

☞ **07hr_sb0295_SC-LEUA_pt03**



Details:

(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2007-08

(session year)

Senate

(Assembly, Senate or Joint)

**Committee on ... Labor, Elections and Urban
Affairs (SC-LEUA)**

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

SB 295 ?

APWA RED BOOK

on Qualifications-Based Selection

Guidelines for Public Agencies

APWA RED BOOK

on Qualifications-Based Selection

Guidelines for Public Agencies



© American Public Works Association, August 2006



American Public Works Association
2345 Grand Blvd., Suite 700
Kansas City, MO 64108-2625
phone 816-472-6100
fax 816-472-1610
www.apwa.net

Index

Introduction	.iv
Public Agencies and Consultant Services	1
The Consultant Selection Process	3
Interview and Selection Process	6
Formulating Consultant Contracts	9
Managing the Contract—Working with Consultants	15
Additional Consideration	16
Summary	17

Appendices

Appendix A	Typical Flow Chart, Use of Consultant Services	18
Appendix B	APWA Advocacy Position Statement (Full Text) on Qualifications-Based Selection of Professional Services Consultants	19
Appendix C	Summary of the Brooks Act—Federal Consultant Selection	20
Appendix D	Summary of State QBS Laws	22
Appendix E	Sample Local Agency QBS Criteria for Use in Consultant Selection	24
Appendix F	Some Consultant Information Helpful in Evaluating Professional Qualifications	25
Appendix G	Sample Selection Interview Rating Form (not weighted)	26
Appendix H	Sample Selection Interview Rating Form (weighted)	28
Appendix I	Sample Summary Interview Rating Form	30
Appendix J	Qualifications-Based Selection in Design/Build Project Situations	31
Appendix K	Getting Assistance For, or Information About, Qualifications-Based Selection	32
Appendix L	Where to Obtain Additional Information or Assistance	33
Appendix M	Sample Notification of Shortlist Selection	34
Appendix N	Sample Invitation to Interview	35
Appendix O	Sample Notification of Selection Results (firm not selected)	36
Appendix P	Sample Notification of Selection Results (selected firm)	37

Introduction

Public Agencies & Consultant Services

The effective selection and use of professional service consultants by public agencies, including engineers, architects, landscape architects, and surveyors presents a major challenge for public works officials, chief administrative officials, and governing bodies. The manner in which this responsibility is carried out can affect the public's confidence in the agency, the quality and cost of a project, the life cycle costs of a project, and the satisfaction of the project users. Well-intended but ill-informed public opinion is that professional services can be purchased at discount pricing to save taxpayer dollars. The failure to select consultants on a qualifications basis can lead to two dissatisfied entities, an owner who didn't get the quality and value she expected and a consultant who has lost money or his reputation from a bad job.

Every project has its unique character that requires careful planning and design, whether it be in the choice of materials, site options, construction techniques, scheduling limitations, or the delivery of what an owner expects and needs. It is the consultant's responsibility to guide the owner from concept to completion. The manner in which this responsibility is carried out will affect the public's perception of the consultant and public officials.

The successful selection of a consultant is the most important decision in the success of a project. The process that best utilizes a fair and equitable selection is *Qualifications-Based Selection (QBS)*. The federal government and the majority of the states support the use of QBS as a straightforward, well documented, and defensible method to select a consultant to maximize the value of any public works project. These are implemented through the proper negotiation, preparation, and administration of the consultant's contract, aimed at the completion of the contemplated project on schedule and within budget. The proper implementation of QBS process provides an objective and commonsense approach to the selection of professional design services.

APWA Policy on Qualifications-Based Selection of Consultants

The American Public Works Association (APWA),

along with other agencies such as the American Bar Association, the American Institute of Architects, the American Council of Engineering Companies, and the American Planning Association, believe that the public interest is best served when governmental agencies select architects, engineers, and related professional technical consultants for projects and studies through Qualifications-Based Selection (QBS) procedures. Basing selections on qualifications and competence (rather than price) fosters greater creativity and flexibility, improves the delivery of professional services, increases the value to the owner in construction and life cycle expenses, and minimizes the potential for disputes and litigation.

In 1972, Congress established a federal law, known as the Brooks Act, which required the selection of architects and engineers on the basis of their qualifications, subject to the negotiation of a fair compensation for the services. In 1973, the American Public Works Association (APWA), recognizing the importance of QBS and sound consultant selection to public works administration, published "Guidelines for Retaining Consultants to Provide Architectural and Engineering Services." That leaflet proved very helpful to both individual and agency members of APWA. In 1990, APWA followed up by preparing and publishing a more comprehensive booklet, *Selection and Use of Engineering and Architectural Consultants: Guidelines for Public Agencies*, which received peer review by both public works practitioners and private sector professionals.

