



# Qualification-Based Selection:

## A Case for Reforms

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# What is Qualification-Based Selection?

- Qualification-Based Selection (QBS) is a procurement process for the selection of professional services for public construction projects
- Codified in *ORS 279C.110*
- Under QBS, public contracting agencies post Requests for Qualification (RFQ) or Requests for Proposal (RFP) and firms submit their qualifications to the public contracting agency
- After a firm is selected, the agency negotiates the scope of work, schedule, budget **and price**. If an agreement cannot be reached, the public contracting agency can select the next most qualified firm and re-engage in negotiations.

# Where Did QBS Come From?

- QBS was originally established by Congress in 1972 as a part of the *Brooks Act*<sup>1</sup>
- Many States, including Oregon, have adopted their own versions of the *Brooks Act*
- Prior to January 1, 2012, QBS applied only to state contracting agencies and was only required for local contracting agencies if they received state funding for any portion of the design and construction of the project, and the state funding for the project exceeded 10 percent of the value of the projects for projects over \$900,000
- **In 2011, HB 3316 passed and was signed into law extending mandatory use of QBS to local contracting agencies**
- Following passage, the Department of Justice promulgated rules implementing the measure.

# How the Law Works

It's complicated, but generally:

1. For contracts  $\leq$  \$100k = Option to direct appoint, can consider cost
2. For contracts \$100k - \$250k = Informal QBS, can't consider cost
3. For contracts  $>$  \$250k = Formal QBS, can't consider cost<sup>2</sup>.

2. ORS 279C.110; OAR 137-048-0200; 137-048-0210; 137-048-220

# The Case For Reforms

## 1. QBS is an Anomaly in the Public Contracting Code

- i.* ORS 279A.015 states “It is the Policy of the State of Oregon, in enacting the Public Contracting Code, that a sound and responsive public contracting system should:
  - (3) Promote **efficient use of state and local government resources**, maximizing the economic investment in public contracting within this state
  - (5) Allow impartial and open competition, protecting the integrity of the public contracting process and the competitive nature of public procurement. In public procurement, as set out in ORS chapter 279B, meaningful competition may be obtained by evaluation of performance factors and other aspects of service and product quality, **as well as pricing, in arriving at best value**”
- ii.* ORS 279B.010 states “It is the policy of the State of Oregon that public contracting activities should:
  - (1) Provide effective outcomes that **represent optimal value to the contracting agency** and, to the greatest extent feasible, be consistent with market practices”
- iii.* ORS 279C.305(1) states “It is the policy of the State of Oregon that **contracting agencies shall make every effort to construct public improvements at the least cost to the contracting agency.**”

# The Case for Reforms (Cont.)

## 2. Time is Money

- i. When public contracting agencies must wait on the consultant to provide an initial price estimate, it adds time and can delay or compromise project schedules
- ii. Additional delays can occur if an agreement on price is not reached with the most qualified firm
- iii. Public agencies do not have the time or staff to negotiate every project from a zero base
- iv. It is important to know early on whether the rough project costs and the agency's budget are reasonably close.

## 3. Mandatory QBS Does not Guarantee “Best Value”

- i. Public contracting agencies are skeptical of a consultants' price when they cannot compare bids
- ii. Two firms may be equally qualified to provide these services. In other procurements, agencies can use price as a differentiator
- iii. Price and price related criteria are critical to any purchasing decision.

# Points of Agreement

1. Selecting a highly qualified firm is a top priority
2. QBS can be a useful tool. It is necessary and appropriate in some circumstances
3. Price should never be the only, or primary, criterion for selecting a consultant
4. Public agencies must evaluate proposals in good faith, based on criteria and weighting specified in the public agency's solicitation; price must not override other factors.

# SB 382 with Proposed Amendments

SB 382 amendments make one basic change to *ORS 279C.110*

1. Maintains the existing \$100,000 threshold for direct appointments
2. Creates new requirements for how price will be considered for contracts between \$100,000 and \$500,000