



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Louisiana

QUALIFICATIONS BASED SELECTION

2019 LPESA Fall Conference

October 3, 2019



WHAT IS QUALIFICATIONS BASED SELECTION (QBS)?

A competitive procurement approach for selecting and retaining design professionals (Architects and Engineers) that emphasizes qualifications to achieve final project performance and ownership cost objectives, which for public good is legally required to be used by government agencies.

QBS was mandated for federal use by passage of the Brooks Act in 1972 and state use by passage of the Hammett Act in 2006.



QBS Safeguards Public Interest
QBS Encourages Competition
QBS Promotes Technical Innovation

Engineering is a highly skilled service that should not be selected on the basis of the firm offering the lowest bid.

The design services provided by engineering firms directly affect the health, safety and welfare of the public, and it is important that only the most qualified and experienced firms be tasked with this critical function. It is the surest way to safeguard the public interest and ensure that tax dollars are well spent.

QBS FOLLOWS A WELL-ESTABLISHED SEQUENCE

- **The owner issues a request for qualifications (RFQ);**
- **Professional entities or individuals respond to the RFQ;**
- **The owner reviews the qualifications based upon past performance, technical competence, capacity to accomplish the work and related factors;**
- **The owner ranks the firms, with the best-qualified firm ranked first, the second most qualified second, and so on;**
- **The owner commences negotiations with the top-ranked firm to reach a mutual understanding of scope; and**
- **The parties negotiate a fair and reasonable price for the services required. If the owner and top-ranked firm cannot reach an agreement on scope, contract terms or price, the owner would then negotiate with the second-ranked firm, and so on. Caps on allowable costs and non-statutory based limitations on compensation are violations of the intent of the QBS process.**



WHO USES QBS?

- **Local, state and federal governmental agencies that procure A/E services**
- **Private industry**
- **Other public and private institutions**
- **Design professionals when hiring other design professionals**
- **Other users of services/products who place qualifications first (“The doctor example”)**

GOVERNING STATUTES AND LEGAL OPINIONS



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THE HAMMETT ACT

R.S. 38:2318.1

PART VII-A. LOUISIANA "NO BIDDING OF DESIGN PROFESSIONAL SERVICES" POLICY

A. It is the policy of the state of Louisiana, its political subdivisions, and agencies to select providers of design professional services on the basis of competence and qualifications for a fair and reasonable price. Neither the state nor any of its political subdivisions or agencies may select providers of design services wherein price or price-related information is a factor in the selection.

B. However, the provisions of this Section shall have no effect on and shall not supersede any contract permitted pursuant to the provisions of Chapter 1 of Title 48 of the Louisiana Revised Statutes of 1950 relating to the authority for the Department of Transportation and Development to enter into design-build contracts or public-private partnership contracts, and the authority of the Louisiana Transportation Authority to enter into public-private partnership contracts, R.S. 38:85, 2225.2.1, or 2225.2.2 relating to the authority for certain political subdivisions to enter into design-build contracts, or R.S. 34:3523, relating to any port project that a notice of intent is advertised for in accordance with R.S. 34:3523, prior to December 31, 2020.

C. It is the policy of the state of Louisiana that all records, as defined in R.S. 44:1(A)(2)(a), involved or dealing with the selection of design professional services shall be open to the public in accord with the intent of Louisiana Constitution Article XII, Section 3, and R.S. 44:31.

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ATTORNEY GENERAL'S OPINIONS

The Louisiana Attorney General's Office issued **Opinion 07-0185** on September 18, 2007 in response to a question from the St. Bernard Port, Harbor and Terminal District relative to whether ACT 407 prohibited requesting of price quotes on design services from engineering firms?

The Louisiana Attorney General explained...**in short, the answer to your question is yes.**

La. R.S. 38:2318.1, in its current form, creates a “No Bidding of Design Professional Services Policy,” which prohibits the state or any of its political subdivisions or agencies from selecting providers of design services where price or price related information is a factor. As a result, the legislature has created a selection process for design services based solely on competence and qualifications. Although the statute does provide that the price should be fair and reasonable, it cannot be considered during the selection process. **Therefore, in accordance with the statute, requesting price quotes on design professional services is prohibited.**

...

