

NSPE Issue Brief

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Qualifications-Based Selection

- Procure design professional services on the basis of qualifications.
- Oppose proposals that weaken the federal Brooks A/E Act
- Oppose proposals to weaken "mini-Brooks" laws at the state and local levels

Background

Qualifications-based selection is a procedure whereby service providers are retained on the basis of qualifications, rather than price factors. Under the QBS method, the procuring agency reviews the qualifications submitted by interested individuals and firms, ranks respondents, and then negotiates with the most qualified respondent for a mutually agreeable contract.

The federal Brooks Architect/Engineer Act (PL 92-582), enacted in 1972, requires federal agencies to utilize QBS procedures when procuring design services.

Forty-two states have implemented some sort of QBS laws and numerous localities have also adopted laws modeled after the federal statute (known as "mini-Brooks" acts). They require states and localities to utilize QBS procedures when procuring design services. Other states and localities have adopted regulations or executive orders that accomplish the same objectives as the statutes.

NSPE Position

NSPE believes that qualified engineers on the basis of design ability, experience, integrity should perform all engineering services. NSPE supports the procurement of design professional services on the basis of qualifications and strongly supports PL 92-582 (the Brooks A/E Act of 1972), which requires federal agencies to use QBS procedures when obtaining design professional services. NSPE also supports the adoption of "mini-Brooks" laws at the state and local level.

NSPE's support for the QBS process is based on the following assertions:

- QBS ensures that projects are designed in a manner that is safe, innovative, environmentally sound, and cost-effective over the project's life cycle.
- QBS allows life-cycle costs such as construction, operations, and maintenance to be factored into project design.
- The procuring agency is more likely to obtain a qualified service provider through QBS than through competitive bidding because the QBS procedure requires respondents to submit information that outlines the applicability of their qualifications to the particular project at hand.
- It allows small firms to compete for contracts based on quality of services provided on equal footing with larger firms. Larger firms would have a distinct advantage if competitive bidding were based solely on price.

NSPE Action

NSPE coordinates its activities in support of qualifications-based selection with the Council on Federal Procurement of Architectural and Engineering Services (COFPAES), a coalition of five professional organizations. NSPE and other COFPAES member organizations were instrumental in drafting the two-phase design-build legislation to ensure that design services were selected on the basis of the designer's qualifications rather than price.

Furthermore, NSPE continues to support the implementation of "mini-Brooks" laws at the state & local levels and continues to monitor activity in the states to make sure there is no effort to weaken or modify the practice of QBS.

Status

In May 2003, the House Government Reform Committee reported out H.R. 1837, the *Services Acquisition Reform Act of 2003*, or SARA. The bill had been introduced earlier this year by Committee Chairman Tom Davis (R-VA) and is similar to his past efforts to reform federal government procurement.

Key sections of J.R. 1837 were subsequently incorporated into H.R. 1588, the FY2004 authorization bill for the Department of Defense. These include:

Section 1414 - Architectural and Engineering Acquisition Workforce This section would require the Administrator for Federal Procurement Policy, in consultation with the Secretary of Defense, the Administrator of General Services, and the Director of the Office of Personnel Management, to develop and implement a plan to assure that the federal government maintains the necessary capability to contract effectively for the performance of architectural and engineering services. This section, however, is not intended to authorize the hiring of additional government employees.

Section 1428 - Improvements in Contracting for Architectural and Engineering Services

This section would amend section 2855(b) of title 10, United States Code, to raise from \$85,000 to \$300,000 the threshold for a participation incentive for small business concerns in acquisitions for architectural and engineering services. This section would also require that architectural and engineering services offered under multiple-award schedule contracts awarded by the General Services Administration or under federal government-wide task and delivery order contracts be performed under the supervision of a licensed professional engineer. These contracts must be awarded pursuant to the quality-based selection procedures set forth in the Brooks Act.

H.R. 1588 has remained mired in a House-Senate conference committee since summer with no resolution in sight. . The Senate version of the DOD reauthorization does not include the SARA provisions.

NSPE has successfully worked to include QBS provisions in the two House versions (H.R. 20, H.R. 1560) of Clean Water Act Reauthorization. The provision would require states and localities that receive funding under the State Revolving Fund to use the QBS process in construction of wastewater infrastructure.

NSPE References

Professional Policy No. 131 - Procurement of Engineering Services

NSPE Professional Engineers in Private Practice Brochure - Questions and Answers on the Procurement of A/E Services by Public Owners.

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