

HB

24

<TARGET><BILL>HB 24</BILL><SUBJECT>HB
24</SUBJECT><COMM>HSTA29</COMM></TARGET>



Representative Sam Kito III

Alaska State Legislature

DATE: 27 January 2016

TO: Representative Bob Lynn
Chair, House State Affairs Committee

FROM: Representative Sam Kito

RE: HB 24 – Professional Services in State-Funded Contracts

I respectfully request that the House State Affairs Committee schedule House Bill 24 – Professional Services in State-Funded Contracts for a hearing. If possible, we would like to schedule a hearing during the Alaska Professional Design Council Legislative Fly-in, which will take place on 9 and 10 February 2016. We appreciate your consideration of this special request.

Please find attached:

- House Bill 24 version A
- Sponsor Statement
- Sectional Analysis
- Supporting Documents
 - APDC LLC Fly-In Position Statement 11 Feb 2015
 - ASCE Policy Statement 304 Jul 2010
 - ASCE QBS State Issue Brief Aug 2011
 - Presentation ACEC Aug 2011 (← Too Big to email)
 - Letter Pickering 23 Mar 2015
 - Email Trueblood 1 Apr 2015
 - Research

Thank you for your consideration. If you have any questions, please do not hesitate to contact me or my staff Tally Teal at 465-4875.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sam Kito III", with a long horizontal flourish extending to the right.

Rep. Sam Kito III



Catherine Fritz, AIA
Architect

February 6, 2016

Honorable Representative Sam Kito, III
Delivered via email: Representative.Sam.Kito.III@akleg.gov

Dear Representative Kito,

Open competition is a fundamental premise of good government procurement. Passage of HB24 will establish a fair playing field by requiring that Qualifications Based Selection (QBS) be used to select professional design services for all projects that receive state funding. I appreciate your sponsorship of this bill and fully support its passage.

QBS currently exists in AS 36.30.270, requiring that design professionals be selected in this fair, competitive manner for state-owned projects. However, the statute does not specify that QBS be used for non-state agencies or political subdivisions that receive state funds for capital projects.

In my long career as a public sector architect, I have participated in many projects that used QBS to select the design team. I can attest to the competitive rigor and fairness of QBS, which is typically a two-step process: Step 1 selects the most qualified team through a proposal scoring system that the Owner fully controls. Step 2 brings the parties (Owner and Consultant) together to discuss fees for the needed design services. Fee negotiations create a strong foundation for the project, allowing both parties to enter the design process with clear understanding of expectations. Without negotiations (when price is provided without discussion), the project can result in lost opportunities for the Owner to receive the benefit of a designer's expertise, misunderstandings about scope, and poor quality of documents. These shortcomings, in turn, can create an unfair construction bidding environment and expensive changes during construction.

For the past 8 years, I have worked on projects funded by the Federal Aviation Administration, an agency that requires the use of QBS. Other federal agencies, including the Federal Highways Administration and the Federal Transit Authority also require QBS. HB 24 would put into practice a similar condition without financial impact or onerous conditions for the Owner (procurement requirements that are tied to funding are routinely accepted by those who receive such funding). The State of Alaska has long used QBS as a fair and competitive process for state projects. Requiring projects that receive state funding to do the same will increase consistency and fairness in procurement throughout our state.

QBS is endorsed by many national, state, and local design professional organizations as the preferred method of selection. Improving Alaska's QBS law will increase consistency in professional services procurement and raise our reputation as a fair and competitive state in which to do business.

Thank you sincerely for the important work you do for the people of Alaska.

Regards,


Catherine Fritz, AIA

c: Representative Cathy Munoz
Senator Dennis Egan

Nancy Manly

From: John <jmwalshco@gci.net>
Sent: Saturday, February 06, 2016 4:49 PM
To: Nancy Manly; Tally Teal
Cc: Dale Nelson; Catherine Fritz
Subject: February 6, 2016 - RE: HB24 Testimony

Nancy,

Presumably Rep. Kito (or Tally) will represent the bill.

Unless there are others that have signed up and are called upon to testify, Catherine Fritz (Professional Architect), who will be here in the Committee Room here in Juneau Thursday morning for the HB24 bill hearing in (H) STA Committee will present 1st for APDC.

Following Catherine's presentation, Dale Nelson PE, (Chair of the APDC Legislative Committee) will be available from the Anchorage LIO.

I am not aware of additional APDC spokespersons. Having said that, there could be other licensed professionals that may sign up to testify.

Thanks,

John Walsh

907.321.0983 cell



Representative Sam Kito III

Alaska State Legislature

Sponsor Statement

House Bill 24

Qualifications-Based Selection in State-Funded Contracts

House Bill 24 extends the use of Qualifications-Based Selection (QBS) of design professionals to municipal and non-profit organizations receiving state funds. Currently, projects designed and constructed for or on behalf of state agencies are required to utilize the QBS process when selecting the services of an architect, engineer, land surveyor, or landscape architect (design professional). However, municipalities or non-profit organizations receiving state funding for construction projects are not currently required to use QBS.

The QBS process allows for the selection of design professionals based on the qualifications provided by the hiring company or individual. The cost of the design services is still factored in through the contract negotiation process; if an acceptable price cannot be agreed upon with the most qualified respondent, negotiations can be terminated with that respondent and initiated with the second most qualified respondent, or the third most qualified respondent, until an agreement on price is reached.

Using QBS to choose design professionals is similar to the way in which we, as individuals, consider the qualifications of a medical professional when selecting a doctor, or legal experience when selecting a lawyer. With many types of engineers, and many different specialties in architecture, it is important to ensure that the most qualified professional is hired to work on projects funded with public money.

