



Checking QBS's Vitals

A quick check-up of the status of qualifications-based selection reveals some good news, and bad.



Design professionals have been promoting qualifications-based selection (QBS) for a long time, and with good reason. QBS remains the best method for procuring professional services. Today, most federal and state agencies require QBS as do many private-sector clients.

Keeping QBS alive and well requires constant vigilance, however. At the federal level, there is a constant need to protect the Brooks Architect-Engineers Act of 1972 from efforts to undermine it. Although QBS has been quietly gaining acceptance in many jurisdictions, some states still have no QBS law, and existing laws are facing challenges in others.

GAINING GROUND

There's plenty of reason for optimism. On the national level, the 2006 Transportation bill, signed into law in late November 2005, requires all state DOTs to use QBS for federally funded design work—closing a loophole in the law that permitted some states to use non-QBS procedures. According to legal consultants for the Design Professional group of the XL Insurance companies, the ACEC was the primary driver behind this provision. It was a real victory for them, and for the industry.

In addition, the Federal Acquisition Regulation (FAR) was adopted as final, which means that all architectural and engineering services contracts must comply with the procedures of the Brooks Act. Although federal agencies are required to use qualifications-based selection under the Brooks Act, in recent years, some federal contracting officers have ordered A/E services from the Federal Supply Schedule, thus circumventing the Act.

Design professional organizations are working to expand state law to the county and municipal levels, and several states passed or strengthened their QBS legislation in 2005.

Florida has amended its Consultants' Competitive Negotiation Act (CCNA)—Florida's version of QBS. This legislation strengthened the QBS statute by amending the definition of "continuing contracts" to provide that professional services firms providing services under continuing contracts shall not be required to bid against others. QBS legislation was signed into law in Oregon. And in North Carolina, the Board of Registration has made the individual licensed professional accountable for upholding the QBS process.

IN GUARDED CONDITION

The news isn't all good, though. The Federal Emergency Management Administration (FEMA) has been criticized for issuing no-bid contracts for post-Katrina work. In October 2005, acting FEMA chief Paulison declared he was "no fan of no-bid contracts" and pledged to open four contracts that had been awarded, but Homeland Security procurement officers have since told Congress that

bidding wouldn't be done until February 2006. In testimony before a Senate hearing last November, a FEMA official said, "...until then, the four companies will continue their work."

On the state level, the Texas House Committee on Government Reform held a spring 2005 hearing on a bill that would allow state agencies to use alternative bidding procedures for procurement of architectural, engineering and surveying services—in other words, to circumvent QBS in certain situations. Based on the level of opposition, however, the legislators left the bill pending in committee.

Design professionals in other states, including Connecticut, Illinois and Wisconsin, also have been fighting challenges to QBS.

YOU CAN HELP

Selecting a design professional based on the lowest fee is no more appropriate than choosing the cheapest surgeon, CPA or babysitter. The results will inevitably be poor service, inferior design, inadequate construction, unmet expectations and increased exposure for everyone.

Low-bid procurement may sound sensible to the uninformed elected official and voter; that's why educating the public about QBS remains crucial. Contact your local and national professional service association to learn the status of QBS in your jurisdiction, and urge your local and state political leaders to support legislation that would protect and promote qualifications-based selection.

QBS IN CANADA

The Association of Consulting Engineers of Canada (ACEC) is heading off efforts by public officials who want to place more weight on price rather than qualifications when selecting design professionals, which would be a significant blow to QBS. As part of their efforts, the organization has launched a QBS promotion campaign aimed at political leaders and other government decision-makers.

The information contained herein is intended for informational purposes only and does not constitute legal advice. For legal advice, seek the services of a competent attorney. Any descriptions of insurance provisions are general overviews only.

"XL Insurance" is the global brand used by XL Group plc's (NYSE: XL) insurance companies. Coverages underwritten by Greenwich Insurance Company, Indian Harbor Insurance Company, XL Specialty Insurance Company, and XL Insurance Company Limited—Canadian Branch. Coverages not available in all jurisdictions.

© 2010, X.L. America, Inc. All rights reserved.



30 Ragsdale Drive
Suite 201
Monterey CA 93940
800-227-8533 ext. 2102508
www.xldp.com