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DEPT. OF ECOLOGY

November 22, 2000

Mr. Erik Stockdale  
Department of Ecology  
3190 160<sup>th</sup> Ave SE  
Bellevue, WA 98008-5452

Subject: Request for Bid for Review of Natural Resource Mitigation Plan (NRMP),  
SeaTac Third Runway project.

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Suite 708  
Seattle, WA 98101-1318  
Phone: 206/623-5936  
Fax: 206/224-0815  
e-mail: office@cecw.org  
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Dear Mr. Stockdale:

The subject Request for Proposals, dated November 14, 2000, has been referred to us because it appears to be in conflict with RCW 39.80. The RFP states that proposers should include a cost estimate for the professional engineering services noted above.

RCW 39.80 governs contracts for architectural, engineering and land surveying services, and establishes procedural requirements for procurement of services by all governmental agencies within the State of Washington. The statute sets forth a three-stage process which includes notice, selection of the most qualified firm for a particular project based upon criteria established by the agency, followed by negotiation of a price determined to be "fair and reasonable" by the agency. If the agency and firm are unable to agree upon the price the agency is free to select and negotiate with another firm, whether or not ranked by the agency, until agreement is reached or the process is terminated.

The competitive, qualifications-based selection process required by RCW 39.80 does not permit bids or cost proposals. Attorney general's opinion AGO 1988, No. 4, states the following with respect to the cost issue:

1. "A public agency may not, in procuring architectural or engineering services consider cost or fee in determining which firm is most highly qualified to provide services."
2. "When a public agency selects a firm to perform architectural or engineering services, cost or fee may be considered only after the most qualified firm has been selected, at which time the law provides for negotiation of a 'fair and reasonable' price."

Enclosed is a copy of the attorney general's opinion and Guidelines for Implementing RCW 39.80.

AR 018492

"Improving the Business of Engineering"

Ex. 190

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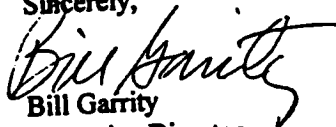
Also, please note that under the rules of professional conduct for professional engineers, included in WAC 196-27-020(5)(f), "Registrants shall not participate in a selection process or be employed in an assignment where said selection was awarded by a process determined to be in violation of Chapter 39.80 RCW."

WAC 196-27-010(3) further states: "A violation of these rules of professional conduct is considered misconduct or malpractice as defined by RCW 18.43.105(11). Registrants found guilty of said misconduct or malpractice are subject to disciplinary powers of the Board as provided in RCW 18.43.110."

The public and private rationale behind these regulations and the contracting statute is further explained in the enclosed Guidelines.

We suggest amending the request for proposal to eliminate any requirement for estimates of costs or fees, so that the apparent successful proposer is selected based on qualifications as required by the statute. If we can be of assistance, or provide further information with respect to compliance with the law in a manner which meets your agency's procurement objectives, please call us.

Sincerely,

  
Bill Garrity  
Executive Director

Enclosure

C.C. The Honorable Christine O. Gregoire, State Attorney General  
Clifford Webster, General Counsel, Architects and Engineers Legislative Council

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