Use of the QBS process will result in public projects that are better and more efficiently designed. It will also yield cost savings to the state both in the short term through a reduction in costly construction change orders and in the long-term through lower operating costs. Both state and federal projects have used QBS, with great success.

Thank you for your support of House Bill 24.



Representative Sam Kito III

Alaska State Legislature

Sectional Analysis

House Bill 24

Qualifications-Based Selection in State-Funded Contracts

Section 1. Amends AS 36.90 by adding a new section to article 2.

Subsection a. directs the contracting person to negotiate with the most qualified and suitable professional person of demonstrated competence to perform the services; requires the contract to be awarded at fair and reasonable compensation; requires consideration of proximity unless federal law prohibits it.

Subsection b. directs the contracting person to negotiate with the next most qualified professional person if an agreement cannot be reached with the most qualified, and so on in order of ranking.

Subsection c. allows the contracting person to reject all or part of a proposal.

Subsection d. exempts contracts awarded in a situation of public necessity from this section.

Subsection e. allows price to be included as a factor in selection when the services are repetitious, and when the scope, nature and amount of services are thoroughly defined; stipulates that price may be a factor in selection only if a majority of the persons involved by the contracting person in proposal evaluation are registered in the state to perform architectural, engineering, or land surveying services.

Subsection f. states that this section does not apply to a contract that incorporates both design services and construction.

Subsection g. defines the terms "contracting person," "grant recipient," "school district," "professional person," and "state-funded."



LEGISLATIVE RESEARCH SERVICES

Alaska State Legislature
Division of Legal and Research Services
State Capitol, Juneau, AK 99801

(907) 465-3991 phone
(907) 465-3908 fax
research@akleg.gov

Research Brief

TO: Representative Sam Kito
FROM: Roger Withington, Legislative Analyst
DATE: February 24, 2015
RE: Municipalities and Communities Currently Using Qualification-Based Selection Processes in Contracting for Certain Professional Services
LRS Report 15 188

You asked for information regarding the procurement practices of municipalities and communities in Alaska. Specifically, you asked us to determine which municipalities and communities in Alaska are currently using qualification-based selection (QBS) processes, or have QBS ordinances, for contracts for architectural, engineering, landscape architecture, and land surveying services.

Generally, Qualifications Based Selection (QBS) is a procurement method in which the final criteria for selection of a service are qualifications and demonstrated competence. Price and cost are not selection criteria, but they may be considered during contract negotiation.¹ We were unable to locate a comprehensive list of which municipalities and communities in Alaska currently use QBS in their procurement of architectural, engineering, landscape architecture, and land surveying services.² As a result, we searched various online municipal codes, or contacted communities via email, to determine which communities, if any, use such practices.

In Table 1, we identify eight municipalities—Aleutians East Borough, Municipality of Anchorage, Barrow, Bethel, Delta Junction, City of Fairbanks, Fairbanks North Star Borough, and the North Slope Borough—that, pursuant to municipal code, use QBS to procure professional services such as architectural, engineering, landscape architecture, and land surveying services. We also identified eleven communities that exclude the procurement of professional services from the competitive bid requirement set forth in municipal code; and the one community—Juneau—that does not have QBS requirements delineated in code but does use QBS in practice. Please note that this list is not exhaustive, and represents a sample of 20 communities. We attach each of the cited municipal codes.

¹ Associated General Contractors of America, <https://www.agc.org/>.

² Neither Kathie Wasserman, Executive Director of the Alaska Municipal League (907-586-1325), nor Jason Soza, Chief Procurement Officer for the Alaska Department of Administration (907-465-5684), had the information we seek. Lawrence Blood, Acting Director of the Division of Community and Regional Affairs, Alaska Department of Commerce, Community, and Economic Development (907-465-4751), did not respond to our queries.

Table 1: Municipalities and Communities that Use Qualifications Based Selection Criteria to Procure Certain Professional Services or Exclude the Procurement of Certain Professional Services from Competitive Bidding Requirements

Municipality or Community	Citation	Summary
Aleutians East Borough	Aleutians East Borough Municipal Code, §§ 3.02.010 and 3.02.150	Qualification Based Selection
Municipality of Anchorage	Anchorage Code of Ordinances, § 7.20.060	Qualification Based Selection
Barrow	Barrow Municipal Code, § 4.16.100	Qualification Based Selection
Bethel	Bethel Municipal Code, §§ 4.20.030 and 4.20.170	Qualification Based Selection
Delta Junction	City of Delta Junction, Municipal Code of Ordinances, § 1.41.600	Qualification Based Selection
Denali Borough	Denali Borough Code, § 3.35.070	Excluded from competitive bid requirement
City of Fairbanks	Fairbanks Code of Ordinances, § 54-207	Qualification Based Selection
Fairbanks North Star Borough	Fairbanks North Star Borough Code, § 16.55.010	Qualification Based Selection
Gustavus	Gustavus Code of Ordinances, § 4.17.050	Excluded from competitive bid requirement
Haines	Haines Borough Code, § 3.60.170	Excluded from competitive bid requirement
Homer	Homer City Code, § 3.16.060	Excluded from competitive bid requirement
Houston	Houston Municipal Code, §§ 4.10.010 and 4.10.100	Excluded from competitive bid requirement ^(a)
City and Borough of Juneau	Not in code but done in practice ^(b)	Qualification Based Selection
City of Kenai	Kenai Municipal Code, § 7.15.050	Excluded from competitive bid requirement
Kenai Peninsula Borough	Kenai Peninsula Borough Code of Ordinances, § 5.28.250	Excluded from competitive bid requirement
Ketchikan Gateway Borough	Ketchikan Gateway Borough Code, § 11.20.100	Excluded from competitive bid requirement
Kodiak Island Borough	Kodiak Island Borough Code, § 3.30.070	Excluded from competitive bid requirement
Matanuska-Susitna Borough	Matanuska-Susitna Borough Code, §§ 3.08.010 and 3.08.2010	Excluded from competitive bid requirement
North Slope Borough	North Slope Borough Code of Ordinances, §§ 2.36.280 and 2.36.180	Qualification Based Selection
City and Borough of Yakutat	City and Borough of Yakutat Code of Ordinances, § 6.24.170	Excluded from competitive bid requirement
Notes: a) Applicable to contracts under \$20,001. b) Rorie Watt, Director of Public Works/Engineering, City and Borough of Juneau, 907-586-0877.		

