

## Qualifications-Based Selection (QBS)

QBS refers to a procurement process established by the United States Congress as a part of the Brooks Act (Public Law 92-582; see also 40 USC 1101 et. seq.) and further developed as a process for public agencies to use for the selection of architectural and engineering services for public construction projects. It is a competitive contract procurement process whereby consulting firms submit qualifications to a procuring entity (owner) who evaluates and selects the most qualified firm, and then negotiates the project scope of work, schedule, budget, and consultant fee.

Crucially, under a QBS procurement, the cost of the work (price) is **not** considered when making the initial selection of the best or most appropriate provider of the professional services required. Fees for services will be negotiated, however, following selection and before contracting.

Many states in the US have adopted their own versions of the *Brooks Act*, commonly referred to as "Little Brooks Acts" or "mini-Brooks Acts". For example, Georgia has adopted QBS as appropriate under its state law. Practical application in Georgia state construction procurements has extended the use of QBS into several areas of professional construction services other than architecture, engineering, land surveying, and landscape architecture. These areas have included project and program management, construction management at-risk (CM/GC), design-build, and building commissioning. Other states have adopted varying interpretations.

Public owners have developed policies and procedures for Qualifications-Based Selection to govern procurements in which price is not the determining factor in selection. Price will be taken into consideration under QBS but not for the purposes of the public owner's determination of the most suitable and qualified provider of construction services.

## Impetus for QBS

QBS was developed because public owners lacked procurement tools for services for which price competition made no sense. For example, creative services cannot be fairly priced before the creative process has taken place. An architect or engineer can hardly "hard bid" (submit a firm price for) a project when part of the cost to the architectural or engineering firm (and therefore its needs for compensation) will be determined later in the process of discovery of the owner's needs and intentions.

Further, lowest cost is widely recognized as the poorest criterion for service selection when quality and professional creativity are sought. An apt analogy from outside of the construction arena often cited is in the area of medical care: Nobody willingly chooses a surgeon based upon a doctor's willingness to perform an operation most cheaply.

Whereas private owners could use common sense to procure services based upon an evaluation of sources of greatest delivery of value, public owners, under political scrutiny, have been bound to the presumed objectivity of selections based on lowest price, even if a realistic price could not be determined. Such situations have led to unintended consequences, including poor service and quality, excessive and expensive change orders, and litigation over disputes.

Adapting to political reality, known abuses, tight budgets, and increasing expectations on the part of taxpayers for quality with integrity, the public owner has developed selection procedures consciously intended to enhance the probability of value while guarding against unfairness and abuse.

Crucial to QBS is the methodology and documentation the public owner uses to ensure competition without consideration of price. An essential element is the use of a selection committee, comprising a number of knowledgeable people of unquestioned integrity, to make the evaluations. The selection committee is charged by the owner with fairly evaluating the qualifications and, often, the ideas for project execution offered by competing firms.

## **Typical QBS Process**

Under QBS, the owner would publicly advertise a project and describe it in significant detail in a published "Request for Qualifications" (RFQ). The RFQ should contain selection criteria explicitly in order for firms to judge the likelihood of being selected. The owner would invite firms to submit their qualifications for evaluation by the selection committee, which must then rank-order the firms using the published selection criteria in making their evaluations.

Commonly, the initial evaluation of qualifications submittals will lead to a shortlist of three to five firms that the selection committee judges to be well qualified to perform the work. Through an additional "Request for Proposals" (RFP), these short-listed firms may be invited to submit more detailed ideas about the specific project at hand. The selection committee would evaluate responses to the RFP, also, and often invite firms to interview in person.

Ultimately, the selection committee will provide the owner with a final rank-ordering of the short-listed firms. The owner would then invite the top-ranked firm to enter into negotiations to establish compensation and other contractual terms. If negotiations are not successful and the parties cannot agree to a contract, the owner would dismiss the top-ranked firm and invite the second-ranked firm to negotiate, and so on until a contract is concluded.

## **History of QBS**

The first U.S. law governing procurement of A/E selection was enacted in 1939. Prior to that, government employees designed public projects. The 1939 law directed U.S. Government agencies to contract with private firms. A/E contracts were negotiated, and fees were limited to 6 percent of estimated construction cost. Many agencies found creative ways to exceed the 6 percent limit.

A 1967 government report revealed a muddled and complex federal A/E procurement process that needed standardization. The report suggested that Congress clarify whether A/E services were subject to price competition. In April of 1967, the Controller General of the United States issued a report to Congress entitled "A Government-Wide Review of the Administration of Certain Statutory and Regulatory Requirements Relating to Architect/Engineering Fees." The report criticized the federal construction agencies for paying fees in excess of the statutory limitation of 6% of the estimated construction cost; exposed that the federal government was not utilizing price competition in contracting for architectural and engineering services as required by law; and provided the motivation for the formation of one of the most durable and effective coalitions in Washington.