In conclusion, it is the opinion of this office that pursuant to La. R.S. 38:2318.1, the district is **prohibited from using price or price-related information as a factor in its selection process and therefore cannot request price quotes on design professional services from engineering firms.”**

ATTORNEY GENERAL'S OPINIONS

La. Atty. Gen. Op. No. 14-0033, March 31, 2014

In 2014, in response to a request for an opinion from the Honorable Christopher J. Bruno, Civil District Court of New Orleans, wherein the Court asked if the Orleans Judicial District Court Building Commission could employ the design-build construction method for the construction of a new courthouse, the Attorney General included the following footnote in its analysis:

“As previously recognized by this office, contracts for services, professional or otherwise, are not subject to the requirements of Louisiana’s Public Bid Law. Atty. Gen. Op. Nos. 07-0061 and 03-0108. **As such, under state law the Commission is free to select a design professional without having to engage in any sort of competitive bid process provided it complies with La.Rev.Stat. 38:2318.1 which prohibits the state or any political subdivision from using price as a factor when selecting a design professional.”**



THE BROOKS ACT

Prior to 1939

Most design done by federal employees

1939 A/E Selection Provision

1947 Armed Services Procurement Act and 1949 Federal Property and Administrative Procedures Act

1972 – The Federal “Brooks” Law (P.L. 92-582) signed

Codified into federal law the QBS process for A/E services

1984 Competition in Contracting Act

Includes QBS as a competitive process

1995, 1998, 2006 – Transportation Authorization and Funding Laws

Applied and expanded QBS requirements for state and local transportation agencies receiving Federal funding



THE BROOKS ACT

TITLE 40--PUBLIC BUILDINGS, PROPERTY, AND WORKS SUBTITLE I--FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES CHAPTER 11--SELECTION OF ARCHITECTS AND ENGINEERS Sec. 1101. Policy The policy of the Federal Government is to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

Sec. 1102. Definitions In this chapter, the following definitions apply:

.....

(2) Architectural and engineering services.--The term "architectural and engineering services" means-- (A) **professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide the services described in this paragraph;** (B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and (C) other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.



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THE BROOKS ACT

Sec. 1103. Selection procedure

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(c) Evaluation.--For each proposed project, the agency head shall evaluate current statements of qualifications and performance data on file with the agency, together with statements submitted by other firms regarding the proposed project. The agency head shall conduct discussions with at least 3 firms to consider anticipated concepts and compare alternative methods for furnishing services.

(d) Selection.--From the firms with which discussions have been conducted, the agency head shall select, in order of preference, at least 3 firms that the agency head considers most highly qualified to provide the services required. Selection shall be based on criteria established and published by the agency head.

Sec. 1104. Negotiation of contract

(a) In General.--The agency head shall negotiate a contract for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Federal Government. In determining fair and reasonable compensation, the agency head shall consider the scope, complexity, professional nature, and estimated value of the services to be rendered.

(b) Order of Negotiation.--The agency head shall attempt to negotiate a contract, as provided in subsection (a), with the most highly qualified firm selected under section 1103 of this title. **If the agency head is unable to negotiate a satisfactory contract with the firm, the agency head shall formally terminate negotiations and then undertake negotiations with the next most qualified of the selected firms, continuing the process until an agreement is reached. If the agency head is unable to negotiate a satisfactory contract with any of the selected firms, the agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.**

DEFINING DESIGN PROFESSIONALS

Louisiana R.S. 38:2225.2.4 B (3) - "Design professional" means an engineer, architect, or landscape architect who has secured a professional license from a Louisiana registration board as required by state law and who is selected by an owner in accordance with state law.

LawInsider- Design Professional means architects, landscape architects, engineers, environmental professionals, land surveying professionals, and any other professionals performing required incidental services who Developer or its Contractors employ, retain, or engage by any method to perform architectural, landscape architectural, engineering, environmental consulting, land surveying, and any other necessary incidental services required for the Work.

DOES THE HAMMETT ACT COVER ALL ENGINEERING SERVICES?

A. It is the policy of the state of Louisiana, its political subdivisions, and agencies to select providers of design professional services on the basis of competence and qualifications for a fair and reasonable price. Neither the state nor any of its political subdivisions or agencies may select providers of design services wherein price or price-related information is a factor in the selection.

Note that the law prohibits public agencies from using price or price related information when selecting the *providers of design services*. As noted previously, the *providers of design services* in this context are engineers, architects and landscape architects. This includes engineering services that are often part of the pre-design phase, such as:

- *Environmental Survey*
- *Topographical Site Survey*
- *Traffic studies*
- *Site Utility Audits*



IF I CAN'T ASK FOR PRICE, HOW DO I CONTROL COSTS?

When engineers compete for projects by the qualifications-based method, price is considered; it is taken into account after the most qualified firm is selected.

