

ACEC Oregon

AMERICAN COUNCIL OF ENGINEERING COMPANIES OF OREGON

Testimony to the
House Consumer Protection and Government Efficiency Committee
In Support of Senate Bill 644

April 30, 2013

Good afternoon Chair Holvey, Vice Chairs Lively and Richardson, 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 and will be very beneficial to small and emerging businesses and women and minority owned businesses who are not able to compete on a low price basis with larger design firms.

SB 644 passed out of the Senate Business and Transportation Committee on a 5-0 vote and 28-0 on the Senate floor.

The intent of SB 644 is to provide a technical fix to HB 3316 from the 2011 session. HB 3316 passed unanimously through both chambers and removed financial thresholds and expanded 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. QBS requires selection based upon qualifications and other factors important to the project owner. Then, only after a scope of work is finalized, does the agency and the design professional agree

on a design fee. The importance of quality design will resonate through the construction phase and for years through the lifecycle of any project.

Why use QBS?

The importance of quality design cannot be overstated. Every project is unique, with its own technical challenges. At the outset of most projects, it is sometimes difficult for the owner to fully grasp the complexities of the project or the variety of professional services that may be required to develop a solution. The qualified design professional fills these needs for the owner.

The design professional serves at the agent of the owner, representing the owner's interests in day-to-day dealings with contractors, suppliers, equipment manufacturers and others providing goods and services for the project. For this reason it is vital that the owner and the design professional share a relationship characterized by trust, respect and effective communication.

QBS fosters this relationship by bringing the owner and the design professional together as a team, a key ingredient to quality, enabling them to define the scope of work in detail and agree upon the services that will be required to make the project a reality. QBS is a three-step process that can be easily adapted to any project, large or small. It is a process that gives the public owner, a partner with whom they will define the project in detail and then agree on all the professional services that will be required for the completion of the project.

We believe all public owners entrusted with making spending decisions with the public's limited resources should be concerned with the best return on that investment. This principle is a key commitment we strive for in each project we design either for public or private interests. Following an organized process for selecting and procuring professional services can help both parties achieve satisfaction. We believe QBS is a process that enables the project owner to obtain the services of a highly qualified design professional at a fair and reasonable cost, an investment in quality that will result in substantial savings over the life cycle of the project.

The QBS process usually includes all or part of the following three steps:

1) Step 1 – Selection

- A) The owner identifies the general scope of work.
- B) The selection time frame is established.
- C) A request for statements of qualifications is published.
- D) Statements of qualifications are received and evaluated.
- E) A short-list of firms to be interviewed (if interviews are necessary) may be determined.
- F) A tour of the site and/or facility may be arranged for the short-listed firms.
- G) Interviews are conducted and the firms ranked for project definition and retention.

2) Step 2 – Definition

Negotiations are conducted relative to scope of the project and services required. Upon a final understanding by both parties, fees and payment schedules with the top ranked firm are finalized. If an agreement cannot be reached with the top ranked firm, those negotiations are ended and negotiations begin with the second ranked firm, and, if necessary but very rarely, on down the list until agreement is reached.

Step 3 – Retention

- A) An agreement covering the above is executed. QBS focuses on providing the public owner with the best qualified people for their project, and then helps them negotiate a fair and reasonable price.
- B) All firms involved receive post-selection communications.

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 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.

The \$100,000 level is important because, prior to HB 3316, the direct appointment threshold was \$50,000 and it was in rule. We agreed to raise the direct appointment threshold to \$100,000 and put it in statute but with the caveat that this selection process continued to not allow price shopping. We would have never agreed to this provision if we thought that price bidding would be allowed. This is contrary to the tenet and philosophy of QBS and of direct appointment.

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.

What others say about QBS

The American Bar Association

Model Procurement Code for State and Local Governments states:

“The principal reasons for supporting this selection procedure for architects, engineers and land surveying services are the lack of a definitive scope of work for such services at the time the selection is made and the importance of selecting the best qualified firm. In general, the architect, engineer or land surveyor is engaged to represent the State’s interests and is, therefore, in a different relationship with the State from that normally existing in a buyer-seller situation. For these reasons, the qualifications, competence, and availability of the most qualified architect, engineer or land surveying firms is considered initially, and price negotiated later”.

