

Exhibit Number: 10

The following exhibit is several assorted documents that exceeds the 10-page limit therefore it cannot be scanned. A small portion has been scanned to aid in your research for information. The exhibit is on file at the Montana Historical Society and can be viewed there.

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.
- ◆ Oregon Law ORS 279.057 confirms it is in the state's best interest in state procurement.
- ◆ HB-2014 implements thresholds of \$400,000 and a minimum of 35% state participation in the project's design and construction before QBS is required. These amendments do not impact local governments selection processes on projects funded entirely with local funds.
- ◆ 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. All the western states, including Montana, Idaho, Nevada, Oregon, Washington and California, have QBS laws.

Why?

In a previous case study conducted by the state of Maryland, their 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 time and effort it took Maryland to prepare a scope of work that could be used to obtain bids from design professionals.

Why Would a Public 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 public 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.

Who Defines this Scope?— At What Cost?

You, as the public owner, must define the scope of design services you expect. This is a difficult task and is best accomplished jointly with the highest rated firm as determined using Qualifications Based Selection.

HOW TO ENGAGE DESIGN PROFESSIONALS *

...to achieve quality and cost effectiveness in public projects using...

QUALIFICATIONS BASED SELECTION (QBS)

as based on

1. Federal Law PL 92-582
2. Federal Law PL 100-464
3. State Law ORS 279.057
4. Common practice in public projects

* Registered architects, engineers, surveyors and landscape architects.

What is

Qualifications Based Selection?

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

The Value:

- ◆ Fosters broad based competition.
- ◆ Affords the selected professional an opportunity to understand the public owner's needs and objectives as a basis for negotiating the professional fee.
- ◆ Saves money over bid-based methods, as proven in actual practice by public owners.
- ◆ Takes full advantage of creativity and expertise of the design professional.

Senate Local Govt. Comm.
Exhibit No. 10
Date Feb. 17, 2005
Bill No. SB 237

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Oregon

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This Qualifications Based Selection Process Keeps the Owner in Control.

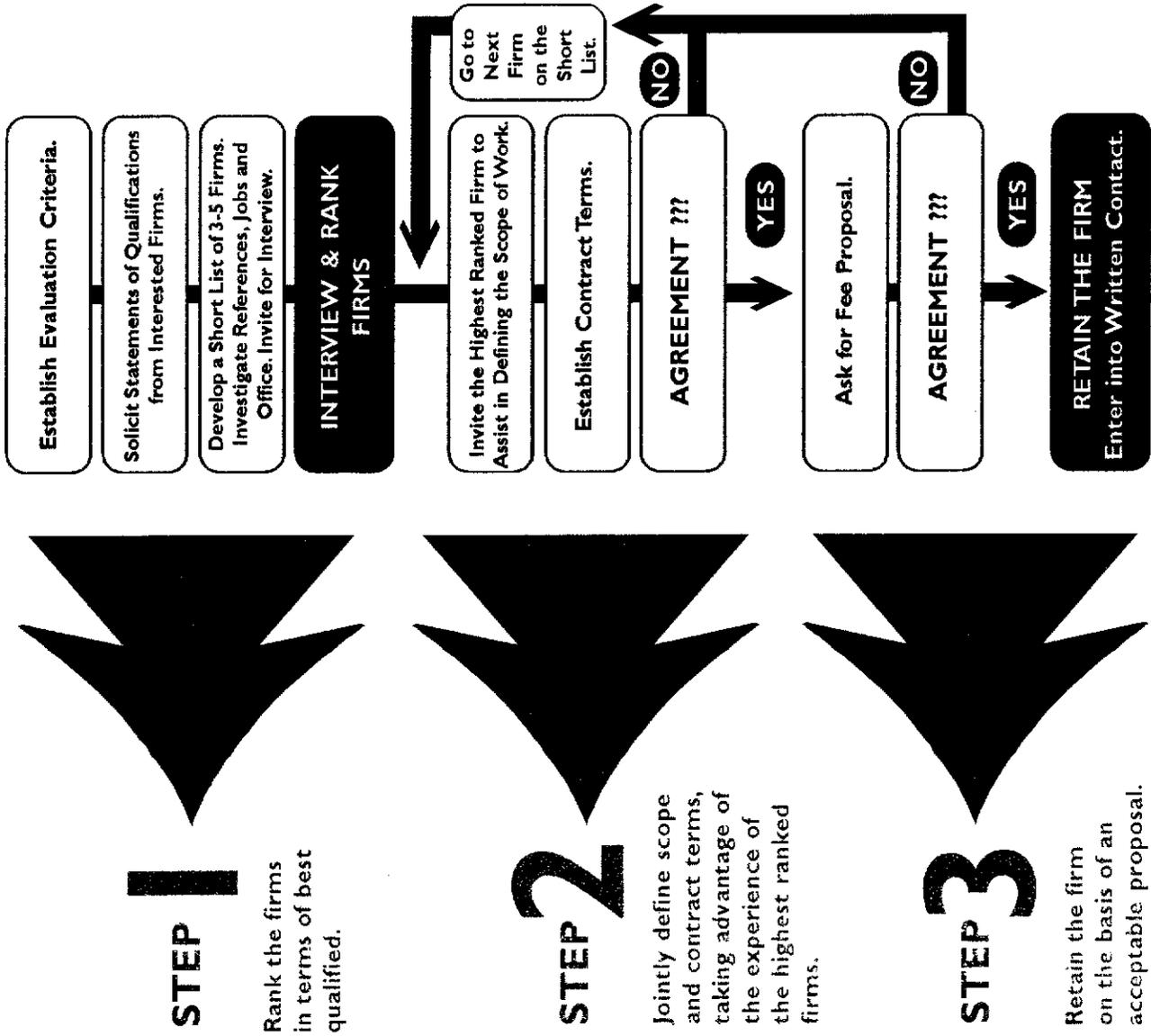
Are Oregon public agencies required to use Qualifications Based Selection? Yes, ORS 279.057 clearly states when QBS is required on certain projects. QBS is required on all projects on Oregon that include federal funds, all state agency projects and local agency projects that meet the thresholds of a minimum of \$400,000 projects cost and a minimum of 35 percent of state funding participation. If these limits are met then QBS is required.

