

February 9, 2018

House Business & Labor Committee
Oregon Legislature

Chair and Committee Members,

Thank you for the opportunity to submit testimony on HB 4127. My name is Jon Walton, a resident at 2060 Cottage St., Salem, Oregon; a lifelong Oregonian. I am a lawyer and member of the Oregon Bar, and currently am working as a contracting officer in state government. I have worked in the field of government procurement for 20 years, including many years working closely with architectural and engineering services. I am also a member of NIGP - the Institute for Public Procurement, which is the largest international professional association for government officials involved in procurement, with 16,000 members. I have been privileged to be selected as their "professional of the year" and to be included on task forces that have developed a series of Global Best Practices, including on A&E. I am an instructor for many of the educational courses sponsored by this association, including how to procure professional services, and involved in authoring new editions of the textbooks used in these courses. I am the past Chair of the Institute's Legislative & Position Committee, and a contributing or lead author on most of the statements of the Institute's position on matters of legislative interest and debate. The Institute is now addressing the same issues that you are addressing in HB 4127.

I believe it is helpful for you to know that the Institute has decided to draft a position statement on increasing professional judgment, public transparency, and contractor accountability when procuring architectural and engineering (A&E) services on government projects – this will likely be the strongest and most definitive statement on this subject ever issued from the governmental professional perspective. The essential position is:

"NIGP: The Institute for Public Procurement affirms that publicly advertised price and cost competition is a key principle for achieving taxpayer value in government acquisition of services from private sector providers, and that public procurement professionals must be empowered to determine the most relevant application of that principle and the most appropriate selection method to achieve best value when procuring services, including professional services. NIGP does not support mandates that give a public entity no choice but to apply the Qualifications-Based Selection (QBS) method for selecting providers of professional services. In the modern era of best value selections, such mandates deprive the public entity of the application of good judgment by procurement professionals about the effective use of prices and costs within public procurement, for no clearly justified reason."

The full expanded position paper has been fully drafted and submitted for final ratification by the Institute's governing body but is not yet published – because of that timing, my testimony is not any official representation of my professional association; it is testimony in my personal

capacity only, but I can share the key findings and conclusions of the writing team that worked on the subject of A&E procurement selection methods.

How We Got Here

In the earlier history of procurement, a less sophisticated age, many purchasers in both the private and public sectors relied heavily on the “low-bid” selection method for getting goods and services – the lowest price bidder wins. During that history we learned that the low-bid method can lead to negative results around quality of services provided to the government, particularly professional services, if there were no consideration of qualifications. Everyone knows this – this lesson began sinking in at least 70 years ago. People had been searching for new methods to avoid the drawbacks of low-bid - some felt they should swing the pendulum to the other side of the spectrum. The Qualifications-Based Selection method is an example – it appropriately focuses strongly on qualifications and experience but pushes anything about costs or prices out of the competition to receive government work. This elimination of price competition feature runs against what most people considered to be common sense, and has remained the contentious feature of this selection method for decades.

Is There a Problem That Needs Fixing?

Yes; experience applying QBS has shown us that eliminating price competition turns out to provide an advantage to large and established firms, providing them a financial incentive to organize and lobby to advance that advantage. The other primary effect of eliminating price competition is that the winning firm in a procurement, standing alone in price negotiation with the public entity, has free rein to start negotiating at the highest possible price. Knowledge is power and without comparative price or costs information from several firms, the government entity and the public are missing crucial knowledge about what is reasonable value within the marketplace. This transfers excessive bargaining power to the selected firm about the price the government will pay, which is not good public policy. Given the difficulty in gathering comparative information about costs and how they relate to outcomes in the health care and financial services sectors, and in obtaining accurate and complete cost information, the U.S. has seen how we end up paying far too much for ordinary outcomes. We need more scrutiny of the value for professional services, not less.

Have We Learned of a Better Solution?

In contrast to QBS, Best Value selection methods are the preferable alternative for dealing with all the challenges that public procurement faces. Procurement, as an emerging profession, has rapidly matured and become quite sophisticated at knowing how to fulfill the government’s best interests. Government entities know how to avoid the drawbacks of the low-bid method, and know how to tailor the advantages of utilizing Best Value selection procedures for them - procurement professionals have been doing this for all types of professional services for over 40 years. Other professions seem to be thriving just fine without QBS - only those services covered by the QBS mandate have interfered with expertise and professional judgment about the fair and appropriate use of costs or prices. It is irrational and not in the public interest to

allow one industry segment to say to government 'we're going to tie your hands and not let you adjust your method to match your need.'

HB 4127 is a wise adjustment to QBS that restores some of the Best Value advantages that are applied when acquiring all other professional services. Best Value methods are better at addressing the drawbacks of "low-bid" procurements while avoiding the drawbacks of QBS. Passage of HB 4127 should be viewed as an evolution in knowing how to conduct public procurement: government professionals should be provided with the ability to exercise professional judgment and accountability without being mandated to apply a method from one pendulum extreme or the other.

Thank you for your consideration.

- Jon Walton

You may also be interested to see just one example of NIGP's stance on similar legislation in the past:

FLORIDA STATUTE 287.055, F.S. - "Consultants Competitive Negotiation Act (CCNA)"

Whereas, public purchasing officials serve the public interest and are accountable to publicly elected officials, and

Whereas public purchasing officials are charged with maximizing the value of every tax dollar expended, and

Whereas, the National Institute of Governmental Purchasing, Inc. advocates for the prudent expenditure of public funds reflecting 'best value for the tax dollar', and

Whereas, the National Institute of Governmental Purchasing, Inc. promotes the use of open, transparent and fully competitive processes for public procurement, and

Whereas, the existing statute limits the discretion and thereby the leverage of public entities in procuring architectural and engineering services in Florida; and

Whereas, the proposed legislation would give public entities the ability to procure architectural and engineering services in a manner consistent with best practices utilized by purchasing agencies in Florida, nationally and throughout the world; and

Now Therefore, BE IT RESOLVED, that the National Institute of Governmental Purchasing, Inc. supports the proposed legislation amending Florida Statute 287.055 to provide public purchasing officials the option of evaluating top firms based on a best overall basis that takes compensation and qualifications into account when evaluating potential professional services providers for award of government contracts.

I certify that the above resolution was adopted by the Board of Directors of the National Institute of Governmental Purchasing, Inc. at its official meeting on the 20th day of February, 2008.



Rick Grimm, CPPO, CPPB
Chief Executive Officer and Secretary