



AMERICAN COUNCIL OF ENGINEERING COMPANIES OF OREGON

"The Engineers"

Since 1956

**Testimony Presented to the
Senate Committee on Business and Transportation
In Opposition to SB 382
March 1, 2017**

Good afternoon Chair Beyer and members of the committee. I am Marshall Coba representing the American Council of Engineering Companies of Oregon in opposition to SB 382. ACEC Oregon is a professional organization representing more than 120 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 united in opposition to this drastic and unnecessary decimation of the current QBS law. We have a long standing policy in supporting the use of QBS by federal, state and local governments and continual education of both our members and our clients to the many benefits that accrue to taxpayers, owners, projects through design and construction and through the life cycle that can stretch over the next 50-75 years. SB 382 would have a major negative impact on the number of projects that would be required to use QBS and would have a negative impact on small, minority and women owned firms who are seeking more and better opportunities.

We thank you for this opportunity to present our position on this important policy question for the state. We strongly support the current Qualification Based Selection (QBS) in Oregon. QBS has become the model procurement method for professional design services across the country and is a proven procurement method.

I will make some opening comments with additional comments from professional engineers and architects. We are confident our testimony will answer your questions about this bill and why you should oppose SB 382 as written or any amendments that would roll back on projects that are currently required to use QBS.

CURRENT LAW

Oregon law now requires QBS to be used for all state and local procurements of design professionals and for local governments to use the QBS procurement process when the total cost of design fees is expected to be more than \$100,000. Since design fees typically represent 10% of a project cost though construction, the direct appointment process is for projects up to approximately \$1 million dollars. The direct appointment threshold was raised from \$50,000 in the last legislation.

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.

SB 382 proposes to raise the threshold to \$500,000 of design fees which would be a \$5 million dollar project. This is a major step in the wrong direction.

WHAT IS QBS?

QBS is a competitive procurement process in which engineering firms submit qualifications to the procuring agency; the owner assesses the expertise and other relevant important qualifications; the most qualified firm **as determined by the procuring agency** is selected to negotiate the project scope and associated fee. If an agreement on the scope and fee cannot be reached then the owner negotiates with the next most qualified firm.

The control of defining qualifications, scoring responses, finalizing the scope of the project and negotiating the final budget is always and completely in the control of the owner or agency. At no time is the budget not known nor understood by the owner or by the design firm. Our witnesses will also further discuss this process.

I would like to share the QBS policy of two well-respected and well-known organizations. First, the American Bar Association's 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 are considered initially, and price negotiated later."

The American Public Works Association in their publication 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."

QBS DOES NOT

Eliminate Local Control - This is not a one size fits all procurement method. All control of the process is in the agency hands from drafting the Request for Qualifications to ranking the responses to negotiating price. At no time is the design professional calling the shots.

Increase Project Cost - Studies show QBS, because of the cooperative attitude it creates between the agency and the design professional, is more cost effective through the design and construction phase of the project. Innovation in the project will save money during the lifecycle of the project in maintenance and operational costs.

Alter Bidding of the Construction Phase - This has nothing to do with the long-standing practice of bidding the construction phase of a project. This is only related to the initial design work. After the design is completed the standard bid process begins for the construction.

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 as 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 is proven to foster 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.

ACEC Oregon believes all public owners entrusted with making spending decisions with the public's limited resources should be concerned with the best return on that investment. 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.

POLITICAL HISTORY

QBS is not a new issue. In 1972 the US Congress passed the Brooks Act requiring QBS for all federal agencies. In 1997, Oregon passed legislation requiring QBS to be used by all state agencies for selecting design professionals. Washington, California and Idaho require QBS at all levels of government. Now 45 states require QBS. This is not a new grand experiment but a proven and respected process for ensuring the best use of public funds and at the same time protecting the health and safety of all Oregonians.

Over the years we have worked closely with local governments to educate them on the benefits of QBS. In 1994 a consultant selection manual was jointly created with QBS included as an option for them to consider.

EDUCATION COMMITMENT

We oppose SB 382 and any potential amendments that will rollback project types or sizes that are currently required to use QBS. As I've mentioned to all of you, we once again express our commitment to work closely with each and every local government and their associations to educate them and their members to the benefits of QBS. We need educated public owners to work with us through this process. These are our clients and it is important they understand and appreciate how QBS is beneficial to their limited and valuable public works funds. Our commitment to education is real and a pledge we will not back away from. If they are not comfortable with QBS we are no better off than we are today.

This issue is important to all Oregonians and to the design community to ensure best value and best to continue best practices. We are committed to ensuring that projects are brought forward by all Oregon governmental agencies with a consistent and fair process for selecting design professionals. We strongly believe QBS is the process best for Oregon. We respectfully ask you to oppose SB 382 as written or any potential amendments that will make less projects use QBS.

Thank you for this hearing and we urge your opposition to SB 382.