



THE AMERICAN INSTITUTE OF ARCHITECTS

STATEMENT OF
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*“Procurement Benefits and Issues with the
Architectural Profession and the General
Services Administration”*

United States House of Representatives
Committee on Small Business

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Introduction

Chairman Mulvaney, Ranking Member Chu, and members of the Committee, I am Thomas Jacobs, AIA, Principal at Krueck Sexton Architects, an eleven-person architectural firm based in Chicago, Illinois, and a member of the American Institute of Architects (AIA). I want to thank you for the opportunity to testify today on behalf of my firm and the AIA.

The current economic crisis has affected every American, but, as this Committee knows all too well, it has hit small businesses particularly hard. However, we have experienced some stability through our diversified work portfolio, which includes designing buildings under the General Services Administration Design Excellence program. I look forward to discussing the benefits and issues with how the federal government procures architectural services with you today.

Architectural Profession and the General Services Administration:

Architects are, by and large, small business people; 95 percent of U.S. architecture firms employ 50 or fewer people.¹ In fact, the vast majority practice in one or two person firms. The recession has accelerated this trend as medium sized firms have been purchased by large firms and some architects, having been laid off by their firms, have begun their own businesses. Architects are the starting point for construction of homes, offices, retail spaces, hospitals, educational institutions, government buildings, and more. Architects are licensed by each state to protect the health, safety and welfare for the buildings' inhabitants. Architects are truly the engine that drives the design and construction industry.

Architects are job catalysts – they are the first workers to be involved in the construction process when they develop designs. Hiring an architect leads to employment in other construction-related fields, from engineers and manufacturers, to steel and electrical contractors. In fact, there is one architectural service worker for every 34 construction industry workers in this country,² creating over \$1 trillion in economic activity in 2008.³ In fact, a study by the George Mason University

¹ http://info.aia.org/aiarchitect/thisweek09/1009/1009b_firmsurvey.cfm

² U.S. Department of Labor

³ www.census.gov/const/C30/total.pdf

Center for Regional Analysis found that every \$1 million invested in design and construction creates 28.5 new full-time jobs.⁴

The construction industry has been devastated by this recession, with the most recent job numbers showing that the construction industry lost 28,000 jobs last month⁵. Because of a lack of financing in the private market, public sector work has literally been a lifeline for many small design firms. Government procurement, including at the federal level, has helped to keep the doors open at numerous firms across the nation. However, small firms are losing some of the contracts available because larger firms are “bottom feeding.” They are going after projects they never would have even considered several years ago just to pay their bills. In addition, clients are also negotiating fees downward, using the threat that they can always find someone to do the project for a greatly reduced price. My firm successfully competed as a finalist for a GSA Design Excellence project with five other firms, none of which qualified as a small business. But many small firms are not able to compete with larger businesses.

Federal Supply Schedule and Architecture

One of the challenges that architects face when working with GSA or other agencies is how the federal government can obtain our services. Many firms have sub-specialties in federal work, due to the complexity of the regulations and the specializations required for federal buildings. Federal agencies are required to procure architectural services through qualifications based procedures under the Brooks Act. This Act sets forth a process that requires agencies to select firms based on qualifications rather than solely the price of architectural and engineering services.

Representative Jack Brooks had a strong concern about government buildings and their procurement when he wrote this legislation. His concern was that agencies would focus only on the cost of the service being provided by architects to the detriment of the qualifications of the architects providing the designs. Therefore, less qualified firms could compete based solely on price which would eliminate talented architects and engineers from participating in the federal design process.⁶ The Brooks Act does not mean that price is not a component of the negotiation

⁴ www.naiop.org/foundation/contdev.pdf

⁵ Bureau of Labor Statistics, US Department of Labor, News Release June 1, 2012. www.bls.gov/news.release/pdf/empst.pdf (last visited on June 4, 2012)

⁶ “If routine contract negotiation procedures were used and the amount of the fee to be paid the AE firm discussed incident to the determination of qualifications, less responsible firms could quote a lower fee and have an advantage in obtaining the contract, and then make up for the reduction in

between the architect and the federal agency. Rather, the price must be negotiated with the firm that best meets the qualifications for the project. This is similar to how private sector clients select and interview architects for their projects.

However, there are ways for agencies to avoid using the Brooks Act for the procurement of architectural services; namely through grants, which are generally not covered by the Brooks Act, or by obtaining services through the Federal Supply Service (FSS). The FSS allows federal agencies to take advantage of volume purchasing for the entire government. In order to participate in the FSS, the contract provider must first apply to participate in the FSS and then post a price list for agency use. The price listed should represent the best price available to the government. Agencies are then required to gather prices for three service providers by reviewing the posted pricelists. The agency then determines “best value” by reviewing price and other option criteria, like past performance, warranties, delivery terms and maintenance availability.