We hope this is helpful. If you have questions or need additional information, please let us know.

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version: HB 24
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB024-DOA-DGS-02-05-16
Title: PROF. SERVICES IN STATE-FUNDED
CONTRACTS
Sponsor: KITO
Requester: House State Affairs, Labor and Commerce

Department: Department of Administration
Appropriation: General Services
Allocation: Purchasing
OMB Component Number: 60

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2017 Request	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
OPERATING EXPENDITURES	FY 2017	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
---------------------------	--	--	--	--	--	--	--

Estimated SUPPLEMENTAL (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Tom Mayer, Director
Division: General Services
Approved By: Sheldon Fisher, Commissioner
Agency: Department of Administration

Phone: (907)465-5677
Date: 02/05/2016 03:00 PM
Date: 02/05/16

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2016 LEGISLATIVE SESSION

BILL NO. HB 24

Analysis

This bill requires that state grant recipients, municipalities, and school districts follow similar procedures as executive branch agencies when using state funds for architectural, engineering, or land surveying procurement. This bill does not change existing state statute for state procurement of architectural, engineering, or land surveying contracts.



2013 Survey of State QBS Laws and Registrations Boards

State	QBS Law	State Statute	QBS Applies to State Contracts	QBS Applies to Local Units	Registration Bd. Prohibits Response To Price Proposal	Registration Bd. Enforced?	Comments
AL	Y	41-16-21&72	Y	N	Y	N	
AK	Y	36-30-270	Y	N			Certain Exemptions
AZ	Y	34-603	Y	Y	N		
AR	Y	19-11-802	Y	Y	N		
CA	Y	Gov Code Chap. 10 – 4525 -29	Y	Y	N		
CO	Y	24-30, Sec. 1401-8	Y	N	N		
CT	Y	4B-58 & 13B-20	Y	N	N		Dept. of Public Works is now Dept. of Construction Services
DE	Y	29-6962 & 6982	Y	Y			
FL	Y	287-055	Y	Y	N	N	See comment below ¹
GA	Y	50-22	Y	N	N		
HI	Y	103D-304	Y	Y	N		
ID	Y	67-2320	Y	Y	Y	Y	
IL	Y	30-ILCS-535	Y	Y	N		Local law cited as 50-ILCS-510
IN	Y	5-16-11.1	Y	Y	N		Price may be considered
IA	N		N/A	N/A	N		Agencies generally follow QBS. Admin Code 11-105-9
KS	Y	75-5801	Y	N	N		
KY	Y	45A	Y	N	N		Local units may use QBS
LA	Y	38:2181-2316	Y	Y	N		

State	QBS Law	State Statute	QBS applies to State Contracts	QBS applies to local units	Registration Bd. Prohibits response to price proposal	Registration Board enforced?	Comments
ME	Y	5-1742	Y	N	N		
MD	Y	13-308	Y	N	N	N	Under \$100,000, price is 40% of selection criteria
MA	Y	Part 1 Title 2 Chap. 7 – 38F	Y	N	N		QBS applies to vertical construction not horizontal
MI	Y	18-1237b	Y	N	N		Only applies to Dept. of Management & Budget
MN	Y	16C.095 16C.08 for the general rules and §16C.33 Subd. 5 for D-B projects	Y	N	N		Does not directly apply to local units of govt; no threshold; designer-selection board and other exceptions.
MS	Y	17.056 Registration law	N	Y			Administrative rule 31-7-13-2. Allows for price after short list accomplished.
MO	Y	8.285	Y	Y	N		
MT	Y	18-8-201	Y	Y	N		
NE	Y	81-1701-1721	Y	Y	Y		Projects over 40K
NV	Y	625.530	Y	Y	Y	Y	Projects over 35K
NH	Y	Title 1 – Chap. 21 Sec 22	Y	N			
NJ	Y	PL 1997 Chap. 399	Y	N	N		Local governments encouraged to use QBS. Allows price proposal from top 3 firms. Working on new law.
NM	Y	13-1-117.2 THRU 13-1-124	Y	Y	N		For contracts over 50K, surveying 10K. Universities exempt.
NY	Y	136A	Y	N			
NC	Y	143-64.31	Y	Y	Y		See comment below ²
ND	Y	54 – 44.7 and 45.7	Y	N	N	N	
OH	Y	153.65-99	Y	Y	N		Except home rule municipalities, see comment below. ³
OK	Y	61, 60-65	Y	Y	Y	N	Includes all political subdivisions

