

# **ACEC Model Procurement Testimony**

**STATEMENT OF**

**[NAME]**

**[OFFICE]**

**[ORG/FIRM]**

**ON BEHALF OF**

**[NAME OF ORGANIZATION REPRESENTING]**

**BEFORE THE**

**[NAME OF GROUP/COMMITTEE]**

**[CITY/STATE]**

**[DATE]**

## **INTRODUCTION**

**[Mr. Chairman/Ladies & Gentlemen]** my name is **[Name]**. It is a distinct privilege and honor for me to appear before this **[Committee/Group]** to discuss the importance of selecting design professionals under a procedure that is based on quality and competence.

I am here today representing the **[Name of Organization]**. ACEC is a national organization made-up of over 5,500 private consulting engineering firms with over 200,000 employees. Members of our state organization **[Name of Organization]** actively pursue contracts with all branches of state and local governments in the state and are thereby responsible for the design of millions of dollars in public works.

Qualifications-based selection is a matter of great importance to the national membership of ACEC as well as our **[Name of State]** organization and other groups representing design professionals. Because it directly impacts the quality of the professional services our members provide, our **[Name of State]** organization thought it would be appropriate to appear before this **[Committee/Group]** to **[Testify/Speak]** on behalf of the proposed system.

“Qualifications-based Selection” describes a general competitive contracting process that includes public announcement of projects, full and open competition, and careful review of firms’ capabilities, experience, technical skills and personnel.

Procedurally, this system usually follows these steps:

1. Firms submissions of statement of qualifications (as an example, annual statement of SF 254, now SF 330),
2. Public announcement (this can be in several forms-newspapers, Commerce Business Daily, on bulletin boards), which includes a basic description of the projects and prioritized listing of criteria to be used in ranking submissions,
3. Evaluation of qualifications and other information provided in response to an announcement (as an example, SF 255, also now SF 330),
4. Discussions/interviews with the top ranked firms regarding anticipated concepts and alternative methods,
5. Ranking of the most qualified firms – with the most capable being number 1,
6. Negotiation of a fair and reasonable fee based upon the agreed upon scope of work and level of effort with the top-ranked firm,
7. Failing agreement, formal termination of the negotiations and an invitation to the second-ranked firm to undertake negotiations. This process can continue to the third-ranked firm and beyond, if agreement cannot be reached.

ACEC believes that it is in the public interest that the highest quality engineering service is provided to both public and private sector clients. It is longstanding experience that leads us to believe that the procurement of these services on the basis of professional qualifications and competence is the key to providing the highest quality work at a fair and reasonable price for both client and design professional.

Widespread support exists for the approach. It has been the required procedure in federal projects for more than 25 years. Congress has added it to various federal grant programs, and it has been adopted by statute by over half the states (not a single state statute requires price bidding for A/E services). Moreover, the process is recommended by the American Bar Association through its Model Procurement Code.

## **ARGUMENTS IN SUPPORT OF QUALIFICATIONS-BASED SELECTION FOR DESIGN PROFESSIONAL SERVICES**

### **Positive Impacts on the Client and the Public**

Use of the qualifications-based selection (QBS) system to procure the professional services of a design professional provides the client and the public with the most important aspect of that service – namely, the innovative approaches and alternative methods which arise when working together with the design professional on the precise scope of a project.

Simply stated, procurement of design services is a very specialized type of contracting because of the difficulty in creating a scope of work upon which to bid. These services involve many intangibles such as technical knowledge, health and safety considerations, aesthetic judgment and creative thought – talent that cannot easily be determined by selecting on price bids.

Typically, use of a qualifications-based system to choose a design professional will have the following positive results;

#### **1. Qualifications-Based Selection Creates a Cooperative Relationship**

The QBS selection procedures foster a sound fundamental relationship between the client and professional. The design professional is really hired to represent the client's interest in the design and construction process.

Bidding defeats the cooperative spirit and inhibits the professional from seeking alternative solutions to problems. Since the design professional is forced to submit a low bid to win the job, the firm's priority shifts from protecting the client's interest to protecting his/her own financial well-being. The client must now watch out for his/her own interest in the design and construction process.

#### **2. Qualifications-Based Selection Improves the Scope of Work Developed**

Project analysis and scope of development are vital parts of a capital project solution. However, price bidding prevents this development because the phase during which much of the various scopes and plans are explored does not occur. Under qualifications-based selection, the design professional has the chance to work with the client in precisely identifying the needs and wants of the client.

Together they decide upon scope of work, with a fair and reasonable fee negotiated.

In a bidding system, the design professional bids on specifics – a specific program or scope of services developed for the bids. If the client's program and/or scope are incomplete, inaccurate, has discrepancies, or is in any other way inadequate, it may result in the design professional and client redefining the scope and re-opening the question of fees after the contract is signed.