How does QBS benefit public agencies? QBS benefits public agencies by ensuring qualified firms are retained to do the work. Also, QBS requires a definitive scope of the project to be finalized by the owner and design team. This thorough scoping process allows a better working relationship between both parties. This cuts down on expensive change orders, legal confrontations, and creates a partnership working to design the best project, not the cheapest project.

How does a public agency decide who is qualified? From the initial RFQ to the final selection the local government is in charge of the process. They will decide what is important to their specific project and how rankings will be developed. Special emphasis in skills, local knowledge, availability, small business, minority owned businesses or other selection criteria are all up to the local government. QBS does not require a cookie-cutter approach to design professional selection. Local governments are allowed to determine qualifications that fit their project best.

When I use QBS, how will I know if I am getting a fair price from the most qualified design professional? All public work done by engineers for public agencies is public information. The QBS law allows the use of previous project pricing information. This previous price history will assist when deciding upon a fair price.

How do I negotiate with the design professional? First and foremost, develop a scope of services in concert with your consultant. This scope should be as complete and detailed as the agency and consultant can reasonably make it. It should define the deliverables and the time frame in which the work should be accomplished. This provides the project control mechanism that most agencies desire. Once the consultant has a well-defined scope of services, the level of effort to perform each task within the scope can be assigned and discussed with the agency.



**Government
Procurement:
Architect/Engineer
Selection**

Statement. The American Institute of Architects believes that architects and engineers should be selected for federal, state, and local government work or work financed primarily by or through federal, state, or local government agencies on the basis of professional qualifications and competence.

Explanation. The Institute endorses and supports legislation such as Public Law 92-582, used by the federal government to procure A/E services, that requires public announcement of all contract requirements, selection and ranking of the three most qualified firms, and contract negotiations with the highest-ranked of the three firms. This selection process, called qualifications-based selection (QBS), endorses the traditional selection method of negotiating a contract with the architectural firm judged most qualified to provide the services for a particular job. Should negotiations fail between the public owner and the highest-ranked firm, negotiations are terminated with that firm. The same negotiation procedure then takes place with the second-most qualified firm and so on down the line in order of their ranking until an agreement is reached.