State	QBS Law	State Statute	QBS applies to state contracts	QBS applies to local units	Registration Board prohibits response to price proposal	Registration Board enforced?	Comments
OR	Y	Statutes ORS 279C.100 to 279C.125. Model rules at OAR 137-048-0100 to 137-048-0320	Y	Y	N		The state board enforces the use of licensed professionals only for geologists under ORS 672.695. See comment below. ⁴
PA	Y	62, CSA 905	Y	N	N		
RI	Y	45-55-8.1	Y	Y			
SC	Y	11-35-3220	Y	N	N		Attempting to pass legislation this year that will extend QBS to local subdivisions and will be enforced by the Registration Board.
SD	N		N/A	N/A			
TN	Y	12-4-106	N	Y	N		Requires qualification, allows price
TX	Y	2254.004	Y	Y	Y	Y	Board enforcement just went into effect. 2013
UT	Y	63-56-42	Y	N	N	N	
VT	N		N/A	N/A			Requires qualification plus price
VA	Y	2.2-4300	Y	Y	Y	N	
WA	Y	38.80.040, 050	Y	Y	Y	N	
WV	Y	5G-1-1	Y	Y			
WI	N		N/A	N/A			Not required but most state agencies use QBS
WY	Y	9-2-1031	Y	N	N		Exempted: WYDOT, U of Wyo., community colleges, school districts.

¹FLORIDA - QBS applies to a planning or study activity where compensation exceeds \$35,000 and in projects where the basic cost of construction, as estimated by the agency, will exceed \$325,000. A "continuing contract" is defined by the statute as a contract for professional services entered into in accordance with all the procedures of this act whereby the firm provides professional services to the agency for which the estimated construction cost of each individual project under the contract does not exceed \$2 million, the fee for professional services for each individual study under the contract does not exceed \$200,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause.

²NORTH CAROLINA's Mini-Brooks Act allows state and local entities various "Opt-Out" provisions in the current law. Proposed Design-Build/P3 enabling legislation (HB857) would eliminate this loophole for all public entities except NCDOT. This legislation has broad support from the infrastructure industry, including ACEC/NC, and should pass this session (2013).

³OHIO - In 2011 we had our law amended to eliminate the exemption for projects with an estimated fee under \$25,000 and we substituted a provision that allows design professionals to be "direct selected" on projects with an estimated fee of less than \$50,000 provided that the fee and scope of services still must be negotiated with the selected firm. ohio.gov/orc/153.71.

⁴ OREGON

- * Oregon has a broad definition of consultants that are covered by QBS including Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services.
- * All state and local agencies must follow QBS. Exceptions apply when the agency finds there is an emergency or the estimated design fee is below \$100,000.
- * Projects with design fees expected to be at least \$100K but less than \$250K are required to use QBS but are allowed to go through a process described as an "informal selection process".
- * Agencies must establish QBS procedures that meet the requirements of the law or adopt the model rule procedures outlined in the Oregon Administrative Rules (OAR 137-048-0100 to 137-048-0320)
- * The Oregon Department of Transportation and Department of Administrative Services must follow the model rules which provide details about the selection process. Projects with an estimated design fee of more than \$100K but less than \$250K use an "informal selection process". The process allows the agency to screen and select a consulting firm from a prequalified list. A request for proposals that are solicited from a minimum of five firms will be rank ordered and negotiations will begin with the top ranked firm as in a regular QBS process (See OAR 137-048-0210). For projects with expected design fees above \$250,000, a full public contracting process must be used with responding firms ranked. Negotiations and discussions on the final contract, scope and price occur with the top ranked firm first and terminate if an agreement is not reached within a reasonable time before moving to the second ranked consultant (See OAR 137-048-0220).

This table consists of information provided to ACEC by the Member Organizations regarding QBS laws in the states. This information is provided for educational purposes only and is not intended to constitute legal advice. ACEC provides no warranties as to the accuracy of this information, especially as it is by its nature subject to change at any time. ACEC and its officers, directors, agents, volunteers, and employees are not responsible for, and expressly disclaim, liability for any and all losses, damages, claims, and causes of action, including but not limited to direct, indirect, incidental, consequential or punitive damages and attorneys' fees and costs, arising out of or resulting from any use, reference to, or reliance on information contained in this table. Any reproduction or redistribution of this table in whole or in part without the express written consent of ACEC is strictly prohibited. Copyright © 2013 American Council of Engineering Companies (ACEC). All Rights Reserved.

The ACEC logo features the acronym "ACEC" in a large, bold, black serif font. Above the letters is a thin, curved orange line. Below the acronym, the full name "AMERICAN COUNCIL OF ENGINEERING COMPANIES" is written in a smaller, black, all-caps sans-serif font. At the bottom of the logo is a red ribbon-like banner with the text "100 Years of Excellence" in white.

AMERICAN COUNCIL OF ENGINEERING COMPANIES

100 Years of Excellence

QUALIFICATIONS-BASED SELECTION

WHY QUALITY OUTWEIGHS COST IN
THE SELECTION OF DESIGN
SERVICES

What is QBS?

- A nationally endorsed procedure for selecting and retaining design professionals (Architects and Engineers) that will provide the best value to the owner in terms of quality and total project cost.
- A competitive procurement approach that emphasizes quality attributes.



History

- 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 qualifications-based selection process for A/E services
- 1984 Competition in Contracting Act



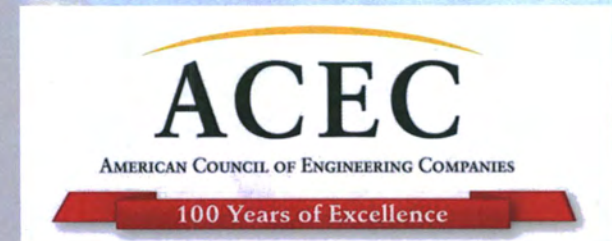
Who Uses QBS?

