



# **Qualifications-Based Selection of Design Professionals**

# Qualifications-Based Selection

## What Is Qualifications-Based Selection?

Qualifications-Based Selection (QBS) is a process for the selection of design professionals by public and private owners. It is a negotiated procurement process for selection based on qualifications and competence in relation to the work to be performed.

- It fosters broad-based competition.
- It affords the selection professional an opportunity to understand the owner's needs and objectives as a basis for negotiating the professional fee.
- It saves money over bid-based methods, as proven in actual practice by public and private owners.
- It takes full advantage of creativity and expertise of the design professional.

## What Precedents Exist for Qualifications-Based Selection?

- It has been in use since the Civil War.
- Public Law 92-582 (Brooks Bill) confirms it is in the nation's best interest in federal procurement on civilian agency projects.
- Public Law 100-464 reaffirms 92-582 and adds specific services covered by the law.
- North Carolina General Statutes 143-64.31, 32, 33 clearly states it is public policy to use the QBS process.
- The American Bar Association's Model Procurement Code for State and Local Governments specifies it as the preferred method of procuring design professional services.
- The American Public Works

Association endorses it in a strongly worded policy statement.

- Experience. Maryland adopted price-based selection in 1974, which in 1985 was overwhelmingly replaced with Qualifications-Based Selection type procurement method because of its efficiency and benefits to the state. Maryland's research and experience clearly showed that meaningful price-based comparisons are quite difficult to make at the time the selection is made. Price-based selection increased the design phase cost by 94% and resulted in major construction cost increases. The cost increase resulted from the time and effort it took Maryland to prepare a scope of work that could be used to obtain bids from design professionals.

## Why Would an Owner Want to Use Qualifications Based Selection?

Because:

- High quality consultant services are only a small percentage of the project cost, yet affect and influence the entire project cost and outcome.
- It promotes improved project quality by assuring that the client clearly understands the scope of work required.
- It leads to realistic construction bids based upon a definitive scope of work.
- Studies have shown that use of Qualifications-Based Selection for projects is more efficient and less costly than use of a selection process that uses price as a primary criterion.
- Qualifications-Based Selection

avoids the situation where the greatest benefit of the design professional's innovation and creativity is lost because its importance was not recognized at the fee proposal stage.

## What about Price-Based Selection?

An RFP that requests fee proposals requires the design professional to determine the lowest fee at which the tasks for the project can be accomplished. A fee proposal can only be as precise and accurate as the owner's statement of the scope of work. For some projects it may be possible to state in advance a comprehensive scope of work on which proposals can be based, but many projects are complex, often more so than they first appear. Ordinarily, an owner must define the scope of work desired. This is often a difficult and time consuming task and is best accomplished jointly with the highest rated firm as determined by QBS evaluation; where the owner takes advantage of multi-discipline experience and knowledge to properly define the scope of services.

## Do Owners Have to Use Qualifications-Based Selection?

NO. Owners have the right to choose any selection process they wish. Likewise, the design professional has freedom of choice as to participation. For example:

### Situation #1

- You have an existing relationship with a design professional.
- Your needs are met, and the firm you are working with has the qualifications needed for the new

# Qualifications-Based Selection

project.

The recommended method for you is to continue the current relationship by jointly developing the new project scope, contract form and fee.

## Situation #2

- You do not have a relationship with a design professional.
- You have a project requiring the attention of a competent technical professional.

The recommended method for you is to use Qualifications-Based Selection.

## Situation #3

- You may or may not have an existing relationship with a design professional.
- You have to (or want to) go through a competitive selection process.

The recommended method for you is to use Qualification Based Selection.

(A simplified example of the Qualifications-Based Selection Process follows this section.)

## QBS and the Rules of Professional Conduct

Effective August 1, 2002 the N.C. Board of Examiners for Engineers and Surveyors added the following to its Rules of Professional Conduct:

21-56.0701(f)3. The licensee shall solicit or accept work only on the basis of qualifications and:...(3) shall, with regard to fee bidding on public projects, comply with the provisions of G.S. 143-64.31, and shall not knowingly cooperate in a violation of any provision of G.S. 143-64.31.

The following questions were asked during an ACEC/NC Special Conference, in January 2001, on the

proper application of the Board's new requirement under the Rules of Professional Conduct pertaining to G.S. 143-64-31 (Mini-Brooks Act). The answers shown represent the official position of the North Carolina Board of Examiners. Both the questions and the answers apply equally to the Engineering and Surveying professions.