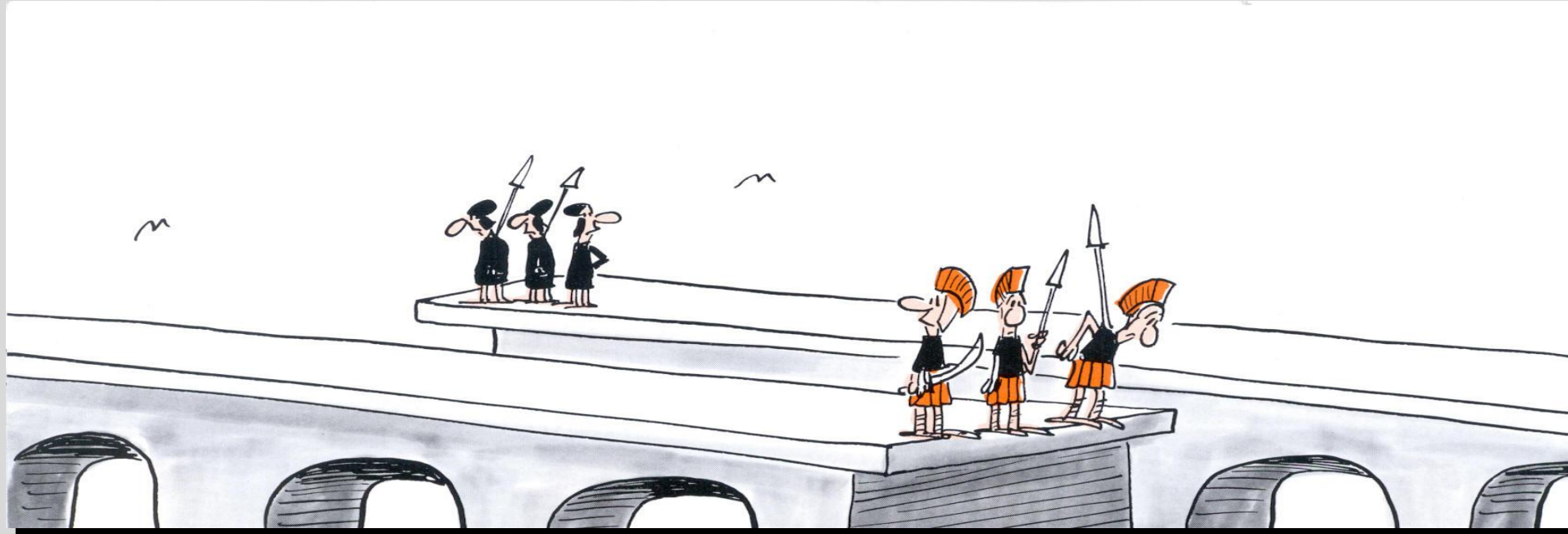
WHY NOT USE LOW-BID?

To those not familiar with our industry low-bid may seem logical



The Reality of Bidding

Low-bidding leads to inferior results and actually increases overall project and long-term ownership costs

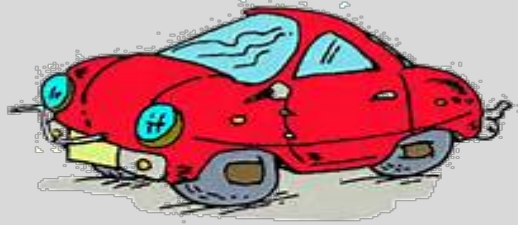


The cost of A/E services is typically less than 1% of the project life-cycle costs.



The Most Qualified Designer Leads to the Best Final Project Based on Need and Budget

Everyday decisions are based on this principal.



\$500

VERSUS



\$250,000

OR?



\$35,000

What Does the Owner Really Want?

- Lowest Construction Cost
- Lowest A/E Cost
- Lowest Life-Cycle Cost
- Performance and Long-Term Value



QBS: THE PROCESS

Selecting a Design Firm

1. An owner identifies the general scope of work and develops a selection schedule.
2. A request for qualifications is issued.
3. Statements of qualifications are evaluated.
4. A short-list of qualified firms to be interviewed is determined.
5. Interviews are conducted and the firms are ranked.



QBS: THE PROCESS

Negotiating a Contract

6. The owner invites the highest ranked firm to assist in defining a detailed scope of work.
7. The design firm develops and submits to the owner a detailed fee proposal, based on the agreed upon scope of work.
8. If the proposed fee is not acceptable to the owner, the owner and designer work together to modify the scope of work, schedule and budget to determine if an agreement on fee can be achieved.
9. If an agreement cannot be reached with the top ranked firm, those negotiations are ended and negotiations begin with the next most qualified firm.
10. An agreement covering the above is executed.
11. Firms involved in the selection process are given post-selection feedback, when requested.

DOES QBS ENCOURAGE COMPETITION?

Absolutely. The A/E will make a serious investment in teaming, approach, the preparation of qualifications packages and the interview process at minimal expense to the Owner. This investment will also ensure that the A/E – Owner negotiations are successful.

DOES QBS RESULT IN HIGHER A/E FEES?

Not when you consider the final project costs. The Maryland experience between 1976 and 1982 showed that fee bidding or two envelope bidding (technical and price proposals) may offer a lower initial price but the “savings” are lost in change orders and time delays.

HOW DOES THE OWNER KNOW THAT HE IS GETTING A FAIR PRICE IN THE NEGOTIATION?

