

**Jon C. Larson**

Admitted in Oregon, Washington & Arizona  
P : 503.232.1410  
F : 503.234.1824  
E : jclarson@mca-law.com

River Forum I  
4380 SW Macadam Avenue  
Suite 515  
Portland, Oregon 97239

February 22, 2018

*Via Email Only*

[Sen.ChuckRiley@oregonlegislature.gov](mailto:Sen.ChuckRiley@oregonlegislature.gov)

[Sen.MarkHass@oregonlegislature.gov](mailto:Sen.MarkHass@oregonlegislature.gov)

[Sen.DennisLinthicum@oregonlegislature.gov](mailto:Sen.DennisLinthicum@oregonlegislature.gov)

[Sen.JamesManning@oregonlegislature.gov](mailto:Sen.JamesManning@oregonlegislature.gov)

[Sen.KimThatcher@oregonlegislature.gov](mailto:Sen.KimThatcher@oregonlegislature.gov)

Senator Chuck Riley – Chairman  
Senator Mark Hass - Vice Chairman  
Senator Dennis Linthicum  
Senator James Manning, Jr.  
Senator Kim Thatcher  
Senate General Government and Accountability Committee  
Oregon Legislature

Re: House Bill 4127

Chairman Riley and Members of the Senate General Government and Accountability Committee:

I am an Oregon lawyer practicing in Portland. The focus of my practice involves construction law.

I have two primary concerns with House Bill 4127. The first is over-arching and substantive, and the second is directed at the actual language of the bill.

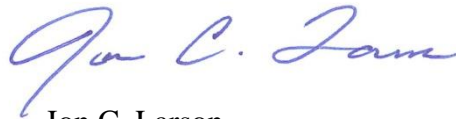
First, I believe the attempt to create a permissive end run around QBS is not wise. I have represented owners, general contractors, architects and engineers, both in contract negotiations and in litigation. In my experience, I have seen too many projects incur substantial and very expensive problems that were caused by one weak team member (which could be the general contractor, or one of its many subcontractors, or the architect or one of its many subconsultants), to believe that this is a good idea. The driving purpose of QBS is to ensure as much as possible that public funds are expended carefully. Enacting a law that specifically allows contracting agencies to not seek the “most qualified” consultant for each, specific project to provide professional design services will necessarily result in a less than optimal team designing and constructing what are many times projects involving millions of taxpayers’ dollars. That does not seem to be good stewardship of public money.

My second concern is about the language of House Bill 4127, specifically the extensive use of the permissive term “may” in the proposed new subsection 5 of ORS 279C. I have reviewed the update issued by Representative McLain about this Bill and in her introduction she says that this Bill “remain[s] true to QBS standards” and she concludes that HB 4127 “[e]nsures qualifications remain the focus of firm selection.” I don’t see how this Bill accomplishes either of these. As proposed, subsection 5 does not create an alternative approach to the QBS process that contracting agencies must follow if they choose not to comply with QBS. As written, the Bill permits contracting agencies to forego the QBS procedure. Thereafter, subsection 5 requires almost nothing from the contracting agencies in terms of selection of design professionals. Subsection 5 of HB 4127, as written, says the contracting agencies “may” solicit information and “may” (not “must” or “shall”) determine those design professionals that are “qualified” (not “most qualified” as is required under QBS). In subpart 5(b), the contracting agencies’ actions all follow yet another permissive “may” at the beginning of that subsection. Thus, all that follows in subpart 5(b) is not mandatory and may be ignored by the contracting agencies. In effect, the actual written words of the proposed subsection 5 mandate only one thing: that contracting agencies may choose to ignore the QBS procedure.

Everything in subsection 5 after the beginning words of “Notwithstanding the procedure set forth in subsection (4)” is permissive. Subsection 5 mandates no process that contracting agencies must follow. This means that contracting agencies are now free to use, almost literally, any basis they “may” think of, and those agencies “may” change their processes at any time or under any circumstance that those agencies “may” like. These loopholes do not require contracting agencies to remain true to QBS standards, and these loopholes do not ensure that qualifications remain the focus for firm selection.

It is hard to imagine that this permissive statute will lead to uniform and fair contracting procedures across Oregon and the sound stewardship of public funds. Clearly, the opportunity for abuse of contracting procedures under this bill should not be ignored. I understand that an Interim Work Group is being considered. I offer my assistance to this effort, if it would be helpful to this Committee.

Very truly yours,



Jon C. Larson

JCL/alf  
Attachment