Selection and Use—which is often referred to as "The Red Book" because of its red cover—enjoyed wide use and acceptance and was updated and published as the 2nd Edition in 1997. The 2006 version, *The APWA Red Book on Qualifications-Based Selection*, is expanded, encompasses additional text, and reflects recent trends in consultant selection and use practices and project procurement. Local agencies continue to experience changes in how they must conduct their affairs, especially those involving financing, regulations, and relationships with higher level agencies. State, provincial and federal laws related to qualifications-based selection of consultants are more prevalent, and various special programs are being offered to educate and assist local agencies in consultant selection and use. A common alternative in the delivery of projects, known as "design/build," involves the selection of an additional party, the

construction manager, in the consultant selection. Further, various other alternative project delivery systems have become more common in recent years and are described in this manual.

APWA appreciates the assistance and cooperation of its Engineering and Technology Committee and other interested and concerned association members. Appreciation is also extended to the American Council of Engineering Companies for their review and comment on this new edition of the *Red Book*. Such peer review makes the manual even more useful to public agencies as they retain and work with consultants.

While this book is oriented to specific needs of public agency officials, it also provides insight regarding how consultants approach selection and use by public agency clients. The emphasis is on local agencies, but much is also applicable to other types of public agencies.

The generic title “public works” is used for convenience throughout this publication. In public agencies, organizational names reflect the wide range of activities and disciplines within public works. Some examples of other common unit titles are: engineering, utilities, water resources, development services, public services, general services, facilities, transportation, streets, buildings and grounds, etc. The essential factor is the involvement and responsibility of these units—regardless of the title—in delivery of services, facilities, and programs through consultants or a combination of consultants and staff.

These guidelines discuss policies, procedures, processes, and practices used successfully by local public work agencies in technical program implementation. It is important to recognize that effective consultant selection and use involves relatively few absolutes. There is considerable flexibility within the precepts of sound public management and applicable law for cities, counties, and other local and regional agencies to structure selection and use of consultants so as to reach their particular objectives appropriately and effectively.

Qualifications-Based Selection is specifically designed to ensure satisfactory outcomes for projects and technical studies. QBS should be adopted and utilized by every agency—and private clients, as well—because it is the vital factor in successful consultant selection.

QBS means that the qualifications of such consultants as architects or engineers are the determining factors in consultant selection. Agencies alert the consultant community regarding available work and invite interested firms to respond. The responses are evaluated (through a process described later in this publication) to determine which firm is best qualified to meet the agency’s needs for that work. The top-rated firm, based on its qualifications, is then invited for contract negotiations. Price is not ignored, but a realistic, mutually agreeable price is established once the scope of services—details on the kinds and extent of work required of the consultant—has been fully negotiated (further discussed below).

A Word on Price vs. Cost

Public agencies generally utilize competition in obtaining goods and services such as construction contracts and vehicle acquisition. This tradition has led to a focus on the price of things required by government, as opposed to analyzing and acting on the basis of cost over the projected life cycle. For example, the major elements of acquiring and using a public facility are its design, construction, operation, and maintenance. While construction represents a definable price, the long-term operation and maintenance are usually the largest part of overall cost. Quality of design has a profound influence on both construction price and operation/maintenance cost but is too often seen strictly as a price item, detached from life cycle cost. The principles of QBS are directly aimed at cost, and price of design is, therefore, not nearly as significant as its quality.

Like construction, QBS is a competitive process, but on a different basis, that of qualifications. Qualifications for architectural and engineering services, like those for medicine and law, do not lend themselves to being set forth in detail in advance as is done for construction services and office supplies. Because no two firms can or will have precisely the same qualifications for any particular project design or technical study, the process is also different than that for sealed bidding in that it requires interview and negotiation.

Public Agencies and Consultant Services

How and When Agencies Use Consultants

Among the most common reasons that public agencies utilize consultants are:

- Regular agency staff is fully occupied with other work.
- Certain projects require special technical capabilities.
- The nature of a project may be unique—perhaps controversial or political.
- Capital program size surges upward.
- Agency staffing policy requires minimizing full-time staffing.

Most public agencies employ at least some full-time technical staff. These engineers, architects, technicians, surveyors, and inspectors are responsible for project planning, design, and construction and provide support for agency maintenance and operations. Additionally, when the consultant option is utilized, agencies must provide sufficient personnel for proper interview and selection and to administer the resulting contracts. It is essential that agency staff be professionally competent to conduct and manage technical aspects of the program, regardless of whether it is accomplished by employees or consultants.