- 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 quality first (“The doctor example”)



Engineering Services

- Are services; not commodities
- Engineers provide:
 - Technical Expertise
 - Innovation
 - Latest Technology
 - High Degree of Professional Competence



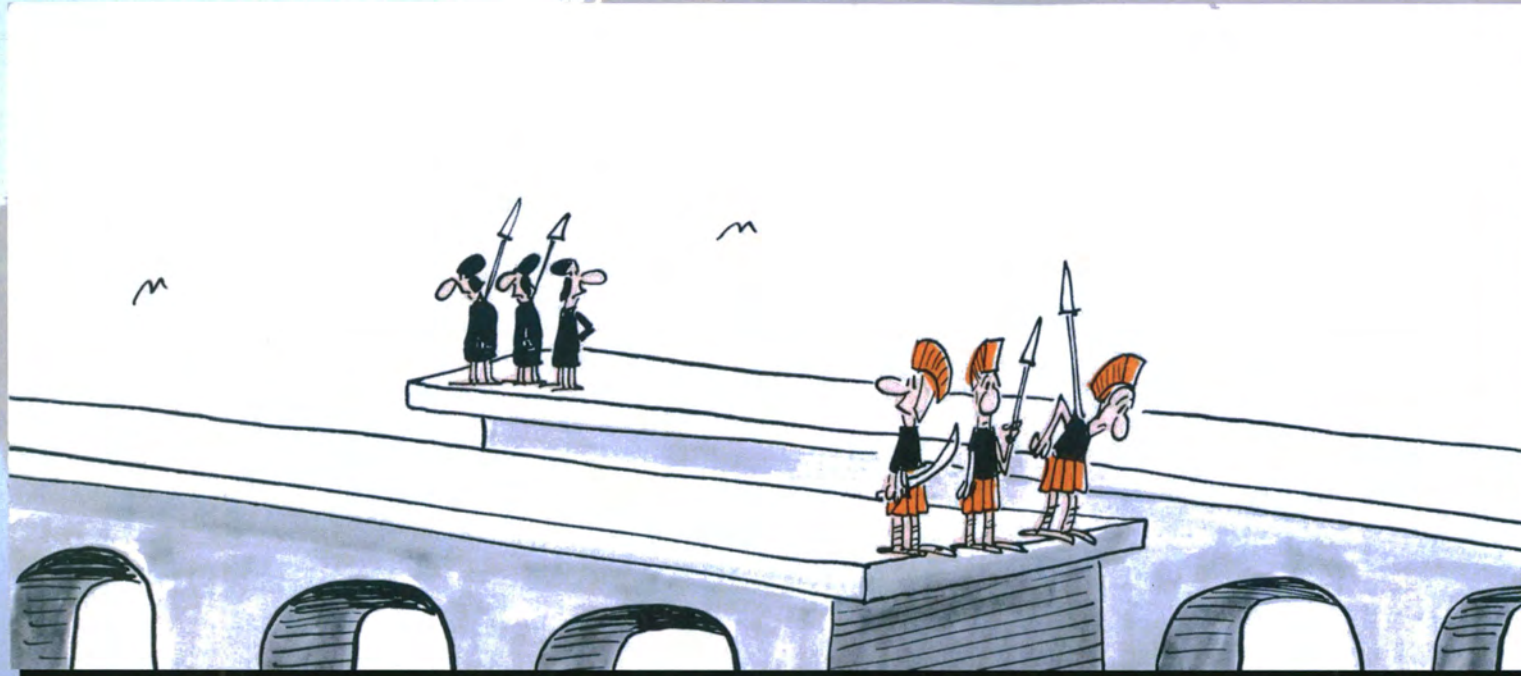
Why not use low-bid?

- 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 costs



ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

100 Years of Excellence

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



ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

100 Years of Excellence

Choose Quality First and Then Decide If You Can Afford It

Everyday decisions are based on this principal.



\$500

Vs.



\$80,000

Or?



\$25,000



What Does the Owner Really Want?

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



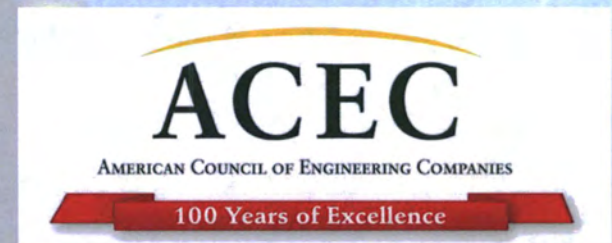
Copyright © 2004 Creators Syndicate, Inc.

