



2004-#1

QBS Colorado *Newsletter*

Spring 2004

QBSColorado – AIA/Colorado Director Position – Vacant

Are you an AIA member interested in Qualifications Based Selection? If yes, we need you. QBSColorado is an organization formed by AIA/CO, ACEC/CO and PEC to become an advocate for qualifications based selection of professional services. Each organization has three seats on the Board serving on a rotation of three years. AIA/CO has an opening for a 3-year position. The group meets monthly on the 2nd Thursday at 7:00 am in the ACEC/CO office. Members sometimes accept assignments to make contacts or follow up on requests for bids in an effort to educate clients and promote QBS. Please contact Sue Bertram at 303.722.4664 for more information.

Comments From the “Chair”

We entered this year with a set of goals and a strategy that is essentially unchanged from 2003. They are unchanged because they were well defined and complete. But I believe we may need to change our approach, without changing our basic strategy. Our approach is enumerated in three areas, with eleven separate goals. Each of these is further defined in terms of strategies giving us twenty-seven defined steps we are attempting to undertake. This is realistic in terms of what actually has to happen, but may be inhibiting us a little. Let's simplify. We have ONE GOAL, QBS for all professional selection. We have TWO STRATEGIES, EDUCATION and LEGISLATION. The rest is how we accomplish this and should be as flexible as necessary to meet the needs of each situation and to fit the style of each of us and each of our Professional Resources.

Our first attempt to modify the approach was thwarted when, after several months of coordination, a well written and extremely edited article on the general subject of “Project Procurement and Delivery Systems” was dropped from publication. We intend, now, to continue that EDUCATION with a mailing of the edited article, to Mayors, Managers and decision makers throughout the state. The full article will be posted on our web page and accessible to anyone whose interest is peaked by the mailing. Where we go from there will be interesting. Do we focus on letting all the entities know they have, or should have, the option of QBS? Do we go straight to the expensive and time consuming effort to change LEGISLATION at the state level? I have some ideas. I would like to hear yours. Lets talk, MLS@RTWENG.com. The Goals and Strategy will be posted on the web page for your perusal.

Michael L. Sherrill, PE, QBSColorado, Chair

It's the Law

Since 1972 the federal government has required Qualifications Based Selection for procurement of all professional Architectural/Engineering (A/E) services. Many states, including Colorado, also have legislation in place requiring QBS for professional services. However, too many officials and agencies remain unconvinced of the value and benefits of the QBS process, or confused about its proper implementation.

QBS typically involves the following steps:

1. Development of Project Description
2. Development of Project Schedule
3. Request Statements of Qualifications
4. Evaluate Statements of Qualifications
5. Develop a Short List of Qualified Firms for Interviews
6. Interview Short-Listed Firms
7. Rank Interviewed Firms in Order of Most Qualified
8. Negotiate Scope of Services, Professional Fees, and Schedules

One of the greatest tasks we face as a professional organization is to communicate, demonstrate and promote the value of QBS in achieving successful projects. Many procurement officials understand that the engineer's performance will influence the entire project, including its conceptual development, financial feasibility, acceptance by the public, project appearance and functionality, construction schedule and costs, and operating and maintenance costs during the life of the facility. Our task is to promote understanding that a project's success begins with the process for selecting the project's engineer.

Our task remains clear. Take every appropriate opportunity to discuss QBS and its merits, solicit and consider the input of our clients, and continue to educate those around us of the characteristics and merits of a Qualifications Based Selection process.

By Jerry Stump, PE, Chair, Business Practices Committee, ACEC of Tennessee

City of Salida Receives QBS Award

The annual certificate of award from QBS Colorado was presented to the City of Salida, Colorado for following the basic procedures for qualifications based procedures for selecting consulting engineering services. They were nominated for this award by Rothberg, Tamburini & Winsor, Inc. The significant basis for this award was the fact that they were following the QBS procedure before they were aware of its existence. The award was presented to Mayor Danny Knight by Bernie Johnson, PE, immediate past chair of QBS Colorado on January 5, 2004 at a meeting of the City Council. The award will be publicly displayed in the Council Chambers. Council members expressed appreciation for this recognition.

If you would like to nominate a public agency for their use of qualifications based selection, please contact QBS Colorado at (303) 832-2200.

Prohibition on Demands for Fee Quotes Doesn't Sit Well with a Few Local Officials

The recent amendment of Ohio law that prohibits most government agencies from demanding price proposals for engineering services isn't sitting well with a few local officials.

For more than 15 years, Ohio law has required most state and local government agencies to use a Qualifications Based Selection procedure in awarding professional design contracts. Most officials, understanding the benefits of QBS, complied with the law. Some tried to get around it in clever ways, such as by requiring the submissions of fee information simultaneous with the submission of technical proposals – the infamous “two-envelope” system.

In last year's state budget bill, ACEC Ohio, working with AIA Ohio, succeeded in gaining an amendment to the state law which makes it clear that agencies affected by the law cannot require submission of fee information during the selection process.

Since that time, ACEC Ohio has had the occasion to remind several agencies about the law's requirements, and in one recent case that reminder sparked a rabid response from a county engineer in southwest Ohio. “This office is quite capable of reading and understanding the laws of the state of Ohio, however wrong they may be,” he wrote. “This office will not be intimidated by you or any of your members. Further, a great effort will be made to have the current law changed as [it] borders on collusion and it does not afford the public officials accountability for contracts awarded.”

