

ACEC Oregon

AMERICAN COUNCIL OF ENGINEERING COMPANIES OF OREGON

"The Engineers"

Testimony to the
Senate Business, Transportation and Economic Development Committee
Regarding SB 644
March 21, 2013

Good afternoon Chair Beyer and members of the committee, I am Marshall Coba representing the American Council of Engineering Companies of Oregon (ACEC) in support of SB 644. ACEC Oregon is a professional organization representing more than 110 member firms and 3,500 employees. Our members range from small locally owned firms to major companies providing design services to public and private clients across the nation and world. Our members are fully in support of clarifying the intent and use of direct appointment for projects estimated to cost less than \$100,000 in design fees. This will help to ensure the best and wisest use of our limited and valuable public funds.

The intent of SB 644 is to provide a technical fix to HB 3316 from the 2011 session. HB 3316 passed unanimously and was successful in removing certain thresholds and expanding the use of Qualification Based Selection (QBS) to more projects in Oregon. QBS is a process for procuring design professionals. ORS 279C.110 lays out the process for QBS when procuring design services for projects over \$100,000 in estimated design fees. For projects under \$100,000 in estimated fees, state and local governments in Oregon can use either QBS or direct appointment. It is this direct appointment process that needs the technical fix in SB 644.

QBS is the procurement methodology supported by designers and more importantly public work professionals. Since the scope of the project is often not fully understood by the owner (the state or local government) and the design team, the QBS process allows a qualified group of professionals to team up and produce the best quality project for the available funds. The importance of quality design will resonate through the construction phase and for years through the lifecycle of any project.

ACEC and other design associations have worked on this issue for a number of years and felt that we had hit the sweet spot of flexibility for state and local governments on projects under \$100,000 in estimated fees. For projects under \$100,000 in estimated fees, our intent with HB 3316 as amended, was to allow state and local governments the option to choose to use either QBS or direct appointment to procure design services. But during the rulemaking process it was

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determined that language in HB 3316 was not certain and clear enough in regards to direct appointments under \$100,000 in design fees. This ambiguity has allowed some local governments the opportunity to use a third option, price bidding, when procuring design professionals. This is not what HB 3316 was intended to do.

We believe SB 644 adds back that certainty and clarity and removes the ambiguity. This will continue to allow state and local governments the choice between QBS or the simpler direct appointment process. This will ensure the best use of limited public funds and will also bring consistency to the design procurement process and consistency from jurisdiction to jurisdiction and from project to project across the state. This will be a significant and valuable improvement to public procurement law in Oregon.

In conclusion, this bill has strong support from the design community and the American Public Works Association (APWA) which is the leading organization for public works professionals. Most governmental agencies in Oregon already use QBS or direct appointment for projects under \$100,000 in estimated design fees. SB 644 ensure compliance among all agencies. We encourage you to support SB 644 to ensure the best and most appropriate use of limited public funds.

Thank you.

American Public Works Association

Your Comprehensive Public Works Resource



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March 19, 2013

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RE: Qualifications Based Selection (QBS) of Professional Consultant Services

Dear Mr. Coba:

We appreciate the chance to share the perspective of the American Public Works Association (APWA) on the topic of QBS for consultant services and its relationship to pending legislation. As you know, APWA is an educational and professional association of more than 29,000 members dedicated to providing guidance and assistance to those engaged in public works activities throughout North America. To that end, APWA has a long established position of advocacy for QBS on the premise that qualifications, competence, and mutual understanding of the scope of work are superior to price when selecting consultants for professional services needs. It is the opinion of APWA that QBS results in a less constrained and more creative design process and, as a relatively small part of overall project costs, is the most effective means for assuring both the optimal life-cycle project cost while minimizing disputes and litigation.

The formal APWA position statement asserts: *"the public interest is best served when governmental agencies select architects, engineers, and related professional services and technical consultants for projects and studies through QBS procedures"*. The statement also states: *"the goal of highest quality results and lowest fees are in conflict, and history provides little basis to believe that bidding can or will actually produce lower fees than will QBS"*.

