

CHANGES TO QBS

(QUALIFICATIONS BASED SELECTIONS)

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***** CHANGES TO QBS *****

WHAT IS QBS?



- A process for the selection of engineering professionals:
 - **Engineers, Architects and Land Surveyors**
- Based on qualifications & competence in relation to scope and needs of a particular project

GENERAL QBS PROCESS



1. LPA identifies the general scope of work and the project time line.
2. Public notice is given to firms.
3. A Selection Committee is appointed.
4. Statements of Qualifications are requested and received.
5. After evaluation, a shortlist of firms is established.
6. A tour of the project and interviews may be arranged for shortlisted firms.
7. Three firms are ranked in order of qualifications.
8. All firms involved receive post-selection communications.
9. Negotiations are conducted regarding the actual scope, services, fee payment schedule and contract.

(If an agreement cannot be satisfactorily negotiated with top-ranked firm, negotiations are terminated and LPA enters into negotiations with the second-ranked firm, and so on, until agreement is reached and a firm is selected.)



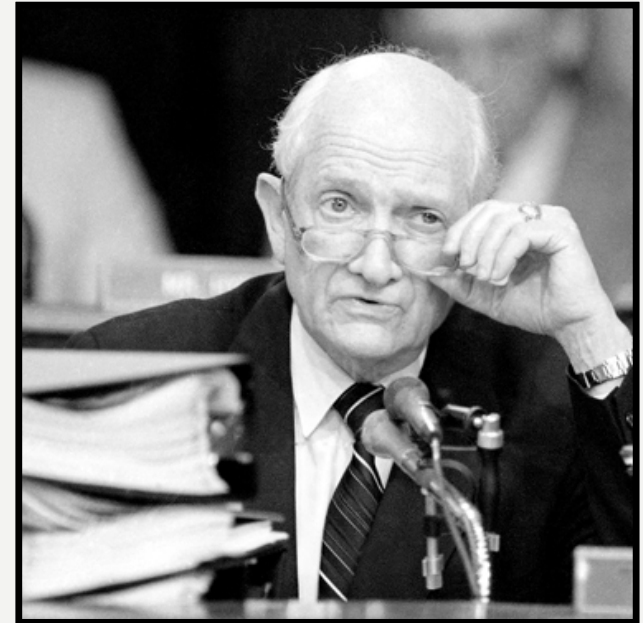
ADVANTAGES OF QBS



- QBS focuses government procurement of engineering services on the best qualified firms.
- Selection is based on the best qualified and not the lowest bid.

HISTORY OF QBS

- In October 1972, the federal government enacted Public Law 92-582, covering the selection of architects and engineers based on qualifications.
- This law has since been known as the Brooks Act because it was introduced by U.S. Representative Jack Brooks of Texas.



Former Rep. Jack Brooks (D-Texas), sponsor of landmark 1972 architect and engineers acquisition legislation.

HISTORY IN ILLINOIS

- Effective September, 1987, Illinois Public Act 85-854, (50 ILCS 510/0.01-510/7), known as the **Local Government Professional Services Selection Act**, mandated non-home rule units of local government to select design professional firms on the basis of demonstrated competence and professional qualifications.
- Effective January 1, 1992, Illinois Public Act 87-673 (30 ILCS 535/1-535/80), known as the **Architectural, Engineering and Land Surveying Qualifications Based Selection Act**, mandated state agencies to select design professionals on the basis of demonstrated competence and professional qualifications.
- These laws apply to engineering, architectural and land surveying services in excess of \$25,000 by public agencies in Illinois.