The federal QBS statute reflects the Congress' judgment, with which the AIA agrees, that selecting architects on the basis of demonstrated qualifications and ability is in the best interest of the public and, conversely, that competitive bidding procedures do not fit well with the subjective attributes of professional services and are not in the best interest of the public client. Most states, and many local governments, have also adopted qualifications-based selection statutes. Several factors underlie this broad acceptance of QBS.

First, competitive bidding requires the comparison of tangible and quantifiable goods or services. Yet the scope of services for a building project has not been fully defined at the stage the architect is selected. Typically, the client and the selected architect together define and delineate the scope of those services after the selection; the services will vary depending on factors including the project type, the client's capabilities, and the groundwork that has already been completed. The architect's compensation is based on the amount of work to be performed--the amount of professional and technical time that will be spent on the project's design, development, and construction--and on the architect's experience and creativity, which are intangible and difficult to quantify. Second, procurement of design services on the basis of cost can also be extremely shortsighted. Using life-cycle calculations, the construction costs of a building with a 40-year life expectancy equal one-seventh of the building's total cost; the remaining six-sevenths represent maintenance and operation costs. Design services represent only a small fraction of initial construction costs, and so represent a very small percentage of the total life-cycle cost; yet the quality of the design services plays a major role in determining the life-cycle costs of the building. Small cost increases initially in the expenditures for design and construction may yield substantial savings in overall life-cycle costs.

Third, QBS fosters trust and confidence between owner and architect, which is a requisite for the success of any project.

Board Approval- May 1995

AIA Kansas

A Chapter of The American Institute of Architects



July 27, 2004

TO: Manhattan City Commissioners

FROM: Robert D. Fincham, AIA, Government Affairs Committee Chair
American Institute of Architects in Kansas (AIA Kansas)

RE: Procurement of Architectural and Engineering Services by the City of
Manhattan

Thank you for the opportunity to provide information regarding your deliberations on the procurement of architectural and/or engineering services for your City.

Everyone wins when qualifications are paramount in a public body's decision to hire professionals.

First, when professional firms' qualifications are considered along with a project and client's parameters, differences always exist to allow a client to rank the firms. No two firms are equal for a particular project, at a particular time, for a particular client, on a particular site.

Second, it takes time and effort to negotiate a project. Most people believe negotiating concerns only the fee. WRONG. The client and architect/engineer are negotiating to define a unique, one-of-a-kind project. This initiates the design process and builds the relationship of trust and understanding between client and professional. The negotiation determines how much the architect needs to consider and, therefore, what the construction and life-cycle costs will be. Depending upon the size of the project, the negotiation sessions could span several meetings and could include a few preliminary technical proposals to determine which method may provide the best, most cost-effective result for the client over time, often referred to as a life-cycle cost. (See attachment #1)

It has been said that any given firm can do a project a hundred different ways, depending upon the concepts used and the personnel assigned. When a client — public or private — uses fees rather than qualifications as the procurement method, however, a firm has to choose just one approach because that's the only way it can develop a fee. That approach is developed without the input of the owner — in fact, it largely takes the owner out of the design process. Unless the client is willing and prepared to discuss in detail the project, the site, and the client's requirements for the project, each professional will be bidding on his or her own preconceptions of what the project, the site, and the client needs. Therefore, the bids cannot be compared and are meaningless.

If a client ranks the firms properly and then negotiates in good faith with its top-ranked firm, it almost always will receive a fair and reasonable price because it is based on a mutually understood project definition. Every firm remaining at the negotiation stage has invested many dollars in the potential project. No firm ranked at the top of the agency's list is going to walk away from the table unless it is faced with losing money. A firm in the top position

knows that there are two and maybe three other firms waiting for an opportunity to develop the project. Knowing this, the firm will provide a fair price. If the price is not within the agency's budget, the agency can and should terminate discussions and go to its second choice.

In January 1985, the American Institute of Architects published the results of a study it conducted comparing the procurement of a/e services in the states of Florida and Maryland for an 8-year period. Florida was using the Qualifications-Based Selection method and Maryland was using price as well as other factors. The results were clear. The projects in Maryland were more costly to design - 13% of construction costs for Maryland vs. 6.7% for Florida. They also took more time to complete - 49 months for Maryland vs. 36 months for Florida. (See attachment #2 for Executive Summary.) After being presented with the results of this survey, the State of Maryland adopted the Qualifications Based Selection method and continues to use this process today.