In sum, the Qualifications-Based Selection system:

- a. Does not presuppose that whoever develops the scope of work is at least as experienced and knowledgeable as the experts being sought;
- b. Does not force design professionals to make assumptions in the preparation of their proposals as to what the client wants, needs, and/or as to the information the client already possesses;
- c. Does not result in fixed scopes of work that tend to stifle innovation and creativity, tethering the design professional to what has been done in the past; and finally,
- d. Encourages, instead of eliminates, the opportunity for discussion and the selection of the firm most capable of meeting the client's specific interests.

### **3. Qualification-Based Selection Increases Competition**

It must be recognized that competition is not *created* by the selection method; however, it does have impact upon the ability to “tap” the competition that already exists in the market place.

The qualifications-based selection process includes a wide-range of competitive considerations; whereas, the bidding system provides only one aspect of design competition, that of price, which may be the least likely to indicate the firm most capable of providing the needs of the client.

Price bidding may also result in the undesirable tendency on the part of design professional to stop competing for work because it is too expensive for them to create detailed cost proposals and then not win the job. Moreover, even for those firms winning the job it is very often cost prohibitive since they have reduced their fees excessively in order to be selected. Smaller firms are often the first to opt-out of the process as a result of the increased costs and because they are less able to spread the costs of low bid “lost leads” over a large number of jobs.

The engineering profession is extremely competitive. In order to better serve their clients, engineers support qualifications-based selection, which requires them to compete based on their skills, experience, and ability to perform the services required – not the illusory economy that a low bid may seem to provide. Thus smaller firms have the opportunity to match large firms with the design team they

assemble for a particular project. Since the personnel to be used on a job are considered in qualifications-based selection, this aspect of the process, among others serves as an important “leveling” device so that many more firms can compete.

#### **4. Qualifications-Based Selection May Decrease Costs**

Procurement of design professionals on the basis of qualifications and ability to meet needs can be extremely farsighted. It is well recognized that to calculate the true cost of a facility, its entire life-cycle must be considered; that is, initial construction cost plus operating cost over the building’s anticipated useful life-span.

Given that design costs are such a small percentage of the overall expense for the construction of most facilities, and that according to a study in Dun’s Review, the initial building of a 40-year facility is only one seventh of its life-span cost, the design costs of a facility can be estimated to be as low as only 1% of its total life-span cost.

Use of price bidding structures does not ensure a more cost effective approach. A number of hidden costs are inherent in the price bidding method that may not be considered when focusing solely on the bid line during contract time. For example:

- a) The additional costs to provide an adequate set of specifications upon which price bids can be made when the project is put out for bid – represents an inherent cost. The administrative and overhead cost to carry sufficient staff and expertise to prepare these documents can easily consume any alleged savings that result from taking a low bid instead of a negotiated contract.
- b) The cost associated with “change orders” that result from the price bidding system because the design professional never really negotiated a precise understanding of the scope for work, is another inherent expense. The danger exists for disputes over the contract documents, with their possible legal expenses, to become the key concern rather than the project’s design. This results because the price bidding system requires the design professional to make assumptions as to the project scope and possible costs before knowing the true needs and requirements for the client.
- c) Time delays that grow from the need to create precise specifications before taking bids, or delays in construction due to change orders can result in added costs. As noted, the chance of these types of delays can be more prevalent in a price bidding setting.

## 5. Qualifications-Based Selection Improves the Level of Effort

The price bidding system may force upon the design professional strictures that would not otherwise exist if the scope of work and fees were allowed to develop in a negotiated contract setting. While the design professional would never knowingly compromise his/her judgment or effort because of a low bid agreement, the client must understand that demanding professional skills at a minimum price will result in receiving the minimum effort required to meet the client's needs. In other words, the design professional bids on specifics, that is what is requested and that is what the client can expect. In sum, when forced to bid for work, even the most conscientious design firms may not be able to provide the required design service because of inadequate scopes and lack of interaction with the client.

### CONCLUSION

Design professional believe strongly that their services should be selected on the basis of qualifications and competence. This widely accepted method provides for vigorous and open competition among design firms in the areas of personnel, experience, prior performance and technical skills. Using the qualifications-based selection method can assure the acquisition of the most capable professional, while at the same time obtaining a price that is "fair and reasonable" to the client. **The main advantage to the qualifications-based system is that the design professional and the client are working in a collaborative spirit to maximize the quality, value, cost effectiveness, and usefulness of the final product.**

In conclusion, [**Mr. Chairman/Ladies & Gentlemen**], let me state that I hope these observations will assist the [**Committee/Group**] in further understanding the value and nature of A/E selection. The American Council of Engineering Companies is ready and willing to assist the [**Committee/Group**] in any way that it can. I appreciate the opportunity to appear before you today and will be happy to answer any questions you may have.

Thank you.