

received by the governor on 18 December 1973, was implemented almost immediately by executive order.<sup>48</sup>

In conformance with the Wolman recommendations, the executive order attempted to coalesce the desire for competitive bidding with the recognition that some projects might not lend themselves to that process because of the nature of the professional services needed. The order could not, of course, directly affect the board's ultimate authority or discretion, which was statutorily based. Instead it attempted to deal with the process by which the procuring agencies made their recommendations to the board and thus get at the problem indirectly.

The order did essentially three things: (1) it created two Professional Service Selection Boards (PSSBs), one for DOT and one for the Department of General Services, each to be comprised of both agency and public members; (2) it specified that no contract for architectural or engineering services other than on a competitive bid basis was to be entered into by the agency or recommended to the Board of Public Works unless approved by the appropriate PSSB; and (3) it created a procedure to be followed where competitive bidding was regarded as unfeasible. That procedure required the PSSB to approve the noncompetitive selection for the particular project and involved then a process of publicly inviting firms to submit their qualifications, prequalifying such firms, and then dealing only with those firms on the qualified list. Generally the procuring agency was to be given three firms from the qualified list, selected in inverse order to the value of the state contracts each had received during the preceding two years. The agency then could choose its nominee to the Board of Public Works by one of three methods: (1) competitive negotiations, in which it would deal sequentially with one firm at a time until it reached a satisfactory agreement; (2) parallel negotiations, in which simultaneous negotiations would be undertaken with all the firms; or (3) invited price bids, with the agency selecting the low bid.

Although there continued to be some grumbling by a few architects and engineers, generally the storm subsided, and most people thought that the problem had been resolved. In its 1974 session the legislature confirmed the executive order by enacting its provisions, with few changes, into law.<sup>49</sup> Once the PSSBs were functioning, all architectural and engineering contracts came to the board through that process and were considered and approved without much ado.

Then came the matter of selecting a construction manager for the Baltimore subway system, bringing with it a swirl of charges and countercharges and involving the board in a public dispute with Secretary of Transportation Harry Hughes.

Construction of the Baltimore subway system—actually an eight-mile line only half of which was to be underground—was the largest single project ever to come before the board. Notwithstanding that some 80 percent of the \$800 million venture was to be federally funded, it involved considerable state funds and thus the expenditures had to be approved by the board. Overall responsibility for the project was invested in DOT and in particular the Mass Transit Administration, one of the five modal units within that department.

At some point DOT determined that it did not have the resources to manage such a large construction project. With at least tacit approval of the board, the department requested, and on 2 June 1975 received, permission from its PSSB to solicit interest from outside consultants for construction management services. Eighteen firms responded to the initial DOT questionnaire. After a two-step review process five firms (or consortia) were found to be qualified and were invited to submit proposals. The proposals were to be in two parts—a technical proposal, describing in detail the services to be performed, and a cost proposal, stating the estimated cost of performing those services.

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48. Executive Order 01.01.1974.04, 9 January 1974.

49. Acts of 1974, ch. 732.