

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

THE MISSOURI CHAPTER OF THE)
AMERICAN INSTITUTE OF)
ARCHITECTS,)

Plaintiff,)

Cause No. _____

v.)

ST. LOUIS COUNTY,)
Serve: Patricia Redington)
County Counselor)
41 South Central Ave.)
Clayton, MO 63105)

Defendant.)

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PETITION FOR DECLARATORY JUDGMENT

COMES NOW Plaintiff The Missouri Chapter of the American Institute of Architects
and for its Petition for Declaratory Judgment against St. Louis County alleges and states as
follows:

Introduction

1. The purpose of this lawsuit is to obtain a declaratory judgment from this Court
that St. Louis County's process for selecting a "design-build" contractor for projects, including
its "County Courts Project" violates Missouri statutes expressing the policy of the State of
Missouri for selection of architectural services.

2. Specifically, Sections 8.285-8.291 RSMo (2007) mandate that the State of
Missouri and its political subdivisions negotiate contracts for architectural, engineering and land
surveying services on the basis of demonstrated competence and qualification. Because they

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mandate a qualifications-based selection method, these statutes are commonly referred to as “QBS” statutes.

3. The State of Missouri and its political subdivisions must select the most qualified applicant for such services without regard to price, and price can only be considered once the contract is being negotiated with the chosen applicant.

4. St. Louis County’s design-build procurement ordinances and its proposed selection process for a design-build contractor for projects, including the County Courts Project violate Missouri’s QBS statutes because, among other things, the County ordinances and selection process make price a substantial criterion in awarding a contract that includes architectural and engineering services.

Parties, Jurisdiction and Venue

5. Plaintiff, the Missouri Chapter of the American Institute of Architects (“AIA-MO”), is a Missouri benevolent corporation, incorporated on June 1, 1903. It is the state chapter of the American Institute of Architects (“AIA”), a national organization for professional architects. AIA-MO has over 1,550 individual members in Missouri, including 650 in the Greater St. Louis Metropolitan Area. Its Missouri corporate headquarters is located at 2610 Tanglewood Drive, P.O. Box 105938, Jefferson City, MO 65110.

6. Defendant St. Louis County is a county of the first class operating under a home rule charter under Article VI, Section 18 of the Missouri Constitution. It is a political subdivision of the State of Missouri with a population of approximately one million. St. Louis County can be served with Summons and a copy of this Petition by serving Patricia Redington, St. Louis County Counselor, at 41 South Central Ave., Clayton, MO 63105.

7. Judicial review is proper in this case pursuant to Section 527.020 RSMo, which allows this Court to determine questions of construction and validity arising under statutes and ordinances and to make a declaration of rights thereunder.

8. Venue is proper in St. Louis County pursuant to Section 508.060 RSMo.

General Allegations

I. St. Louis County's Design-Build Procurement Process

9. In 2006, St. Louis County adopted its "design-build ordinance," Title I, Chapter 113 of its Code of Ordinances, which sets forth its three-phase process for entering into design-build contracts. ST. LOUIS COUNTY, MO., REV. ORDINANCES § 113 (2006).

10. In Phase I, all proposers submit statements of qualifications that provide certain required information. An evaluation team then evaluates those statements of qualifications and selects "qualified proposers" to proceed to Phases II and III of the selection process. § 113.050.

11. In Phase II, the director of procurement invites the five most qualified proposers to participate. The proposers submit their designs for the project with the required level of detail. The designs are then evaluated and assigned points, but the points assigned for Phase II submittal "shall count for *no more than* fifty (50) percent of the total point score assigned by the evaluation team." § 113.060 (emphasis added).

12. Concurrently with the design proposals submitted in Phase II, proposers must provide a firm, fixed cost for the design and construction of the project. Those cost proposals are considered Phase III of the process and are opened after the Phase II design proposals have been evaluated and scored. The Phase III cost proposal "shall count for a *minimum* of fifty (50) percent of the total point score assigned by the evaluation team." § 113.070 (emphasis added).

II. St. Louis County's "County Courts Project"

13. On October 2, 2012, St. Louis County's Department of Highways & Traffic and Public Works issued a Request for Qualifications ("RFQ") for a single entity to provide both professional architectural and engineering services and the construction for a construction project known as the "County Courts Project," to be located in the City of Clayton in St. Louis County, Missouri. It is attached to and incorporated into this Petition by reference as Exhibit A.