Under “best value,” the selection of architectural services is focused on price. This process is in direct conflict to the Brooks Act requirement which focuses first on ensuring that the best qualified architect is identified and then ensures that architect provides a reasonable price. The focus by the agency under the FSS schedule is on price, and not the professional qualifications needed to protect the health, safety and welfare of the people who use the building. Moreover, in some states, architects are prohibited from competing on price. This puts architects in an untenable position of either violating ethical obligations, or preventing them from participating in business.

The FSS issue is not limited solely to architecture, but also includes engineering services, mapping services, and geographic information services. COFPAES, the Council on Federal Procurement of Architectural and Engineering Services, has presented the argument to GSA over the past 13 years that these services must be withdrawn from the FSS. GSA has pledged to COFPAES they will remove these services, but they are still on the schedules.

GSA may argue that there are clear disclaimers on the schedules to prohibit contracting personnel from incorrectly using the FSS when the appropriate contracting vehicle is the Brooks Act.

fee by delivering lower quality plans and specifications to the Government.” 118 CONG. REC. 25487 (1972)

However, these provisions are either at the bottom of the webpage or buried within the FAQ regarding GSA schedules.⁷ Moreover, because Brooks Act-covered architecture, engineering and other related construction services are still listed on the FSS, there is an implicit contradiction between the disclaimer's directive to use Brooks Act for architecture and engineering services, while listing those design services on the schedule.

The FSS provides many benefits to the federal government. However, by procuring architectural services through the FSS program, which focuses on price rather than qualifications, agencies threaten public health, safety and welfare. GSA must cease to use the FSS program for architecture as it violates the Brooks Act.

Design-Build Issues and the GSA

Another procurement issue small design firms face is the burden of the federal design-build construction model on architects. On average, the federal design build fee is approximately \$1.5 million. The rewards are high for these projects, but the cost to enter is increasingly prohibitive to small firms. When design-build occurs, an architecture firm spends on average \$260,000 to compete for design-build project, by making plans, models and other material.⁸ In almost 87% of federal design-build competitions, there are no stipends delivered to the architectural firm.⁹ Instead, the firm must hope that they win, with their teamed organization, to make up the costs.

The costs of competing for these projects are sizable because of the large amount of effort that goes into preparing a bid. First, in order for the design build team to get an accurate price, the architect must develop a full set of schematic designs developed for the building. The amount of work required from an architect is larger than any other partner. The team must know the overall building design, what is required in the building, and what the individual specifications are in order to accurately price out the bid for the building owner. A significantly large percentage of the design occurs before there is a contract, in order to get the price of the bid developed. Clearly, the architect is bearing the brunt of the risk and the work for the bid for the federal design-build contracts.

⁷ <http://www.gsa.gov/portal/content/203021#9> (last visited on June 1, 2012)

⁸ AIA Large Firm Roundtable , *Competition Survey Results*, May 31, 2012 at 9.

⁹ Ibid at 12.

Second, agencies have taken advantage of their purchasing power during the recession and have expanded the number of final list teams. In the past, there were typically three teams who competed for a project. Now, there are reports that as many as eight to ten teams are on the final list. The odds of being selected have dropped significantly, even as the cost to compete still goes up. Because jobs are scarce, small firms face competition from larger firms that can easily absorb the cost. Due to the current recession, firms face the Hobson's choice of "betting it all" on a contract they may not get, or self-selecting out of the federal design-build market. We ask the committee to look at reducing the number of finalists on these types of construction positions, so that all firms can accurately determine the risks and rewards of participating in this market.

Design Excellence as an Alternative Method of Procurement

My firm has been a successful participant in the GSA's Design Excellence program. We respectfully ask the committee to urge GSA and other agencies to expand the participation of small firms in this competitive program. The Design Excellence program streamlines the architect/engineering selection process while stressing creativity in designing the buildings. Because of this streamlined process, the cost of competing for GSA contracts is greatly reduced, but the quality of design and efficiency of the projects is greatly enhanced. When we competed for our project, we were the only small firm competing against five other large architectural firms for this project. However, because we had the talent, the design and were a small business, we won the project.

Another benefit of the Design Excellence program is that it follows the procurement policies outlined in the Brooks Act. Firms must qualify to compete for the project, so when the competition began, the selection focused on which firm had the best design, rather than which firm could compete at the lowest price. While price must play a role in procurement, and it is a valid factor in the selection of architects, the focus must be on how the government values the long-term cost of the building. At a time when the federal government is facing unprecedented deficits, we need to ensure that every dollar spent on federal facilities is spent wisely. Ensuring the most qualified designers are selected at the outset of the project reaps financial benefits for years to come.

In conclusion, I would like to thank Chairman Mulvaney, Ranking Member Chu, and members of the Committee for giving me the opportunity to testify before you today. I want to commend you for your dedication to the problems that small businesses face in this economy and your

leadership in advancing legislation that helps small businesses drive the recovery. The challenges that we as small businesspeople face are serious, but so is our commitment to play a leading role in rebuilding and renewing our country.