AIA Kansas and the City of Manhattan have the same goal – to provide the best professional services for the best price. AIA Kansas strongly supports your current QBS procurement process as the method that will give you the results you want – the best-qualified professional design team at a fair and reasonable cost.

I'll be happy to answer any questions you may have.

Catherine Fritz

From: Peter Arsenault [arsenault@mda-cny.com]
Sent: Tuesday, January 07, 2003 1:13 PM
To: Catherine Fritz
Cc: Barbara@alanys.org; cless@cannondesign.com
Subject: RE: [sgn-l] QBS

Hello Catherine

I have been on the NY State QBS council in the past advocating for the use of QBS for professional services. We found that AIA National had some good literature and overviews of the benefits of QBS vs. bidding. Have you asked them to send you any information?

Other professional organizations also have addressed the issue. The American Consulting Engineer's Council (ACEC) has a publication called "Bidding is not the Solution: Case studies in Bidding" Prepared by ACEC's Professional Procurement Committee. (I have a 1997 copy with several one page "horror stories" of building failures linked to bidding out professional services).

The American Public Works Association (APWA) has also been very active in QBS offering publications and seminars on the topic. You can reach them in Kansas City, MO at (816) 472-6100 or apwa@mail.pubworks.org.

In my own experience, I have found effective points to make include:

- * A/E services represent less than 10% of the total project cost yet they influence 100% of the cost of construction. A savings in design fees is a false economy, since it may mean the A/E is less able to spend time on controlling or even reducing construction costs, where the real expense is.
- * None of us would choose a doctor, lawyer, or accountant based on low bid -the importance of their services are too high. The same is true with design services- do we really want to hire an architect or engineer who isn't experienced or doesn't think enough of the value of their own service?
- * Paying less for design fees directly means receiving less service. A/E firms are also businesses. They can't stay in business and provide service if they don't have enough money coming in to make payroll. They must put people to work on projects where there is enough fee to cover their costs.
- * Negotiating a level of service and a corresponding fee assures the Owner that they are receiving only the services that they need and paying a fair price for them. The AIA Architect/Owner Agreement, part 2, is a perfect vehicle for establishing this negotiated level of fee and service. That is a much more direct and effective "cost control" measure than the alternatives you have been presented with.
- * In addition to the above, it should be pointed out that the Federal government and many State governments (including NY) have laws that require Qualifications Based Selection in some form when public funds are being spent. That is because these government bodies have found out the truth that QBS is in the best public interest.

Hope this helps.

Peter Arsenault
Peter J. Arsenault, AIA, NCARB, Project Director
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Catherine Fritz

From: Bill Seider [bseider@wbgs.com]
Sent: Friday, January 03, 2003 1:01 PM
To: Catherine Fritz
Subject: RE: [sgn-l] QBS

Catherine - I don't have any specific examples of why QBS is a good thing or why not using QBS will save you money. But my favorite example for lay people on the benefits of QBS is to bring in a set of construction documents for a similar sized project, drawings and specifications and plop them down on the table. See what a wealth of detail and information we give general contractors and subcontractors to get a competitive bid. Still, the one who gets the project is often the bidder who makes the biggest mistake. We are stuck with public bidding laws for construction, but do you want to hire an architect on the same basis? Who is served by that?

Can this owner provide the architect(s) with a similarly detailed scope of work that you want them to bid their services on, and to make these bids make sense and to be able to compare them between each other, just like we ask of contractors bidding public work? How many meetings during each phase, what is the public involvement going to be, how big a project, the budget, schedule, what is the program, how many submittals will be processed during construction, how long will construction take, how many bid packages, how many specification sections, one story or two, what's the roof look like (flat or sloped), what are the site conditions, will there be zoning and conditional use reviews required, what are the soil conditions, how many restrooms, what are the energy conservation strategies to be incorporated, what are the security hardware requirements, and on and on. I have never seen a proposal yet ask for fees and even come close to giving the type of detail and information that you need to make a fee proposal seem fair to everyone. The scope of work, and a fair and reasonable fee should be negotiated by the most qualified architect and the owner, when these and other issues can be reviewed and at least some assumptions agreed to before the work actually begins.

You may already know all of this. But if not I hope that helps.

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