While this kind of ignorance is thankfully rare among professional engineers in government, it does exist. It reminds us that we must be ready to carry the fight to those who would debase the profession by turning it into just another commodity, to be bought at low bid.

Unfortunately, instances such as this one remind us that sometimes we are our own worst enemies. In that case described above, the project at issue was a sizable roadway improvement project, and most engineers that received the RFP felt it would involve a fee in excess of \$25,000 (projects with an estimated fee of less than this amount are exempt from the QBS law).

Rather than reissue the RFP to comply with the law, this county engineer sent a letter to the firms that received the original request, asking whether any would design the project for less than \$25,000. One firm took him up on his offer.

While the firm certainly was within its rights to make that business decision, such actions only undermine efforts to promote the selection of engineering firms on the basis of qualifications and to obtain fair fees for quality service. Despite such momentary setback, ACEC Ohio will continue to promote QBS.

ACEC Ohio has agreed to meet with the County Engineers Association of Ohio to discuss what a few county engineers perceive as “problems” with Ohio’s QBS law. While the Council will cooperate to improve understanding of, and facilitate compliance with the law, bargaining away the principle behind it is not an option.

Reprinted from ACEC Ohio, March 2004

CAGE Resolution to Endorse QBS

Adopted February 2004

The Board of the Colorado Association of Geotechnical Engineers (CAGE) has resolved to endorse the tenets of Qualifications Based Selection (QBS). It is the opinion of the Board that following the QBS process will result not only in better quality of service and value for the geotechnical engineer’s client, but also in an overall betterment of the profession.

In the QBS process, selection of an engineering professional begins with a Request for Qualifications, followed by a process of selection of the most qualified firm based solely on their qualifications for the contract and not based on price, and then followed with a subsequent negotiation of scope and fees. A fair and reasonable fee is negotiated with the selected professional. If a reasonable fee is not negotiable with the selected professional, then the second most qualified professional is then selected for negotiation. Colorado law (SS 24-30-1401 to 24-30-1409, CRS, (1988 & 1991 supp.)) requires this process to be used if state funds are involved in a project. At the federal level, the “Brooks Act” of 1998 requires that qualifications based selection be used on federally funded projects.

The QBS process results in a more productive relationship between the client and the engineering professional. QBS does not use price as a selection criterion. While price is important, when professionals are faced with a bidding situation, they are put into a situation that is a conflict of interest. They are forced to concentrate on their own interests (controlling their costs) instead of the interests of their client (the best solution). They have to first “win” the contract based on lowest price and then find ways of executing the work economically, rather than concentrating on what is the best solution for their client. They are forced into providing the simplest solution for them instead of the most appropriate solution for their clients.

Bidding of fees sets an adversarial tone to the selection process and relationship between a client and the professional engineer. The professional selected should be part of the client’s team representing their interests in the execution of a contract, and should not be an adversary. The most appropriate solution to a client’s problem frequently isn’t clear. A professional has to investigate, analyze, and research the problem to find that solution. The effort it takes to do this is not always predictable. If forced to low bid his fee, the effort becomes constrained by cost. Ideally, the firm selected should be considered a partner with common goals and expectations. Professionals who are committed to finding the most appropriate solution for their clients provide the best service.

A professional engineer should be selected on the basis of their unique qualifications and capabilities, and on how their knowledge and experience can be applied to the project as a valued member of the team. If they are the most qualified, then the professional and the client should discuss each other’s expectations. If a fee cannot be agreed on, the next qualified firm should then be approached.

The American Public Works Association, the Associated General Contractors, the American Council of Engineering Companies, the American Institute of Architects, and the National Society of Professional Engineers endorse QBS.

Qualifications Based Selection Needs Your Involvement

ACEC has been very active recently in furthering Qualifications Based Selection (QBS). These efforts have resulted in the elimination of anti-QBS amendments to key congressional funding bills, and the inclusion of favorable QBS language in several other congressional bills.

However, our commitment will continue to be tested over the next several years. Every year in federal funding negotiations, there are those that try to attach bidding type amendments to major appropriations bills. With major reauthorization bills still under negotiation, we must remain committed to our efforts. For these and many other reasons, we must continually renew our emphasis on one of our core principles – Qualifications Based Selection (QBS).

There is always confusion surrounding QBS and its implementation. What constitutes a QBS process? When must QBS be used as the procurement process? What should be considered “engineering services”?

Is there more than one procurement model that complies with the principles of QBS?

QBS Tip

Did you know that Qualifications Based Selection has gained wide acceptance and use in public procurement? According to the APWA, 71 percent of respondents to a recent APWA/NIGP survey reported using QBS. Most of them are authorized by legislation to use QBS or to purchase for “the best interest of the jurisdiction.”

While the highest ratio of QBS users versus non-users was in the southern U.S., the Midwest had the lowest ratio. There are only seven states that still do not have a QBS law on the books.

Qualifications Based Selection (QBS) “When quality and value matter.”

Reprinted from ACEC Wisconsin Update, February 2004

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Word to the Wise...

“It’s unwise to pay too much, but it’s worse to pay too little. When you pay too much, you lose a little money. When you pay too little, you sometimes lose everything, because the thing you bought was incapable of doing the thing it was bought to do.

The common law of business balance prohibits paying a little and getting a lot – it can’t be done.

If you deal with the lowest bidder, it is well to add something for the risk you run.

And if you do that you will have enough to pay for something better.”

John Ruskin, 1819–1900, English Author, Architect and Economist