**Question:** Is a two envelope system, where qualifications are placed in one envelope and price is placed in the second envelope with an assurance from the public body that the price will not be opened until the selection has been made based upon qualifications, acceptable under the provisions of the Mini-Brooks Act?

**Answer:** No. A project price may not be provided until a firm has been selected based upon a qualification based process. Once selected, the firm can then negotiate a project price with the public body.

**Question:** Are all licensees obligated to report known violations of board rules?

**Answer:** Yes. All licensees are obligated to report known violations of board rules under the requirements of the Rules of Professional Conduct. This would include reporting Professional Engineers or firms that submit prices in response to request for proposals for publicly funded projects that have not been exempted under the provision the Mini-Brooks Act.

**Question:** What about the delivery of unit prices for the project?

**Answer:** The delivery of unit prices as a response to a request for proposals identifies relative information with respect to general fees and is not specific to tasks related to the project. The submission of any information,

which can be easily correlated to a fixed price or a bid, is prohibited unless the project has been exempted.

**Question:** If the proposed fee is less than \$50, 000.00, is an exemption still required?

**Answer:** Yes. All exemptions must be in writing and are required on a project by project basis.

**Question:** What is an appropriate way to respond to a request for a price?

**Answer:** Currently, the American Council of Engineering Companies of North Carolina has developed a process to contact the party who is requesting the price. This contact includes detailed information regarding the Mini-Brooks Act and the obligation by the licensee not to submit a price.

**Question:** Will the Board of Examiners respond to a specific request for clarification of rule?

**Answer:** Yes. The Board of Examiners will respond to any request for clarification of responsibility concerning the proper application of the Mini-Brooks Act but the Board's jurisdiction is limited to licensees.

**Question:** If a resolution of exemption is obtained from the requesting entity, may the licensee submit a price?

**Answer:** Yes. The ability to exempt projects is provided to NCDOT and local units of government when the estimated cost is less than \$50,000.

**Question:** Are their exemptions for special conditions?

**Answer:** Yes. The Act provides for exceptions in the "cases of special emergency involving the health and safety of the people or their property."

# Qualifications-Based Selection

**Question:** What does the effective date of the resolution need to be and must the resolution or exemption be project specific?

**Answer:** The resolution to exempt a project must be in force before a licensee may provide a project price. Each exemption must be project specific.

**Question:** How far does the responsibility of the engineer go as it relates to prime/sub-consultants (architectural type of contracting arrangement)?

**Answer:** The Board of Examiners has ruled that the provisions of the Mini-Brooks apply even in situations of prime/subconsultants. If the project involves public funds from a project that has not been exempted, the sub-consultants must be selected through a qualification-based process. The North Carolina Attorney General has been asked to render an opinion on this issue.

**Question:** What about design/build and alternative delivery systems? How should the licensee handle this issue?

**Answer:** Same as above.

**Question:** What is the licensee's responsibility as it relates to assure that the resolution of exemption is valid?

**Answer:** The licensee must exercise prudent judgment to determine that an exemption has been properly executed in writing for the specified project.

**Question:** What about multiple Phase contracts?

**Answer:** Unless specifically exempted, multiple phase contracts are subject to the requirements of the Mini-Brooks Act.

**Question:** There seems to some gray area in environmental work,

such as wetlands delineation. Now with this new rule engineers cannot bid, but environmental professionals can. Is there some way that we can address this situation?

**Answer:** The Mini-Brooks Act only pertains to professional services listed as "...architectural, engineering or surveying services..." Professional Engineers and Firms may offer prices for projects that they are legally capable of providing, i.e. geology, soil science, landscape architecture.

**Question:** Is it permissible to submit project prices for projects that have been exempted?

**Answer:** Yes. If the exemption is by a local unit of government or NCDOT and is in writing, it is permissible for licensees to submit total project prices.

**Question:** Is it a violation of the Rules of Professional Conduct for a licensee, placed in a responsible role for a public body, to request other professionals to provide a total project price on behalf of the owner?

**Answer:** Yes. All licensees of the Board are required to comply with the provisions of the Mini-Brooks Act.

**Question:** Has there been any consideration to Maryland's rescinding the price prohibition?

**Answer:** No. This is outside the Board's jurisdiction.

**Question:** Currently the State of North Carolina is required to request bids for construction and the contractor then typically hires sub-consultants through a bid process. Is it a violation for a licensee to provide a total project price under such circumstances?

**Answer:** Yes. The Mini-Brooks Act applies to all publicly funded projects and professional services must be selected based upon a

qualification based process unless exempted under the provisions of the act. The North Carolina Attorney General has been requested to render an opinion on this issue.