## **Creation of COFPAES**

COFPAES, the Council on Federal Procurement of Architectural and Engineering Services, was organized in anticipation of the results of the General Accounting Office research summarized in the 1967 report. Then, as now, the major organizations representing design professionals realized that a common effort was needed to educate Congress and the public on the design professions and the need to place the emphasis on quality and competence by procuring professional services through a qualifications-based selection process.

In 1966 four organizations, the American Society of Civil Engineers, the American Consulting Engineers Council , the Professional Engineers in Private Practice division of the National Society of Professional Engineers, and The American Institute of Architects formed COFPAES. Later, the Planning and Design Division of the American Road and Transportation Builders Association, the American Congress on Surveying and Mapping, and the American Society of Landscape Architects became active members in COFPAES.

Because in the GAO report the controller general asked Congress to clarify whether federal A/E selection was subject to existing procurement laws requiring price competition, the first COFPAES project was to provide Congress with an understanding of the nature of the design professions. With the combined strength of the COFPAES organizations, a recognition of the professionalism of architectural and engineering services finally was signed into law in October of 1972 (Public Law 92-582, the Brooks Act.)

But the enactment and defense of the Brooks Act is not the only reason for the continued existence of COFPAES. The goal of the coalition always has been the promotion of sound A/E procurement practices. Through the years, COFPAES has provided the stimulus for advancements such as the development of the SF 254 and SF 255 questionnaires and has served as an informal sounding board for new developments in federal procurement procedures, policies and regulations.

In addition, COFPAES has organized courses for private sector design professionals and federal, state and municipal procurement personnel, sponsored conferences on federal programs and procedures, and published guides to contracting with the federal government. COFPAES also works with the construction-related federal agencies to conduct an annual Federal Programs Conference which offers information to design professionals on funding levels and new project starts, provides opportunities for design professionals to meet agency officials and share information on their common needs and problems, and serves as a forum for federal officials to exchange ideas and concerns with their peers in government service.

Since its inception in 1966, COFPAES has provided the design community with a common voice on the narrow focus of federal procurement law and regulations. COFPAES continues to serve the American public as a well-known and respected forum for the consideration of policy and operational changes in the selection procedures of design professionals. Because of its emphasis on professionalism in the procurement process, COFPAES assists the federal government in assuring that the design of projects to satisfy the building and infrastructure needs of our Nation is conducted in an efficient and quality manner.

## Procurement Studies

In Maryland, a grossly corrupt procurement led ultimately led to the resignation of the Vice President of the United States in 1972. At the time, Maryland had in place a QBS system in name only. It had none of the safeguards that are typically in place as described above and was easily influenced by political pressure. Following the scandal, a price-based system was put into effect in Maryland.

In 1984, the American Institute of Architects (AIA) compared the procurement practices of Maryland and Florida. According to the report:

“Maryland’s A/E selection process was significantly more time-consuming and expensive than Florida’s. In Maryland, the necessity of preparing detailed programs on which A/Es can base price proposals results in added expense to the state in the form of administrative staff, time delays and consultants costs. These additional system costs are unique to the Maryland process.”

A 2002 study by the Polytechnic University in New York looked at the procurement of A/E services in New York City compared to New York State concluded:

“Competitive bidding may result in “presumed” cost savings at the time of award, but the short term (construction phase) and long-term (life-cycle) costs may increase the original costs significantly. The disadvantages of competitive bidding exist even when the best technical proposal wins because the effect of the bidding process remains... QBS reduces procurement efforts. Rather than spending long periods of time on developing a very narrow scope of work, owners can focus on identifying qualified firms.”

## **QBS Testimonials**

The following are a series of testimonials in support of qualifications-based selection procedures:

QBS is a valuable tool for us. It consistently delivers high-quality, on-time infrastructure projects for the citizens of New York." - **William F. O'Connor, Deputy Commissioner, New York State Office of General Services.**

"The public interest is best served when government agencies select engineers, architects and related professional services and technical consultants for projects and studies through QBS." - **Marty Manning, President, American Public Works Association.**

"In general, QBS has allowed us greater flexibility, placed minimal financial burden on prospective consulting firms, initiated greater understanding of the scope of work, and facilitated the development of contracts that are based on common understanding and sound fiscal principles associated with the expected work." - **Harry Judd, Manager of TMDL, Utah State Division of Water Quality.**

"The whole QBS process was very helpful. My only regret is that I wish we would have adopted it sooner." - **Rick Manchester, Parks and Recreation Director, City of Two Rivers, WI.**

"QBS means that the owner gets a qualified, competent engineer who is known to have the qualifications for a specific project. And the taxpayer receives a quality infrastructure system that is well-designed and meets the required service life." - **Paul Kinshella, Superintendent for the City of Phoenix Water Services Department.**