LOCAL AGENCY EXAMPLE KANE COUNTY DOT

- 2004 First Written QBS Procedures
- Amendments to State Law (50 ILCS 510)
 - Prohibited using price as evaluation criteria
- Kane County Context





KANE COUNTY PREQUALIFICATION

- 3-Year Intervals
- IDOT Prequalifications/SEFC
- Additional Local Categories
- Online Submittal

KDOT Home | Kane County Government

Kane County Division of Transportation Qualifications Based Selection

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KANE COUNTY SELECTION PROCESS

Conducted for each contract:

- Advertising: e-mail blast
- Statement of Interest (2 pages)
- Short List (3 teams)
- Written Proposal
- Interview
- Evaluation
 - Selection Panel (3 people)
 - Rank / Score
- County Board: Contract Approval



KANE COUNTY LESSONS LEARNED



- “Right Size” Process to Match Project Size
- Combine Phase I & II
- On Call / Various-Variou s / IDIQ
- Communicating with Industry



ACEC / NSPE AWARD



- 2011 National Award of Merit for QBS Process
 - Written Process Document
 - Qualifications-Based
 - Selection by Engineers / Professionals
 - Transparency



WARNING – REGULATIONS AHEAD



WHAT CHANGED?



- **23 Code of Federal Regulations Section 172**
 - Required when using FHWA funds for engineering services
 - Final Rule published in May 22, 2015 Federal Register
 - More prescriptive and addresses GAO and OIG audit reports, plus changes in Industry practices
- **States were given until June 22, 2016 to update procedures for FHWA funded contracts.**
- **Illinois requested and was granted an extension until June 22, 2017.**

MAJOR IMPLICATIONS



- **Existing relationships are no longer allowed by FHWA to be used in lieu of QBS**
 - In Illinois, this had been allowed under the procedures for small purchases
 - Now, three firms must be considered, and
 - The lower of state limit (\$25k) or federal limit (\$150k) determines when these procedures can be used
- **IDOT must ensure Local Agencies meet the more prescriptive requirements in 23 CFR 172 when using FHWA funds**

PURPOSE & APPLICABILITY

23 CFR 172.1

- States when rule does/does not apply
 - References 2 CFR 200
- Specifically extends rule to subrecipients



DEFINITIONS

23 CFR 172.3



- **Revised:** Audit, Cognizant Agency, Competitive Negotiation, Consultant, Contracting Agencies, Engineering and Design Related Services
- **New:** Contract, Federal Cost Principles, Fixed Fee, Management Support Role, Noncompetitive, Scope of Work, Small Purchases, State Transportation Agency (STA), Subconsultant

PROGRAM MANAGEMENT & OVERSIGHT

23 CFR 172.5

- Responsibility requirements for State Transportation Agencies (or other recipients) toward managing and overseeing their Consultant Services Programs.



STA RESPONSIBILITIES

23 CFR 172.5(A)



- Prepare and maintain written policies and procedures
- Establish a procedure for estimating resources and costs of needed consultant services
- Procure, manage, and administer consultant services in accordance with applicable Federal and State laws and regulations
- Administer subawards in accordance with State laws and procedures

SUBRECIPIENT RESPONSIBILITIES

23 CFR 172.5 (B)

- Adopt written policies and procedures prescribed by the awarding STA.
- Procure, manage, and administer engineering and design related consultant services in accordance with applicable Federal and State laws.



WRITTEN POLICIES & PROCEDURES

23 CFR 172.5(C)

- Contracting agency prepares and maintains the written policies and procedures
 - 18 Elements to ensure compliance with laws
- Division Office approves the written policies and procedures
 - Including revisions
- STA approves written policies and procedures of a subrecipient
 - Including revisions

18 ELEMENTS TO ENSURE COMPLIANCE

23 CFR 172.5(C)

1. Prepare Scope of work/evaluation factors
2. Solicit interest, qualifications, or proposals
3. Conflict of Interest – Consultant & Contracting Agency
4. Suspension/ Debarment protection
5. Evaluate interest, qualifications, or proposals
6. Need for discussion after RFP submission
7. Independent agency estimate (negotiation use)
8. Select contract type and payment method
9. Negotiate contract



18 ELEMENTS TO ENSURE COMPLIANCE

23 CFR 172.5(C)

- I0. Establish elements of cost
- I1. Ensure allowable costs are billed
- I2. Monitor work and the contract
- I3. Conduct Consultant Performance Evaluations
- I4. Close out a contract
- I5. Retain supporting records
- I6. Address errors and omissions liability
- I7. Assess remedies for contract violations
- I8. Resolve disputes