The American Public Works Association

Selection and Use of Engineers, Architects and Professional Consultants states:

“The APWA believes that the public interest is best served when governmental agencies select architects, engineers and related professional technical consultants for projects and studies through Qualification Based Selection (QBS) procedures. Basing selections on qualifications and competence (rather than price) fosters greater creativity and flexibility, and minimizes the potential for disputes and litigation”.

American Public Works Association

Your Comprehensive Public Works Resource



www.oregonapwa.org

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March 19, 2013

Marshall A. Coba
CobaCo, LLC
Government Relations
PO Box 5506
1960 Brookside NW
Salem OR 97304

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

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.



10250 S.W. Greenburg Road, Suite 111
Portland, Oregon 97223
Phone 503-452-1100 Fax 503-452-1528

April 29, 2013

House Consumer Protection and Government Efficiency Committee.
Chair Representative Holvey

As President of a small, Portland-based engineering firm, I am writing to urge your support for SB 644. This bill fixes HB 3316, which passed the House and Senate unanimously in 2011. The intent of HB 3316 was to prohibit bidding or other pricing policies when procuring engineering design services.

Having practiced consulting engineering for a small business for 25 years, I can state unequivocally that direct appointment based on qualifications helps our firm stay competitive and viable. The federal government has required QBS for decades. QBS and direct appointment is also strongly endorsed by APWA, the American Bar Association, AGC and many others in the design and construction profession.

Please vote yes for SB 644. Taxpayers will receive the greatest return on investments when all projects in Oregon use QBS for the design of our state's infrastructure.

Sincerely,

A handwritten signature in cursive script that reads 'Andy Vessely'.

Andy Vessely, P.E.
President

April 29, 2013

Oregon State Legislature
House Consumer Protection & Government Efficiency Committee
900 Court Street NE
Salem, OR 97301

Attention: Rep. Paul Holvey, Chair

Subject: Support of Senate Bill 644

Representative Holvey:

On behalf of Wallace Group, Inc., this letter supports the passage of Senate Bill 644, which would prohibit public contracting agencies from using bidding or price shopping as the basis for direct appointment of professional services in the areas of architecture, engineering, land surveying, transportation planning and photogrammetric mapping.

During Qualification Based Selection (QBS) rulemaking in 2011, QBS Bill HB3316 passed unanimously. Unfortunately, the Department of Justice (DOJ) interpreted a section of the bill to allow state and local governments the option to price bid design services for projects under \$100,000 in design fees. This was not the intent of HB3316, and SB 644 will add certainty and clarity to the use of QBS for professional design services procurement.

QBS is the preferred methodology for government agencies to procure professional design services from engineers, surveyors and architects, and has been a requirement for federal government contracting for many years. QBS is endorsed by the American Public Works Association, American Bar Association, American Institute of Architects, Associated General Contractors of America, and many other construction related organizations.

Wallace Group is a small professional engineering practice and Oregon Emerging Small Business (ESB #7277) established in Bend in 2010. The passage of SB 644 will have a direct positive impact on our ability to contract with local and state agencies for schools, parks, transportation, and public works projects. Providing professional services on public projects allows us to provide family wage jobs for Oregonians. SB 644 will also benefit public agencies by simplifying the procurement process and allowing the design firm that best fits the owner and project needs to be selected, and allowing project work to proceed sooner, after an appropriate scope of work and fee are negotiated. We strongly believe the public interest is best-served by the passage of SB 644.

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

Sincerely,

WALLACE GROUP, INC.



R. Scott Wallace, R.G.
President



NW Engineers, LLC
3409 NW John Olsen Place
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Email gregt@nw-eng.com
Website www.nw-eng.com

April 5, 2013

Oregon State Legislature
900 Court Street NE
Salem, OR 97301

To: Senate Business, Transportation and Economic Development Committee

Re: Support of Senate Bill 644

On behalf of NW Engineers LLC, 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.

NW Engineers LLC was founded in 2007 and is an Oregon-certified emerging small business (OMWESB Certification # 5681). Our office is in Hillsboro and we offer civil engineering and land use planning services to both our public and private clients. We have worked for cities and counties both in Oregon and Washington.

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 that 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 SB644.

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

Sincerely,

NW Engineers LLC



Gregory M. Thiel, P.E.

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.