ACEC
AMERICAN COUNCIL OF ENGINEERING COMPANIES

100 Years of Excellence

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

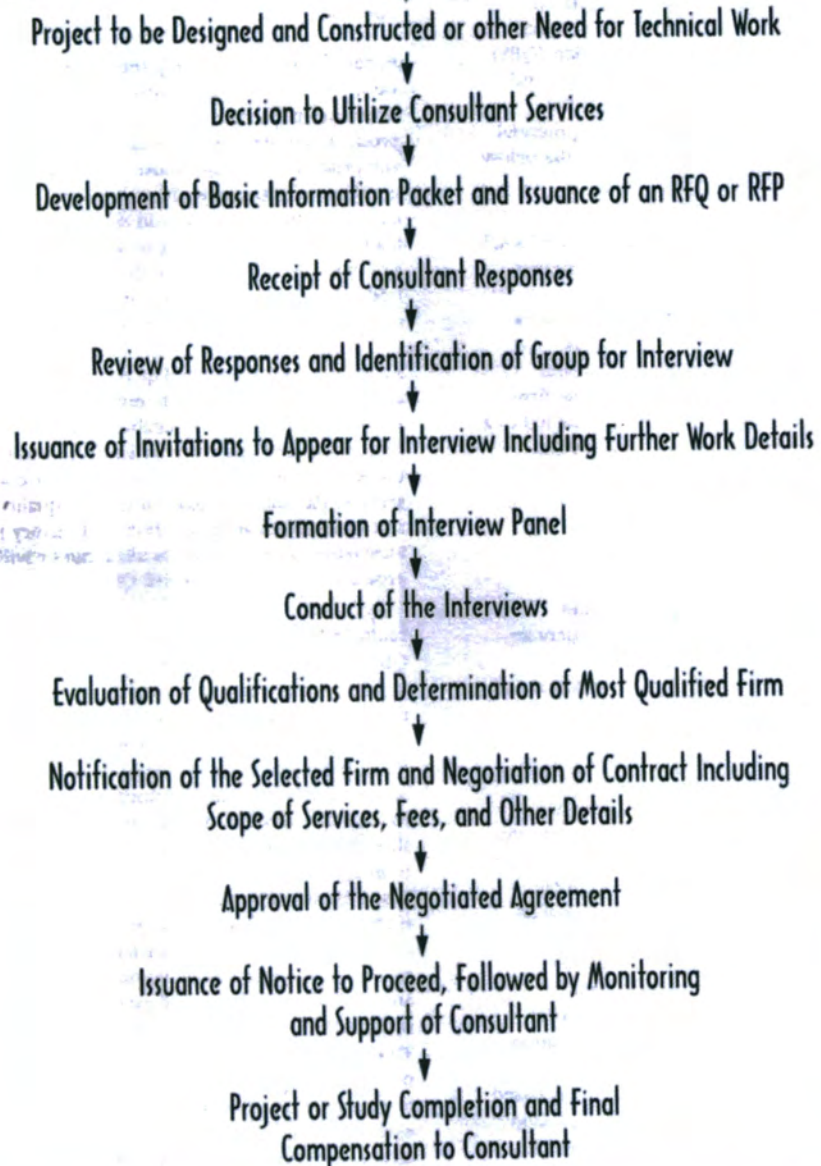
- Negotiating a Contract

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.



APWA Flow-Chart

TYPICAL FLOWCHART USE OF CONSULTANT SERVICES



ACEC
AMERICAN COUNCIL OF ENGINEERING COMPANIES

100 Years of Excellence

Evaluating Qualifications

Training

Expertise

References

Experience

Availability

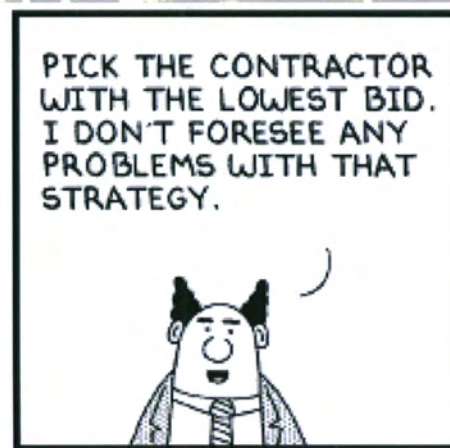
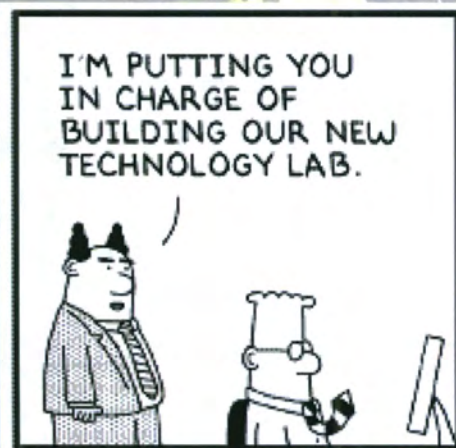
ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

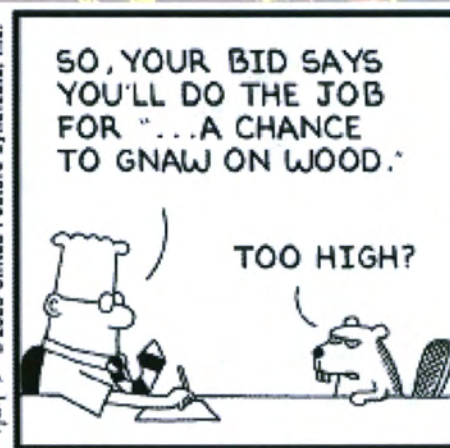
100 Years of Excellence

Why QBS?

- Life Cycle Cost Considerations
- Team Building
- Technology/Innovation
- Reduced Changes
- Flexible Contract Approaches
- Competition Among Best Performers; Not Low Bidders



1/12/05 © 2003 United Feature Syndicate, Inc.



Copyright © 2003 United Feature Syndicate, Inc.

ACEC

N COUNCIL OF ENGINEERING COMPANIES

100 Years of Excellence

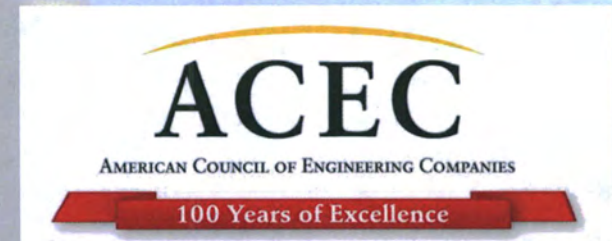
Questions?