14. It is the intent of St. Louis County to "expan[d] . . . Court facilities at the County Government Center to include all operations currently housed at the Family Court Center located at 501 South Brentwood Boulevard in order to create a modern, highly functional and sustainable unified Courts Complex." The budget for the project is "approximately \$90.5 million." See Exhibit A at 3-4.

15. The Department's RFQ utilizes and implements the three phase design-build structure laid out in Title I, Section 113 of the St. Louis County Code of Ordinances at issue and discussed above.

16. The RFQ first requests Statements of Qualifications ("SOQs") for Phase I of the three-phase procurement process, stating: "St. Louis County will evaluate the SOQs to determine which submitters are the most qualified . . . , [and] will generate a shortlist of five qualified Submitters from those who submit SOQs." See Exhibit A at 4.

17. The RFQ further explains that in Phase II:

St. Louis County will issue a Project Request for Proposals (RFP) to the five (5) Submitters in the shortlist. Only the Submitters on the shortlist will be eligible to submit proposals for the Project. The proposals will have two parts: a technical proposal and a price proposal. St. Louis County will first evaluate and score the technical proposals using the criteria outlined in the RFP.

See Exhibit A at 4.

18. The RFQ then explains that “[a]fter St. Louis County completes the evaluation of the technical proposals, the price proposals will be opened. (Phase III – Cost). St. Louis County shall evaluate the price proposals for the scope of work presented in Phase II and shall apply the criteria outlined in the RFP.” See Exhibit A at 4.

19. On information and belief, for the County Courts Project, St. Louis County is adhering to Title I, Section 113 of the St. Louis County Code of Ordinances in its implementation of the three-phase design-build process discussed above.

III. Missouri’s QBS Statutes

20. The hiring of architects and engineers by the State of Missouri and its political subdivisions is governed, in pertinent part, by Sections 8.285-8.291 RSMo (2007) (the “QBS Statutes”).

21. St. Louis County is a “political subdivision” of the State of Missouri as that term is used in the QBS Statutes.

22. St. Louis County’s Department of Highways & Traffic and Public Works is an “agency” of a political subdivision of the State of Missouri, authorized to contract for architectural, engineering and land surveying services, as that term is defined in the QBS Statutes.

23. “Architectural and engineering services” as defined in Section 8.287(2)-(3) RSMo means any service as defined in Sections 327.091 and 327.181 RSMo, including services that St. Louis County contemplates in its design-build ordinance and has included in its October 2, 2012 RFQ for its County Courts Project.

24. The project contemplated in St. Louis County's design-build ordinance and the County Courts Project are "projects," as that term is defined in Section 8.287(6) RSMo, meaning any capital improvement project or any study, plan, survey or program activity of a State agency or political subdivision thereof, including development of new or existing programs.

25. Under Missouri's QBS Statutes, "[i]t is the policy of the state of Missouri and political subdivisions of the state of Missouri to negotiate contracts for architectural, engineering and land surveying services on the basis of demonstrated competence and qualifications for the type of services required and at fair and reasonable prices." RSMo § 8.285.

26. Under Section 8.289 RSMo, when St. Louis County and its agencies wish to procure architectural or engineering services, they are required to encourage firms engaged in the lawful practice of their professions to annually submit a statement of qualifications and performance data to the agency.

27. Also pursuant to Section 8.289 RSMo, when St. Louis County and its agencies propose a project requiring architectural or engineering services, St. Louis County and its agencies are required to evaluate current statements of qualifications and performance data of firms on file together with those that may be submitted by other firms regarding the proposed project. In evaluating the qualifications of each firm, St. Louis County and its agencies are required to use the following criteria:

- a. The specialized experience and technical competence of the firm with respect to the type of services required;
- b. The capacity and capability of the firm to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project;

- c. The past record of performance of the firm with respect to such factors as control of costs, quality of work, and ability to meet schedules;
 - d. The firm's proximity to and familiarity with the area in which the project is located.
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28. Pursuant to Section 8.291 RSMo, St. Louis County and its agencies are required, when selecting architectural and engineering firms for a project, to list three highly qualified firms, select the firm considered best qualified, and then negotiate a contract for the project with that firm. In the event that the contract cannot be negotiated with the most qualified firm, the agency may then attempt to negotiate a contract with the next qualified firm.

29. The QBS Statutes require that price not be considered *until* the most qualified firm is selected and the contract is being negotiated.