**Question:** Paragraph F of Section 21-56.0701 is only applied/enforced relative to GS143-64.31. Does this apply to public funds only?

**Answer:** The Mini-Brooks Act only pertains to public funds. The Board Rules do not prohibit licensee from offering total project prices for privately funded projects.

**Question:** What about primarily planning studies with engineering elements? Is this considered a violation?

**Answer:** This would be dictated by the nature of the services to be rendered for the specific project. If the services are professional in nature, the Mini-Brooks Act would apply.

**Question:** What about state agencies, are they covered by GS14364.31?

**Answer:** No exemptions are allowed for state agencies other than NCDOT.

**Question:** What about State Universities?

**Answer:** There was an exemption for capital improvement projects for The University of North Carolina, which expired on July 1, 2001

**Question:** Do other non-DOT agencies have the ability to exempt themselves on state directed projects?

**Answer:** There are no exceptions allowed for State agencies except for State Capital Improvement Projects where the total cost is less than \$100,000.00.

**Question:** What about exemptions for municipalities?

# Qualifications-Based Selection

**Answer:** Local units of government or NCDOT may in writing exempt particular projects in the case of:

- (1) Proposed projects where an estimated professional fee is in an amount less than fifty thousand dollars (\$50,000), or
- (2) Other particular projects exempted in the sole discretion of the Department of Transportation stating the reasons therefore and the circumstances attendant thereto.

**Question:** Is a non-license violation a criminal violation?

**Answer:** No. A violation of the MiniBrooks Act would be considered a civil violation.

**Question:** Does the rule apply to GIS?

**Answer:** Yes

**Question:** What is considered a fee bid?

**Answer:** The submission of any information that would allow the public entity to determine a total project fee would be considered a "fee bid."

**Question:** Would an RFP that request man-hours without unit prices be considered a bid?

**Answer:** The Act only allows for "unit price information" and qualifications. Man-hours would not be considered a "unit price."

**Question:** During a short list or interview type of arrangement, if the interviewing party requests a price, is the licensee free to give a price at that time?

**Answer:** No. Price should not be given until the consultant is selected as the most qualified to provide the services requested and negotiations may then begin to establish the fee.

**Question:** What about licensed city/state engineers, architects and surveyors, are they in violation if they send out RFP's requesting a price.

**Answer:** Yes. All licensees must comply with the requirements of the Mini-Brooks Act.

**Question:** Who must issue the written exemption?

**Answer:** The exemption can only be issued by the entity that is authorized to award the contract.

**Question:** What if a sub-consultant asks for a price and it is thought that there is a sole source selection being performed?

**Answer:** The licensee should make every effort to verify that the proposed project is a sole source selection, which should include confirmation in writing from the requesting entity.

**Question:** What if a client (public) asks for prices of recent projects, is this a violation?

**Answer:** Currently, government form 330 requires prices for similar types of previous work effort as a basis for qualifications. It is not a violation of the Mini Brooks Act to provide this form as a part of the QBS process for publicly funded projects.

# Qualifications-Based Selection

## **NORTH CAROLINA GENERAL STATUTES 143- 64.31, .32, .33 and .34 (as amended)**

### **§ 143-64.31. Declaration of public policy.**

It is the public policy of this State and all public subdivisions and Local Governmental Units thereof, except in cases of special emergency involving the health and safety of the people or their property, to announce all requirements for architectural, engineering, and surveying services, to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for architectural, engineering, or surveying services at a fair and reasonable fee with the best qualified firm. If a contract cannot be negotiated with the best qualified firm, negotiations with that firm shall be terminated and initiated with the next best qualified firm.

### **Changes to A/E Procurement by HB 1043:**

SECTION 4. G.S. 143-64.31, as amended by Section 3 of this act, is amended to add a new subsection to read:

"(f) Except as provided in this subsection, no work product or design may be solicited, submitted, or considered as part of the selection process under this Article; and no costs or fees, other than unit price information, may be solicited, submitted, or considered as part of the selection process under this Article. Examples of prior completed work may be solicited, submitted, and considered when determining demonstrated competence and qualification of professional services; and discussion of concepts or approaches to the project, including impact on project schedules, is encouraged."

### **§ 143-64.32. Written exemption of particular contracts.**

Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of this Article in the case of: Proposed projects where an estimated professional fee is in an amount less than fifty thousand dollars (\$50,000).