ADOPTION OF GOVERNMENT REGULATIONS

23 CFR 172.5(D)

- Allows a contracting agency to formally adopt any direct Federal Government contracting regulation, standard, or procedure
 - Not conflicting with this regulation or
 - Title 23 US Code Section 112 or
 - Other FHWA regulations



23 CFR 172.5(E)



- Requires contracting agencies to issue or update current written policies and procedures for review and approval in accordance with the new regulation within 12 months (June 22, 2016).
- An extension can be granted for unique or extenuating circumstances (June 22, 2017).

PROCUREMENT METHODS & PROCEDURES

23 CFR 172.7

- **Procurement Methods**
 - Competitive Negotiation
 - Small Purchases
 - Noncompetitive



COMPETITIVE NEGOTIATION

23 CFR 172.7(A)(1)



- **Competitive Negotiation (QBS)**
 - Solicitation
 - Request for Proposal (RFP)
 - Even for Multi-Phase approaches with RFQs
 - Evaluation Factors
 - Evaluation, Ranking and Selection
 - Negotiations



DETAILED CHANGES OF 23 CFR 172.7(A)(1)



The Required RFP must provide, identify, or specify :

- A. Scope of work, technical requirements, and necessary qualifications
 - Should provide project description, required deliverables, estimated schedule, and other details
- B. Requirements for discussions after RFP submission
- C. RFP evaluation factors and weights
- D. Contract type & method(s) of payment
- E. Special provisions or contract requirements
- F. If required, Cost proposal and handling procedures
- G. Estimated RFP process schedule
 - with 14+ days to respond after RFP issuance

DETAILED CHANGES OF 23 CFR 172.7(A)(1) – PART 2



- Evaluation factors must be QBS related
- Allows a few “non qualifications-based criteria” as nominal criteria (no more than 10% combined)
 - Allows a “local presence” factor to be included as a nominal evaluation criterion
 - Allows Disadvantaged Business Enterprise (DBE) commitment factor to be included as a nominal evaluation criterion
- Continues the prohibition of “local preference”

DETAILED CHANGES OF 23 CFR 172.7(A)(1) – PART 3



- Evaluate proposals per established & published criteria
- Notification must be provided to the responding consultants of the top three ranked firms
- Only concealed cost proposal of selected firm can be used in the negotiation

PROCUREMENT METHODS & PROCEDURES

23 CFR 172.7(A)(2) - SMALL PURCHASES

Small purchases:

- Can use State procedures when <\$150,000 (or State threshold if lower)
- Minimum of 3 sources/firms
- Can't break down phases to use this method
- Contract modifications resulting in the threshold (\$25,000) being exceeded are non-participating

PROCUREMENT METHODS & PROCEDURES

23 CFR 172.7(A)(3) - NONCOMPETITIVE

Noncompetitive

- Contracting agencies may use its own procedures that reflect applicable State laws and conform to applicable Federal requirements
- Contracting agencies establish a process to determine when noncompetitive procedures will be used
- Subject to FHWA review and approval
- Limited to certain conditions



PROCUREMENT METHODS & PROCEDURES

23 CFR 172.7(A)(3)(III) - NONCOMPETITIVE CONDITIONS

Noncompetitive Conditions

- A. Service is available only from a single source
- B. There is an emergency (& timing will not allow for competitive selection)
- C. After solicitation of a number of sources, competition is determined to be inadequate

ADD'L PROCUREMENT REQUIREMENTS

23 CFR 172.7(B)

- 2 CFR 200
- Disadvantaged Business Enterprise (DBE) program
- Suspension and debarment
- Conflicts of interest
- Consultant services in management roles



CONTRACTS AND ADMINISTRATION

23 CFR 172.9



Contract Types

- Project Specific
- Multiphase
- On-call or indefinite delivery/indefinite quantity (IDIQ) - Limits maximum length to 5 years and a maximum dollar threshold



WAKE UP

CONTRACTS AND ADMINISTRATION (CONT.)

