

ACEC Oregon

AMERICAN COUNCIL OF ENGINEERING COMPANIES OF OREGON

Testimony in Support of HB 4119

House Business and Labor Committee

February 5, 2014

Good morning Chair Doherty and members of the Committee, I am Marshall Coba representing the American Council of Engineering Companies of Oregon in support of HB 4119.

HB 4119 is a technical fix that will clarify rulemaking on HB 3366 following the 2011 session. HB 3316 passed unanimously and was signed by the Governor. The bill created three financial thresholds for procurement of design professionals including engineers, architects and land surveyors. The thresholds were:

- 1) For public projects with more than \$250,000 in design fees a full qualification based selection (QBS) process would be required by public agencies. This requires an announcement of the RFP to all firms.
- 2) For public projects from \$100,000 to \$250,000 in estimated design fees an informal QBS process was created. This allows the ability to select five firms to respond to the RFP.
- 3) For public projects less than \$100,000 in estimated design fees the bill allowed public agencies to do a qualification based selection process or that they "may" do a direct appointment process. This is the section that HB 4119 seeks to remedy. This allows public agencies to "select" one firm to discuss scope and fees on a project.

During rulemaking, the Department of Justice ruled that "may" in HB 3316 section 4 (8) had the unintended result of allowing local and state governments in Oregon the ability to use a qualification based procurement method, a direct appointment procurement method, a bidding procurement method or any other procurement methodologies that they deemed appropriate. This is contrary to the goals of HB 3316 in regards to projects under \$100,000 in design fees. We support the interpretation of "may" to allow a qualification based selection process or a direct appointment process. We did not envision it being interpreted to include a bidding process. HB 4119 will not impact projects with more than \$100,000 in design fees as the intent of that portion of the bill was not changed through rulemaking.

In 2013 we introduced SB 644 which passed the Senate 28-0. Following the first hearing in the House we developed amendments that addressed many of the concerns of local governments who testified in opposition. The language in HB 4119 once again addresses many of their concerns and makes it clear that price is a major component of direct appointment as it is with the QBS process.

5319 SW Westgate Drive, Suite 224, Portland, Oregon 97221

phone (503) 292-2348 ♦ fax (503) 292-2410

www.acecOregon.org

Member of the American Council of Engineering Companies, Washington, D.C.

HB 4119 will simply fix the loophole created in the 2011 rulemaking and allow state and local governments to use either a qualification based solution or a direct appointment methodology to select design professionals. We believe there is a small group of public agencies that continue to bid design and this legislation will bring consistency across the state.

We want to make sure that the record leaves no uncertainty to the use of "may" in section 1 (8) (a). "May" means that state and local governments "may" use either a qualification based selection process as described in section 1 or they "may" choose to make a selection of a design professional by the direct appointment process. This means they have a choice of a qualification based selection process or a direct appointment process. "May" does not allow any other than these two choices for selecting a design professional for projects under \$100,000 in estimated design fees.

If passed, this bill takes effect in January 2015. We pledge to work with local and state governments this summer and fall to implement an ongoing educational process with public works and procurement staff across the state. This will ensure proper implementation next January and help realize our long stated goal of consistency across the state in all levels of government and in all levels of projects. This process provides for the best and wisest use of the limited public funds we have in Oregon.

Thank you for your consideration of HB 4119.

From: COREY Kurt A
Sent: Tuesday, February 04, 2014 1:53 PM
To: 'rep.valhoyle@state.or.us'
Cc: GARDNER Lisa A; JONES Eric R
Subject: HB 4119

Representative Hoyle:

I understand you have sponsored HB 4119 and would like to take this opportunity to share what I hope is a useful perspective.

Your bill represents what many view as a clarification to previous legislation on the topic of qualifications-based selection (QBS) for professional consulting services. Having spent a good part of my career working toward better public understanding of QBS and having participated as an active member of the American Public Works Association (APWA) for nearly thirty years, I can tell you APWA and its 29,000 members across the country endorse QBS as an important component to the delivery of public works goods and services. 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.

To that end, APWA has a longstanding QBS advocacy position statement that reads:

"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"...and "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". QBS has been incorporated into our professional services procurement process for many years here at the City of Eugene. As I understand it, HB 4119 is intended to specifically address the smaller professional services contracts (i.e., valued at less than \$100,000) and for which present legislation already authorizes a direct appointment procedure . The bill would simply clarify that QBS also applies to these smaller contracts. Many who have expressed concerns regarding QBS have what I believe to be the mistaken impression that QBS precludes asking for cost information and essentially mandates

that agencies enter into contracts they cannot afford. What does not always seem to be clearly understood is that cost is always a factor - QBS simply underscores the prudent approach in negotiating professional services agreements with the most qualified firms.

I would note the City of Eugene enters into numerous small consultant contracts each year using the direct-appointment provision of the statute. We maintain a pool directory of qualified firms for various types of work and pick up the phone to ask for a proposal as the need arises. Once we have received the proposal, we negotiate costs - if we are unable to agree on an acceptable price, we simply call the next firm on the list who we believe to be the next best qualified. Many believe that was the intent of previous legislation and HB 4119 aptly, in my opinion, provides that clarification.

Please let me know if you have questions or concerns regarding this or would care to discuss in further detail. Thank you for your time and consideration and for your service to the Oregon Legislature.

Kurt Corey, P.E.
Director of Public Works
City of Eugene
101 East Broadway, Suite 400
Eugene, Oregon USA 97401
541-682-8421
kurt.a.corey@ci.eugene.or.us<<mailto:kurt.a.corey@ci.eugene.or.us>>
>