30. St. Louis County's design-build ordinance procedures and proposed selection process for its County Courts Project vary from the requirements of Missouri's QBS Statutes and are not commensurate with those requirements.

31. Section 8.291.5 RSMo does not permit a political subdivision to vary from the statutory QBS procedures, and St. Louis County may not introduce price, cost or fee as a part of the selection criteria when determining the most qualified applicant to perform services that include architectural and engineering services for St. Louis County projects.

32. St. Louis County, by selecting *five* of the most qualified applicants for further submission of a price proposal, does not have a procedure to "select the firm considered best qualified and capable of performing the desired work," as required by Section 8.291.1 RSMo.

33. St. Louis County's design-build ordinance does not comply with the requirements of Sections 8.285 through 8.291 RSMo because the single entity that provides the design and

construction services is not selected until after price is considered, and price is a substantial factor in that consideration, weighted as “a *minimum* of fifty (50) percent of the total point score” awarded in Phases II and III.

~~34. St. Louis County’s adopted procedure for the procurement of architectural or engineering services that are embedded within the services of a design-build contractor violates~~
the stated public policy of the State of Missouri for a political subdivision and its agency by making price a significant part of the selection criteria for determining the most qualified persons or firms to perform the County’s contracts for architectural and engineering services for County projects.

35. Specifically, St. Louis County’s adherence to Title I, Section 113 of its ordinances in its implementation of the County Courts Project does not comply with the requirements of Missouri’s QBS Statutes because the County ordinances and County Courts Project selection process makes price a substantial criterion in awarding a contract that includes architectural services. See Letter from Jonathan Hensley, Mo. Assistant Att’y Gen., to John Huff, Dir., Mo. Dept. Ins., Fin. Inst., and Prof’l Registrations (Oct. 6, 2010) (“It is not appropriate or lawful for an architect, professional engineer, professional land surveyor or landscape architect . . . to submit its proposal for the work intended by the agency or to provide a sealed envelope that contains its proposed costs . . . *unless that firm has already been selected by the agency as the most highly qualified for the job* . . . and the firm’s submission of its work and price proposal is made during the contract negotiation process described in Section 8.291 RSMo.” (emphasis added)).

Count I – Request for Declaratory Judgment

36. Plaintiff realleges and incorporates by reference herein the allegations contained

in Paragraphs 1 through 35 above.

37. As set forth above, St. Louis County has violated Sections 8.285-8.291 RSMo by making price a significant part of the selection criteria used to determine the most qualified of the interested firms that will provide services that include architectural and engineering services for County projects.

38. Title I, Section 113 of St. Louis County's Code of Ordinances is void and unenforceable as to the procedure which considers price as a significant selection criterion when determining the most qualified persons or firms to perform services that include architectural or engineering services for County projects.

39. Title I, Section 113 of St. Louis County's Code of Ordinances deprives members in the architecture and engineering fields, such as the members of AIA-MO, of the opportunity to compete for and obtain St. Louis County contracts by first submitting information demonstrating competence and qualifications and subsequently negotiating a contract at fair and reasonable prices, as required by the QBS Statutes.

40. Unless St. Louis County's ordinance challenged herein is declared invalid and the County's adherence to the ordinance in implementing its County Courts project is declared illegal, the County's continued adherence to the ordinance will deprive members of the architectural and engineering fields, including the members of AIA-MO, of the chance to compete for and obtain County contracts based upon their qualifications.

41. Plaintiff has no adequate remedy at law and will suffer irreparable harm by St. Louis County's continued practice of using price as a selection criterion to determine the most qualified persons or firms to perform County contracts. Accordingly, Plaintiff seeks a declaratory judgment from this Court.

WHEREFORE, Plaintiff requests that this Court issue an order declaring:

- a. that Title I, Section 113 of St. Louis County's Code of Ordinances violates Missouri law and policy as set forth in Sections 8.285-8.291 RSMo;
- b. that Title I, Section 113 of St. Louis County's Code of Ordinances is thereby void, illegal, invalid, and contrary to Missouri law and policy as relates to selection of contracts involving architectural and engineering services;
- c. that St. Louis County's adherence to Title I, Section 113 in its implementation of the County Courts Project is thereby void, illegal, invalid, and contrary to Missouri law and policy as relates to architects and engineers;
- d. that Plaintiff be awarded its attorney's fees and costs herein and for such further relief as the court deems just and proper.

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