Whether an agency uses staff, consultants, or a combination, use of public funds always mandates responsible administration. For that reason, performance of both staff and consultant must be effectively monitored and managed. While these guidelines suggest various steps shown by experience to assist and achieve objectivity, fiscal integrity, and quality performance in selection and use of consultants, there is no implication that technical consultants represent any unique problems or risks for public agencies. As we know, no societal group can be totally perfect, but most technical consultants are competent, honest, and responsible. The consultant community represents an important resource for any agency. These guidelines simply reflect normal prudent management of the public's business as applied to this specialized area.

Significant fluctuations are typical in both size and scope of construction and rehabilitation programs. Operations, maintenance, system planning, environmental, and other functions may also present technical questions and needs beyond the capabilities and expertise of available permanent employees. Staffing peaks and special needs are sometimes dealt with through support from other government units or by hiring temporary workers, but it is often more workable and satisfactory to retain the services of private consulting firms. Fluctuations in program delivery are readily accommodated by using qualified permanent staff for projects and studies funded from stable sources with employment of consultants reserved for workload peaks or large, complex, and/or specialized technical needs. However, many agencies routinely use consultants to perform studies and design at least part of the ongoing capital projects to minimize difficulties associated with recruitment of staff or rising employee compensation costs.

The range of available consultant technical services is almost without limits. Most often, though, agency needs involve construction-planning, design surveying, geotechnical studies, bidding, inspection, materials testing, and related work. Many consultants offer diverse services, while others concentrate on specialized areas such as geotechnical assistance, traffic engineering, or construction management. Consultants can be retained for selected phases with the agency or a separate consultant performing the balance. Sometimes technical consultants offer total (planning-to-occupancy) project service packages involving joint ventures between firms backed up by a specially selected team of subconsultants.

Some agencies prefer to have consultants provide a full range of project design and delivery services including surveys and management of construction. Others prefer to limit direct consultant services to planning and design but provide for the design consultant to have an effective advisory role in subsequent project phases. These options can be kept open during the interview process, but a clear picture is essential before final selection and contract negotiations. For example, what are the agency's intentions on staff's role? What does it expect from the prime consultant? And, what is planned for separate contracts with other consultants? Such alternatives profoundly affect the details of the agreement(s).

especially the type and extent of the consultant's compensation and then allowed completion time, and may influence the final selection itself.

Smaller agencies often engage a consultant on a retainer basis to act as the agency's official engineer and, in some cases, also to oversee operations and maintenance. Periodic cost monitoring is important for all work accomplished by such consultants. It is generally desirable that other firms also be permitted to offer services for at least the larger projects. A general engineering consultant is sometimes engaged by an agency to manage selection of, and administer the agency's contracts with, other consultants. Conflicts of interest must be avoided. For example, such general consultants (and their affiliate firms) usually are strictly limited regarding eligibility to directly undertake project or study contracts for the agency and are forbidden to have any direct or indirect financial interest in other agency contracts with which it is assisting.

Consultant Compensation— Negotiated Fees vs. Competitive Bidding

The underlying principle of this publication is that the single factor of qualifications far outweighs all other considerations—especially that of price—in retaining consultants. In selection, there are critical factors such as consultant experience, organizational structure, staff qualifications and resources, and the personality of key personnel. These factors must be reviewed, evaluated, and weighed before the agency can be reasonably assured that a specific consultant can fulfill its expectations. Once qualifications are established, scope of services, price, and terms of compensation are negotiated with the selected firm. Those three vital items must be in harmony with each other because inadequate compensation for effort expected inevitably leads to disappointing results. As the English social reformer John Ruskin (1819–1900) put it, "The common law of business balance prohibits paying a little and getting a lot. It cannot be done."

In situations appropriate for competitive bidding, all parties can quote on the same basis because services or products have been described in exact detail; construction and purchasing are examples. On the other hand, only a limited number of professional services can be bid in a similar manner, and those are ones which basically involve

application of standard procedures, such as auditing. However, most professional services, such as engineering, law, architecture, and medicine, are generally recognized as not lending themselves to pre-determination through detailed specifications because they involve creative thought, evaluation, learned judgments, and the like, which are the result of the services rendered. Professional fees usually represent only 1 percent to 2 percent of a project's life cycle cost but most consultants create savings or quality improvements, which more than offset their fees through their expertise and creativity.

Competitive bidding for engineering and architectural services is not in the best public interest, because it may easily lead to employment of a lesser qualified or least qualified firm (rather than the best qualified as should be the objective). The intent of competitive bidding, lowest cost for the subject activity or item, provides little, if any, assurance for the owner regarding overall cost or successful lifetime use. Factors such as quality of design, cost control, or ultimate maintenance and operation experience cannot be reasonably or readily judged from competitive bids, nor can an architectural consultant's ability to achieve an esthetically desirable building.