### **§ 143-64.33. Advice in selecting consultants or negotiating consultant contracts.**

On architectural, engineering, or surveying contracts, the Department of Transportation or the Department of Administration may provide, upon request by a county, city, town or other subdivision of the State, advice in the process of selecting consultants or in negotiating consultant contracts with architects, engineers, or surveyors or any or all.

### **§ 143-64.34. (Effective December 31, 2006) Exemption of certain projects.**

(a) State Capital Improvement Projects under the jurisdiction of the State Building Commission where the estimated expenditure of public money is less than hundred thousand dollars (\$100,000) are exempt from the provisions of this Article.

### **§§ 143-64.35 through 143-64.49: Reserved for future codification purposes.**

This statement of public policy and the results of its use provide the people of North Carolina with the assurance that public funds are providing them with the most qualified and experienced firms to handle each unique project that is undertaken in the public interest.

# Qualifications-Based Selection

## **U.S. Public Law 92-582**

The United States Congress passed Public Law 92-582 in 1972 which states that “The Congress hereby declares it to be the policy of the Federal Government 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 qualifications for the type of professional services required and at fair and reasonable prices”.

## **The American Bar Association**

The American Bar Association, on February 13, 1979, in a Model Procurement Code for State and Local Governments also recommended competitive negotiation procedures for selection, repeating the policy stated by Public Law 92-582 (see above).

## **APWA Policy Statement**

The American Public Works Association believes that the public interest is best served when governmental agencies select architects, engineers and related professional technical consultants for projects and studies through QBS procedures. Basing selections on qualifications and competence (rather than price) foster greater creativity and flexibility, and minimizes the potential for disputes and litigation (see footnote on QBS below).