- What happens if the Owner and A/E can not agree on the fee for the services?
 - The Owner terminates negotiations with the first ranked firm and begins negotiation with the second ranked firm. The Owner is always in control of the process. This happens only rarely, since the A/E has invested significant resources to arrive at this point.



Questions?

- Why not ask for prices from three qualified firms?
 - Each firm will offer a price based on its own interpretation of the scope and not necessarily that of the owner. Each price therefore, represents a unique and unilateral scope.
 - Since most equally qualified firms have similar labor cost, overhead, and profit structures, they will cut scope first to be price competitive.



Questions?

- Does QBS encourage competition?
 - Absolutely. The A/E will make a serious investment in 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.



Questions?

- 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.



Questions?

- 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.

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

100 Years of Excellence

QBS Case Study #1

- You are one of three engineers that an owner has asked for a price proposal for a site plan for a business park. Your work will include permitting and stormwater management.
- You have determined that the site is suitable for an innovative bio-filtration stormwater management facility. This innovative design may allow more parking and office floor space when compared to a conventional stormwater management basin. However, the design and permitting effort (scope) for the innovative design is about 1.5 times the cost of the conventional basin design.



QBS Case Study #1

Here are your choices of action:

1. Call the owner and ask to explain the opportunities of innovative design in the hope that he will accept your higher price.
2. Ask the owner to tell the other engineers to base their fee on the bio-filtration design so that everyone's fees are comparable.
3. Give the owner two fees, one for the conventional design and one for the innovative design and let him decide.
4. Base your fee on the conventional design so your fee is low and hope you get the job.

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

100 Years of Excellence

QBS Case Study #1

Who Chose Option #1? (Call the owner to explain the opportunities of innovative design...hope he accepts your higher price.)

- The owner says that it is a great idea. So you give him your higher fee based on the innovative approach.
- But the owner calls a week later to thank you for your effort but he just had to take the engineer whose fees were 65% less than yours. But he will invite you to bid next time.



QBS Case Study #1

Who Chose Option #2 (Owner tells other engineers to base their fee on the bio-filtration design.)

- The owner says, fine. Just write a scope so he can hand it to the other engineers.
- One of the other engineers calls you to ask what a bio-filtration facility is.
- The owner calls a week later and says that he chose the engineer whose price was 65% lower than yours. Without telling you, he thinks that you price gouge and will not call you again.
- The selected engineer later talks the owner out of the risky bio-something design and goes ahead and designs the big ugly hole. Yes, he was the one with the low fee.



QBS Case Study #1

Who Chose Option #3 (Give the owner two fees, one for the conventional design and one for the innovative design.

- The owner calls and says that he really likes the innovative option but the low conventional design fee looks really tempting. Even though you were not the lowest fee among the three engineers, he would be happy to give you the job if you would go with the innovative option for the conventional option fee. If you can't, he will have to go with the lowest fee of one of the other engineers.



QBS Case Study #1

Who Chose Option #4 (Base your fee on the conventional design so your fee is low)

- Congratulations, you got the job. Your price was 65% lower than the next engineer. This client thinks you're a great guy.
- Three months later your multiplier is 1.4 and the project is behind schedule. You and the owner are barely speaking since you have submitted seven change orders for out-of-scope work. The owner says, "How can this be? You said that this is a conventional design! Don't you know your own business!"



QBS Case Study #1

Moral of the Story

- When price is on the table it trumps other considerations, even quality and innovation. However, in many cases, the difference in quality outweighs the apparent savings in fees when considering the life cycle costs.
- Had the owner used QBS he would have worked with the innovative engineer to develop a layout that would have generated more rentable office space and a higher rate of return on his development investment.



Case Study #2

- Three engineers were invited to submit technical and price proposals for a wastewater treatment plant upgrade project.

• The price proposals and technical scores were:

1. \$ 349,000	88
2. \$ 388,000	85
3. \$ 325,000	84

- You are the Director of Public Works and have to recommend a firm for the project.
- Here are your choices:
 1. Choose the firm with the highest ranked technical proposal for \$349,000.
 2. Choose the firm with the low price.



Case Study #2

Who Chose Option #1 (the firm with the highest ranked technical proposal for \$349,000.)

- After you have notified the winning firm, the President of the County Council calls and asks you to attend the next Council meeting to explain why you agreed to pay an additional \$24,000 when the technical scores of “equally qualified firms” were so close.



Case Study #2

Who Chose Option #2 (the firm with the low price.)

- You have made the Council and the County Procurement Agent happy.
- At the 50% submission, you realize that an important item of scope was not included in your Request of Proposal or in the A/E's original fee. To be fair you ask the A/E for a change order. It amounts to \$30,000.
- The County Council President calls and asks you to explain why you didn't select the most qualified firm who "would have known about this" and would have charged \$6,000 less considering the change order that you now ask for.



Case Study #2

Moral of the Story

- When the owner writes the scope without the A/E's input, he is exposed to a greater risk of change orders.
- When multiple prices are on the table, the owner is not in control; the price is.
- Had the Director used QBS, he would have been able to identify contingencies and have a contract means to handle them. He would also have been able to tell the Council that the procurement method he used is widely endorsed by governmental and professional organizations.



Case Study #3

- What the City Wants...
 - Consultants are requested by a City to submit price proposals for providing complete engineering services for a Water Transmission Line Replacement Project.
 - The advertisement states that the City wishes to replace 5,000 feet of an existing 8-inch transit line with a new 12-inch asphalt dipped and wrapped steel transmission line. The City has a policy of using steel pipe on all transmissions lines, and the Council has determined that they can afford only a 12-inch diameter line.
 - The city desires a lump sum “bid” for all of the engineering, including surveying, design, contract administration, and inspection.