A/E's typically get about 85% of their business from repeat clients. Client satisfaction ranks second only to the A/E's public safety professional responsibility. A reputation of inflated fees without commensurate high quality (value) is a sure formula for losing clients and not in the best business interest of the A/E.

If the owner can not be convinced that the fees are fair, he does not have to buy the A/E's services.

COMMON MISCONCEPTIONS

- QBS takes longer – **False:** QBS fosters teamwork between the client and engineering and facilitates construction, leading to faster project delivery
- QBS is a waste of taxpayer money – **False:** In fact, low-bid is more expensive because it leads to increased change orders and high project maintenance costs. Furthermore, QBS ensures the public gets a high quality and safe design.
- QBS eliminates price as a selection criteria – **False:** Price is a factor! Price becomes a factor only after the most qualified firm has been identified and a detailed scope of work has been jointly developed by the owner and design professional.

SAMPLE LANGUAGE FROM A COMPLIANT RFQ



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Submittal Format

Submittals should be organized in a clear and concise manner. **Six (6) bound paper copies and one (1) digital copy on a labeled USB flash drive shall be provided.** The format for the submittal should be as follows:

1. **Cover letter** – Provide an introductory letter serving as an Executive Summary (maximum of two pages) on firm letterhead indicating:
 - a. Contact information: Name of firm, contact person and title, address, phone, email;
 - b. Summary: A short statement summarizing the Proposer’s ability to perform the services described in the RFQ and confirms that Proposer is willing to perform those services and enter into a contract with [AGENCY].
 - c. RFQ Compliance: Illustrating and describing compliance with the RFQ requirements.
 - d. Signature: By signing the letter and/or the proposal, the Proposer certifies compliance with the signature authority required in accordance with Louisiana law.

The person signing the proposal must be:

- i. A current corporate officer, partnership member, or other individual specifically authorized to submit a proposal as reflected in the appropriate records on file with the secretary of state; or
- ii. An individual authorized to bind the company as reflected by a corporate resolution, certificate or affidavit; or other documents indicating authority which are acceptable to the public entity. See attached example forms.

Personnel Qualifications and Experience – Provide a statement of their team’s qualifications and ability to perform the work as described in 2.1 Scope of Services including a project team organization chart, clearly indicating the relationship, expertise, roles and responsibilities of each organization/sub-consultant and team member, with the project manager clearly identified.

Relevant Work Samples and References – Provide examples of three (3) comparable projects with references. At a minimum, the Relevant Work Samples should include:

- a. Project Name
- b. Client Name
- c. A narrative of the project scope and services provided, including design challenges, solutions, and project success.
- d. Key personnel who participated in each project and description of their roles.
- e. Reference name and current contact information for each of the work sample.

Approach and Scope – Provide a written description of your firm's intended approach to the project that demonstrates an understanding of the scope of services, including how the Consultant Team will complete project milestones, meetings, and deliverables.

- a. Project Schedule - provide a project schedule that corresponds to the scope of services.

Proposal Documents – Complete Attachment A including the affidavit, bidder’s organization, and corporate resolution. Include insurance requirements as defined in Attachment B.

SAMPLE EVALUATION CRITERIA



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PART III. EVALUATION

To evaluate all proposals, a committee whose members have expertise in various areas has been selected. This committee will determine which proposals are reasonably susceptible of being selected for award.

The Committee will evaluate all Proposals and develop a “short-list” of the most qualified firms. Each submittal will be judged as to the Consultant’s capabilities and experience to perform the Scope of Services. Selection will be based on a 100-point criterion. If required, oral discussions may be conducted with any or all of the Proposers to make this determination.

It is the intent of the selection process to examine the demonstrated competence and professional qualifications of the professional. Requested information is intended to assist the Committee in gauging a fair and equitable fee for the services requested. [AGENCY] may, at its option, negotiate and modify the Scope of Services with the selected firm and negotiate fee and schedule Adjustments, as [AGENCY] deems appropriate.

Written recommendation for award shall be made to [AGENCY’S] Selection of Professionals Committee and then the [AGENCY] for the Proposer whose proposal, conforming to the RFQ, will be the most advantageous to [AGENCY]. The committee may reject any or all proposals if none are considered in the best interest of [AGENCY].

Formatting your proposal into these categories will greatly improve the reviewing Committee’s chances of finding the key material and scoring accordingly.

3.1 Technical Proposal Scoring – Approach and Scope (100 points/100%)

The following criteria are of importance and relevance to the evaluation of this RFQ. Such factors, listed in order of importance, may include but are not limited to:

- Ability to meet project scope and technical requirements – 30 points
- Approach and methodology – 25 points
- Proposed staff qualifications – 25 points
- Schedule – 20 points



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QUESTIONS??

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