.

Civil Penalties Passed

Another new law passed this year by the Missouri State Legislature involves changes to licensing laws. The old licensing laws for architects and engineers suggested compliance with those laws, but did not provide any real method for enforcing the laws against non-licensed persons. Particularly troublesome was the growing concern that the licensing board did not have an effective way to stop persons from practicing architecture and engineering without a license, short of suing for an injunction.

The new law, which declares practicing architecture, engineering, land surveying or landscape architecture without a license a Class A misdemeanor, authorizes the Board of Architects, Engineers, Land Surveyors and Landscape Architects to impose “civil penalties” against those who break the law, including persons who are not architects or engineers. The Board can now impose penalties of up to \$5,000 for each offense (each day of a continuing violation constitutes a separate offense) with a maximum penalty of \$25,000.

The new licensing law, which is part of HB 780, also provides that the title “engineer” may be used by persons who are not licensed professional engineers, “so long as such use is reflective of that person’s profession or vocation and is clearly not indicating or implying that such person is holding himself or herself out as being a professional engineer or is willing or able to practice engineering.” This resolves an ongoing dispute over domestic engineers, industrial or chemical engineers, etc. who use the title of “engineer.” These changes in the licensing laws allow design professionals to better regulate their industry and to protect the public by making sure the most qualified firms design our schools, city halls and bridges, and punishing those who violate the law.. The architects are smiling in Missouri, as should all citizens who have been victims of those attempting to practice architecture or engineering without a license.