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UNITED STATES GENERAL ACCOUNTING OFFICE
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STATEMENT OF
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COMPTROLLER GENERAL OF THE UNITED STATES
BEFORE THE
SUBCOMMITTEE ON GOVERNMENT ACTIVITIES HSE 01514
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
ON
H.R. 12807, 92d CONGRESS
[PROCUREMENT OF ARCHITECTURAL AND ENGINEERING SERVICES]

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Mr. Chairman and Members of the Subcommittee:

We appreciate the invitation to appear before your Subcommittee to give our views on H.R. 12807, 92d Congress, which would amend the Federal Property and Administrative Services Act in order to establish Federal policy concerning the selection of firms and individuals to perform architectural, engineering, and related services for the Federal Government.

As you know, Mr. Chairman, we testified before your Subcommittee on June 4, 1970, on H.R. 16443, 91st Congress, a similar bill to H.R. 12807. During that testimony we went into considerable detail as to the background of the report we made to the Congress on April 20, 1967, entitled "Government-Wide Review of the Administration of Certain Statutory and Regulatory Requirements Relating to Architect-Engineer Fees." In that report we dealt with the 6-percent fee limitation on architect-engineer services and the method of procurement of A-E services.

With respect to the 6-percent fee limitation we concluded that the present statutory fee limitations are impractical and unsound principally because:

-- The limitations are governed by estimated construction costs which do not necessarily relate to the value of

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the A-E services rendered.

-- Estimated construction costs may not be known at the time the limitations must be applied.

-- Some A-E contracts do not involve programmed construction projects.

-- The limitations may not be meaningful in that they can be partially avoided by agencies using in-house resources perform services that have generally been contracted to A-E firms.

-- A-E fees in terms of percentages of construction cost vary widely and thus render impracticable the establishment of a percentage at an appropriate level to limit effectively the fee for the majority of contracts.

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We recommended to the Congress that the statutory provisions limiting A-E fees be repealed.

With respect to the procurement of A-E services, we found, as stated in our report, that there was a failure on the part of the Government agencies to select A-E contractors under the competitive negotiation procedures as required by Public Law 87-653, as codified at 10 U.S.C. 2304(g), and the Federal Procurement Regulations.

However, we advised the agencies that our Office would take no action until the Congress had an opportunity to consider the matter. We recommended that Congress clarify its intent as to whether the competitive negotiation requirements of Public Law 87-653 are to apply to the procurement of A-E services.

We have given careful study to the provisions of H.R. 12807 and we believe it establishes a method of procurement of architect-engineer services which, in our opinion, does not allow for sufficient competition.

We recognize the need for the Federal Government to assure itself that the architect-engineer services it needs will be of the highest quality, but we do not believe the procedures that would be established under H.R. 12807 are best designed to assure this quality. We are of the opinion that the well-recognized concept of competitive negotiation can be successfully applied to the procurement of architect-engineer services as it has been with similar professional services without adversely affecting the quality of the service to be furnished.

It is necessary in dealing with the procurement process to distinguish very clearly between formal competitive "bidding" and competitive "negotiation." While the rigid formalized rules applicable to advertised procurement generally require award to the lowest (price) responsive, responsible bidder, the flexibility inherent in the concept of negotiation permits an award to be made to the best advantage of the Government, "price and other factors considered." Negotiation permits, and indeed requires, the contracting officials of the Government to consider those "other factors" of the procurement which, in a proper case, may result in an award to one offeror as opposed to another less qualified offeror submitting a lower price.

The award of an architect-engineer contract may and properly should be made to the offeror whose proposal promises the greatest value to the Government in terms of performance and cost, rather than to an offeror who merely proposes to perform at the lowest price. Performance, of course, should include such matters as appropriate such as design concept and life cycle costs of the facility to be constructed.

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As an overall average, architect and engineering costs represent a small percentage, probably not more than five percent, of the total cost of construction. It is, therefore, obvious that the Government's interest is primarily with the total construction cost, whether the design will be both functional and esthetic, and whether the design is such as to reduce to the maximum extent operation and maintenance costs over the intended life of the facility. In the debate which has taken place on this subject over the past few years, I fear that this point may not have been properly emphasized. It would be shortsighted indeed to concentrate too heavily on the cost of the architect and engineering services if this meant that the total life-cycle cost of the facility would thereby be increased or if the design was less than satisfactory from the standpoint of its intended use, its general conformity with community plans, and other considerations.

H.R. 12807 would provide for the selection in order of preference of no less than three firms on the basis of their qualifications and performance data to be submitted annually. Negotiations would then be conducted with the firm having the highest ranking. If a contract could not be negotiated at a fair and reasonable price then negotiations would be conducted with the second most qualified firm, etc. This procedure standing alone forecloses competition between A-E's on a particular project.

Section 904(a) of the bill contains a proviso stating: "That if deemed appropriate the agency head may, before selecting the highest qualified firm, request alternative methods of approach to the solution of the problem and concepts of the scope of services required." While we are not certain as to the meaning of this language we read it to say that in particular cases

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the agency head can request alternate concept proposals from more than one firm. However, even if this were done there is no provision for competing price proposals assuming technical proposals are rated equal.

In summary, we do not recommend enactment of H.R. 12807. We believe there can and should be more competition between A-E's in the design concept area and that in those cases where two or more A-Es are found to be technically equal in their proposals consideration should be given to the prices proposed to be charged by the A-Es. Further, if there is to be legislation, we would urge that the laws relating to the 6-percent fee limitation be clarified by appropriate amendment.

We believe you are aware that in the past we have recommended that Congress not enact legislation dealing with the procurement of A-E services until the Commission on Government Procurement reports its findings and recommendations. The Commission staff has given a great deal of time to the question of how A-E services should be procured, and study groups dealing with the subject have come up with differing recommendations. I do not know how the Commission itself will come out on this issue but it seems appropriate for Congress to have the benefit of the Commission's views before enacting legislation. The Commission report will be available later this year.

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One further point I wish to mention is that I believe one of the problems in securing competition among A-Es is codes of ethics of the various professional societies which consider it unethical for members to enter into price competition for professional services. From articles appearing in the press, my understanding is that the Department of Justice has had this matter under study and that in October 1971 the American Society of Civil Engineers dropped this provision from its code of ethics. I don't know what other codes of professional

societies the Department may have under consideration but the Commission on Government Procurement will undoubtedly explore this development before reaching its conclusions.

Accordingly, I would hope that the Committee would defer consideration of the subject until the Commission has reported.

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