23 CFR 172.9

- Payment Methods
 - Cost-plus-fixed-fee; Lump-sum; cost-per-unit-of-work; specific-rates-of-compensation
- Contract Provisions
- Contract Administration and Monitoring
- Contract Modifications



ALLOWABLE COST AND OVERSIGHT

23 CFR 172.11(A)



Allowable Costs

- Any costs allowable in accordance with the Federal Cost Principles are eligible for reimbursement
- Consultants are responsible for this accounting



ALLOWABLE COST AND OVERSIGHT

23 CFR 172.11(B)



Elements of Contract Costs

- Indirect Cost Rates
- Direct Salary or Wage Rates
- Fixed Fee
- Other Direct Costs



ALLOWABLE COST AND OVERSIGHT

23 CFR 172.11(C)



Oversight

- Agency Controls
- Optional Risk-based Analysis
- Consultant cost certification
- Sanctions and Penalties

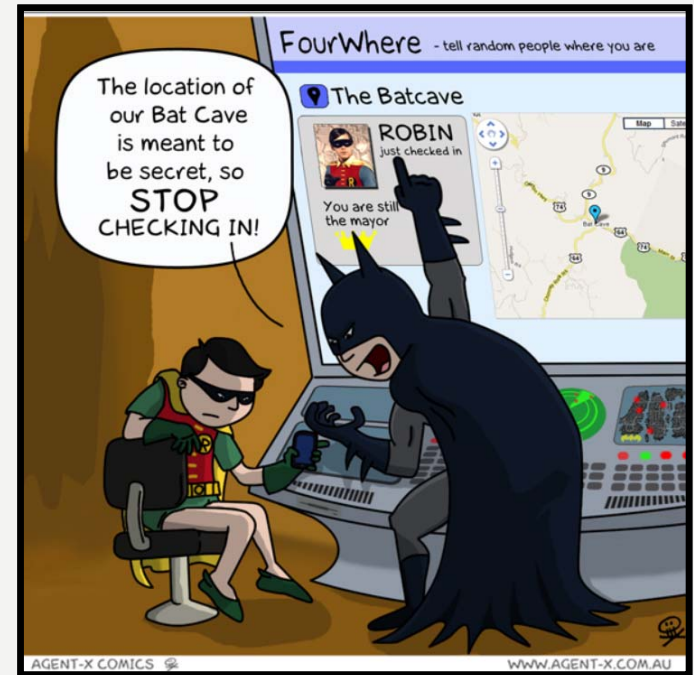


ALLOWABLE COST AND OVERSIGHT

23 CFR 172.11(D)



- Prenotification; Confidentiality of Data



IMPACT OF CHANGES



- Different requirements may be applied based on types of funding used.
- If Federal Funds are used to pay for engineering, federal and state requirements must be met.
- If state funds are used to pay for engineering, only state requirements must be met.
- Ineligible Engineering work does not jeopardize funds for subsequent phases of work, such as construction (23 CFR 172 also applies for construction engineering)

FOLLOW-UP LINKS



FHWA Consultant Services web page:

- www.fhwa.dot.gov/programadmin/consultant.cfm

FHWA Federal-aid Essentials for LPAs:

- www.fhwa.dot.gov/federal-aidessentials
 - FEDERAL-AID ESSENTIALS VIDEO LIBRARY – Federal-aid Program Overview
 - Consultant Services Overview
 - Hiring a Consultant Using Competitive Negotiations Process

IDOT'S ROLE

- IDOT provides guidance and procedures in Chapter 5 of BLRS manual.
- IDOT maintains a listing of pre-qualified firms.
- IDOT also maintains a listing of DBE firms.
- IDOT will coordinate FHWA approval of local QBS procedures.



LOCAL QBS PROCEDURES

- Local Agencies may choose to develop local QBS procedures.
- Local policies allow agencies to consider their own experiences with firms.





Batman, out.