Case Study #3

- Problems....

- If a consultant wants to be competitive on this job he must first accept the fact that the line size must be 12 inches, and the material used must be asphalt dipped and wrapped steel pipe.
- Several assumptions could cause the engineer to price himself out of the job. For example...
 - He includes costs for soil testing to see if corrosive soils may exist on the route, this making steel pipe unsuitable.
 - He includes the cost to evaluate the City's overall water supply and transmission facilities beyond the limits of this project to see if a 12-inch line will fit the long-range needs of the City.
 - Several stream crossings are involved in the project, and if the engineer assumes the responsibility for securing the necessary crossing permits as a part of his work.

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

100 Years of Excellence

Case Study #3

- The City thinks it is getting a valuable product for the least engineering cost.
- In fact...
 - The choice material maybe wrong for the type of soil.
 - The size of the line maybe too small for the long-range needs of the City.
 - Additional work (securing steam crossing permits) may have to be done by the City themselves.
- These problems are likely to lead to change orders, time delays, higher life-cycle project costs, and contention between the engineer and City.

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

100 Years of Excellence

Case Study #3

- What if the City had used QBS instead...
 - After the selection of the most qualified engineer, the engineer could meet with the City to discuss the various items of work to be done.
 - The engineer could explain the various elements of the project, from a technical standpoint, and point out potential problems.
 - The engineer and City collaborate to develop a detailed scope of work so that both parties are fully aware of what is to be done during the project.
 - The engineer and City negotiate a fair and reasonable price based on the scope of work.
- The City receives the best value for its buck.



Case Study #4

- The community of Knob Hill's main water transmission line which bring drinking water to the citizens was exposed by winter floods. Anxious to get the problem resolved the community asked for bids from consultants.
- Needing the work, and despite the fact that their engineers were mainly trained in designing roads and highways, Firm XYZ successfully submitted the lowest bid and proceeded to complete the project design.
- Soon after construction began a stop work order was issued by the Dept. of Fish and Wildlife because Knob Hill had obtained neither a "Dredge and Fill Permit" or a "Stream Crossing Permit" from the Department. In addition, work in the flowing stream was not allowed for another six weeks, after the native salmon had hatched and moved downstream. By contract, Firm XYZ was not responsible for obtaining the necessary permits, having made it Knob Hill's responsibility in order to keep their "bid" low. Having never done this type of project before, however, the firm's staff was unaware that in-stream work was only allowed for a six week period late in the summer.



Case Study #4

- Claim letters began to arrive weekly from the contractor, claiming damages for delays on the contract. The same contractor had already bid and had been awarded other construction work during the late summer. They had only bid on this job because of the early timing of the work in the construction season.
- Whether or not Firm XYZ knew the permits were required it did not concern them because they were not responsible for this task. .
- In the end, Knob Hill paid more than double the stream crossing transmission line cost to another contractor whom they hired under force contract. Firm XYZ was blamed by the Council members for their failures to point out the seriousness of having the necessary permits and not scheduling the construction during the proper time frame.

The logo for ACEC features the acronym "ACEC" in a large, bold, serif font. Above the letters is a thin, curved line that arches over the top of the text.

AMERICAN COUNCIL OF ENGINEERING COMPANIES

100 Years of Excellence

Case Study #4

- Had Knob Hill used QBS...
 - They probably would have selected a firm with experience in water line crossings of streams and would have been familiar with the permitting process and Dept. of Fish and Wildlife in-stream construction regulations.
 - By working with the consultant to develop a proper scope of work coupled with appropriate fees that were enough to cover some of the “extra services”, such as the permitting, instead of simply bidding the design work out, Knob Hill would have been able to save time and money in the long run.

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

100 Years of Excellence

Federal Initiatives

- ACEC secured QBS language in new federal procurement regulations and pending water legislation.
- Ongoing defense of QBS with federal agencies.
- TEA-21 Reauthorization language



State Initiatives

- Forty-five states currently have QBS (mini-Brooks”) laws
- Hundreds of municipalities use QBS
- QBS is prone to attack by state administrations and legislators unfamiliar with the process
 - Alabama situation
 - Reverse auctions in Minnesota & Kentucky
 - Louisiana attempts to use the “two-envelope” system
- The key is education!



State Initiatives

- **The Good News**

- The list of QBS states continues to grow
 - Alabama, Michigan, Georgia, and Hawaii all in the past 4 years
- Many states are successfully promoting QBS at the local level.
 - Oregon: Amended QBS law to include local agencies using state money for projects. Twenty-one states have similar law.
 - New York: Was able to expand their QBS law to include public benefic corporation and authorities.
 - Colorado & others: Currently trying to expand QBS to the local level.

- **The Bad News**

- Attempts to skirt the QBS process still arise – usually by contracting officers unaware of the law.
- Again, the key is education!



Who Endorsed QBS?

- The American Council of Engineering Companies (ACEC)
- The American Public Works Association
- The American Bar Association in their model municipal code.
- The American Institute of Architects
- The National Society of Professional Engineers
- Numerous Engineering Technical Societies such as the American Society of Civil Engineers, etc.



Testimonials

- "QBS is an invaluable 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, Former 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.**

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES

100 Years of Excellence

Resources

- ACEC's Online QBS Resource Center
 - <http://www.acec.org/advocacy/qbs.cfm>

Mark Steiner, P.E.
Senior Policy Director

ACEC

202-682-4343

msteiner@acec.org