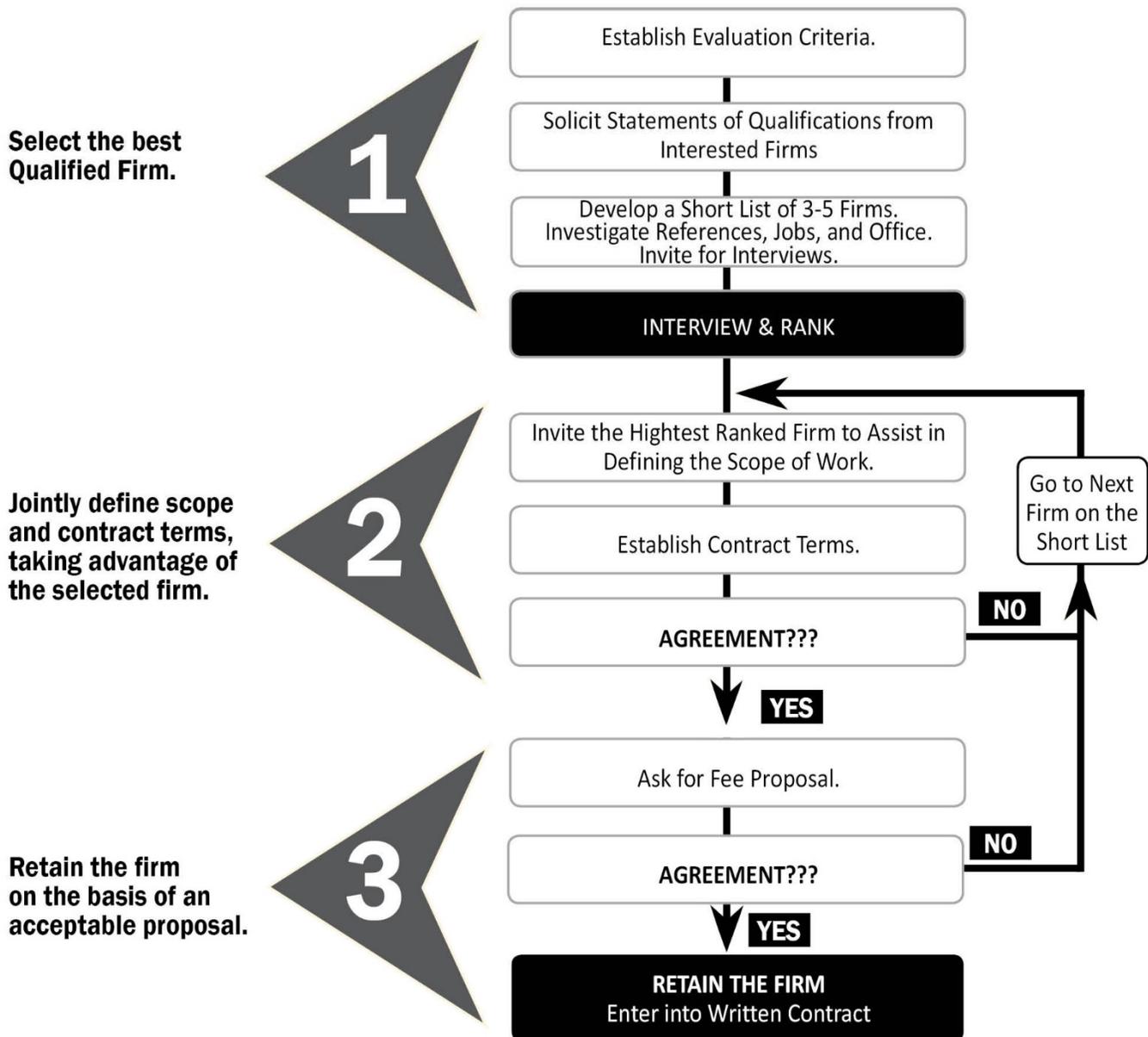
## **APWA Footnote:**

QBS means that the qualifications of architect-engineer consultants are the determining factors in consultant selection. Agencies alert the consultant community regarding available work and invite interested firms to respond. The responses are screened to determine the firms most likely qualified to meet the agency’s needs. The screening results in a “short-list”, because it is seldom practical or productive to interview all who may respond. This best-

qualified group is invited to appear for interview. Interviewers include technically qualified person and others such as elected officials or citizens having a special interest. The direct presentations, questions/answers/, and supporting materials of each firm are the basis for ranking the firms in order of relative qualifications. The top-rated firm is then invited for contract negotiations. Price is not ignored, but a realistic price is mutually agreed upon once details on the kinds and extent of work required of the consultant have been established through the negotiations. If agreement cannot be reached with the top firm, negotiations are terminated with that firm and opened with the firm judged next-best qualified.

# QBS - The 3-Step Process

## Qualifications Based Selection Process – Easy as One, Two, Three





# Who We Are & The Benefits of Membership

The American Council of Engineering Companies of North Carolina (ACEC/NC) is a member organization of the American Council of Engineering Companies (ACEC), a national federation of state organizations headquartered in Washington, DC.

ACEC/NC works to promote the business interests of engineering companies by providing legislative advocacy and business services for member companies.

Some of the benefits of ACEC/NC membership are:

**MEMBERSHIP MEETINGS**, which provide forums for sharing ideas and experiences between company leaders and often lead to partnering between companies on major projects in the state.

**SEMINARS**, through which required professional development hours (PDH's) can be earned. ACEC/NC seminars provide opportunities to earn at least a total of fifteen PDH's per year to meet the State licensure requirement for licensed engineers.

**MARKETING OPPORTUNITIES** through client contact at special awards ceremonies and joint conferences with State agencies, interaction with partner organizations representing client groups, and interaction with elected officials.

**ACTIVE COMMITTEES**, which focus on practice-area-specific issues that have an impact on how engineering companies do business both at the state and national level. All members of ACEC/NC normally participate in one or more committees and, through their participation, run the affairs of the Council.

**A VOICE IN RALEIGH** on issues impacting member firms. The Executive Director of ACEC/NC is a registered lobbyist for the Council and covers the activities of the General Assembly gavel-to-gavel, advocating on behalf of and protecting the interests of member companies.

**A VOICE IN WASHINGTON** through our National organization, ACEC, our Executive Director and Board of Directors monitor and advocate for legislation beneficial to the industry at the Federal level.

**POLITICAL INVOLVEMENT** through education on legislative issues affecting member companies, organized interaction with elected officials, and participation in Political Action Committees (PAC) such as “ACEC NC PAC”, which supports State-level candidates who support issues important to the business of engineering in North Carolina; and “ACEC/PAC” which supports candidates at the Federal level. We also have an Independent Expenditure Account (ECNC) which advocates for issues and ballot initiatives important to our industry.

**COST-EFFECTIVE INSURANCE** offered through the ACEC Life/Health Trust, which includes health, dental, disability, and life insurance as well as business insurance, retirement plans, and professional liability insurance through ACEC Business Insurance Trust and Retirement Trust. The Trusts can save your company money by leveraging the group purchasing power of more than 5,500 firms and 600,000 employees nationwide to give member companies lower insurance and retirement plan rates.

*For additional information about ACEC/NC member benefits or questions on how to become a member, please contact Meredith Houston at 919-781-7934 or via email at [mhouston@acecnc.org](mailto:mhouston@acecnc.org).*