It is not the role of APWA through its chapter activities to advocate for specific legislation. We are, however, able to affirm through the legislative process the rationale for and commitment to the QBS process as a public policy matter and, further, suggest that legislation intended to strengthen or advance the use of QBS in Oregon would fall in line with the advocacy position of APWA and should be supported as a non-partisan issue.

Thank you again for the opportunity to lend our insight to this important topic.

Sincerely,

Bob Patterson, President
Oregon Chapter American Public Works Association

March 15, 2013

Oregon State Legislature
900 Court St. NE
Salem, Oregon 97301

To: Senate Business, Transportation and Economic Development Committee

Re: Support of Senate Bill 644

On behalf of Casso Consulting, Inc., this letter is to support the passage of Senate Bill 644, which would prohibit public contracting agencies from using pricing policies, pricing proposals, or other pricing information as a basis for direct appointment of professional services in the areas of architecture, engineering, photogrammetric mapping, transportation planning or land surveying.

Casso Consulting was founded in May 2012, and is a woman and minority-owned emerging small business (OMWESB Certification #8440). With offices in Beaverton and Salem, Casso Consulting is an engineering and professional services firm with a focus on infrastructure improvements and related services. Our principals have experience delivering projects for Oregon Department of Transportation, Port of Portland, TriMet and several counties and cities throughout the state of Oregon.

Qualification Based Selection (QBS) has been endorsed by the American Public Works Association, and has been used for many years in Oregon and elsewhere throughout the country. This bill is a simple technical fix to a loophole within ORS 279C.110 that is used by some public agencies to price shop. Even though agencies may want to provide a direct appointment, we have seen that their local "purchasing rules" treat professional services like a commodity, so they are prevented from proceeding in accordance with the original intent of QBS. Adoption of SB 644 will help remove these barriers, and add consistency from jurisdiction to jurisdiction, and from project to project for selection of our industry services.

We believe that clearly supporting small project procurement through direct appointment or QBS will directly benefit small firms, such as ours. We anticipate that SB 644 would also benefit public agencies by reducing expenditures of public employee resources to gather and compare price-based proposals. The procurement process would be greatly simplified, allowing the design firm that best fits the owner and project needs to be selected, and allowing the project work to proceed sooner. We believe the public interest is better served by the passage of SB 644.

As a small business owner, I urge your support of SB 644.



Tina M. Adams, PE
President
Casso Consulting, Inc.

ACEC Oregon

AMERICAN COUNCIL OF ENGINEERING COMPANIES OF OREGON

VOTE "YES" FOR QBS! **Support HB 3316-B**

57-0 House vote; 4-0 vote in Senate Business Committee

Expand Qualification Based Selection to More Projects

Protect, Enhance, Innovate Oregon's Public Investments

Qualification Based Selection (QBS) is the preferred and proven method for government agencies to procure design services from professional engineers, architects and land surveyors. The HB 3316-B will expand QBS to more Oregon projects while allowing direct appointment of designers for projects up to \$100,000 in design fees (up from \$50,000 now). This compromise bill will help ensure the best use of Oregon's limited public works funds.

The Problem

Many local governments in Oregon use a price driven or bidding process when procuring professional design services. This is inconsistent with the QBS methodology endorsed by the American Public Works Association and others. This overemphasis on design price leads to many unforeseen problems. Studies and actual experience clearly show that using a non-QBS bidding process:

- Can negatively impact the project and potentially limit innovation by not having a fully defined and mutually understood scope of work.
- May add significant operating, maintenance and staffing costs throughout the life cycle of the project
- Often leads to expensive construction change orders and expensive litigation
- Fosters an attitude of conflict, rather than cooperation, between the owner and the designer through the design and construction phases of the project.

The Solution: Expand Oregon's QBS Law

HB 3316-B will expand ORS 279C.110 to require local governments to use QBS to procure designers on more projects. By removing state financing thresholds, HB 3316-B will remedy a loophole in Oregon's law. HB 3316-B will:

- Allow direct appointment of designers for projects that have up to \$100,000 in design fees. This will enhance opportunities for small and emerging businesses.
- Allow informal QBS process for projects up to \$250,000 in design fees, up from \$100,000 now.
- Ensure quality design for more projects by expanding QBS to more projects;
- Ensure a positive and productive working relationship between the owner (the local government) and the design and construction professionals.

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