A thoughtful consultant once said, "If you want to select a bridge designer on the basis of least cost to design, I will give you a bridge which costs me the least to design. If you want to select a bridge designer on the basis of least life cycle cost, I will use my brains and experience to give you a bridge which will cost you the least to design, build, and maintain."

Linkages—Working with Consultants

Agencies must also consider management of the consultant contract and involvement of the appropriate persons and groups in the process. Public works often provides the linkage between the consultant, the end-user(s), and others interested in the project or study. The consultant considers the contracting agency (public works) as its client, and public works will similarly have a clearer understanding of its role and responsibilities if it considers the linked internal and external groups as its clients. These public works clients can include the governing body, citizen businesses (as both individual and groups), other agency departments, public works operations or maintenance units, cooperating entities,

and so forth. Of course, the ultimate client or customer is always the public. Timely and effective client participation facilitates a project, while inadequate involvement and linkage is certain to result in delay, poor results, and/or criticism (which will usually fall on public works). Because an interactive process adds much to project success potential, both agency project managers and consultant staff should actively encourage full involvement of all stakeholders.

Consultant contracts don't just manage themselves. Sometimes officials believe that once they have hired a consultant, little more management is required. Nothing could be further from the truth. The agency must designate and effectively support an individual or a team to work directly with each consultant, to provide the consultant

with timely information and decisions, to involve (link) public works clients at appropriate points and, ultimately, to ensure delivery of the intended services and products on schedule. The project manager(s) must be competent and experienced in administering technical activities and dealing with people. They must possess sufficient technical knowledge to provide appropriate support and direction to the consultant. A greater extent of staff effort may be required for some consultant contracts.

Through careful qualifications-based selection, effective participation, and a smooth working relationship, consulting services are a highly useful and economical means of meeting agency needs for design, construction, rehabilitation, studies, reports, and other technical services.

The Consultant Selection Process

There are several important objectives in developing an effective consultant selection process:

- Participation by a sufficient number of qualified consultants to ensure the agency's ability to secure a truly qualified firm;
- Fair competition between available firms—while narrowing the final group under consideration to avoid undue imposition on the consultant community;
- Involvement of stakeholders whose satisfaction with the selection process and the eventual accomplishment of the consultant's work is vital to final success. However, some of these parties may be impractical to reach and involve as individuals, such as motorists who use a highway;
- Formulation and thoughtful administration of policies and procedures to ensure fair, thorough, and objective comparison of agency needs and goals with the capabilities, concepts, time frames, and other relevant capabilities offered by each firm under consideration; and,
- Flexible selection procedures to keep the degree

of agency and consultant effort in reasonable proportion to the magnitude of the work to be done.

Many consultant selection processes commence with issuance of a "Request for Qualifications" (RFQ) or "Request for Proposals" (RFP); these two documents are not interchangeable. They have different meanings and objectives, and the degree of effort for the consultant to respond is not the same.

Request for Qualifications

A Request for Qualifications is normally used to ascertain the general qualifications of consultants or particular qualifications in a selected area of expertise such as pipeline design. RFQs are frequently used to develop a data bank of interested and qualified consultants. Some agencies solicit RFQs annually to ensure fresh information for use during the year. Responses are often referred to as the SOQ (Statement of Qualifications) or SOI (Statement of Interest). SOQs and SOIs generally highlight overall firm qualifications, recent client lists, key staff resumes, and other promotional materials. Agencies sometimes require or accept federal (U.S.) standard form SF 330.

Request for Proposals

A Request for Proposals tends to be used in conjunction with specific projects or studies and contains details such

as the scope of services desired, project descriptions, and budget allocations. The more specific the information, the better will be the responses, in which consultants should be encouraged to focus on relevant qualifications rather than reputation. RFPs should describe factors to be used in determining the most highly qualified firm and also include a selection schedule. Consultants expect to receive and respond to RFQs and RFPs as a normal part of doing business, but client agencies must guard against imposing on the consultant community through unnecessary information requests, steps, or delays in selection. Both RFQs and RFPs entail a definite cost to responding consultants. Costs for RFQs usually range from very low to moderate, while RFP responses can be quite expensive, increasing with the size and complexity of the project or study.

Structuring the Process

To the extent laws and regulations permit, details of the process should be tailored to the nature and magnitude of the services desired. For relatively small, uncomplicated projects or studies, it may be reasonable to interview only two or three consultants (or even sole source), possibly based on SOQs, unsolicited SOIs, or telephone contacts. However, for larger and more complex projects, the process should be more formal and comprehensive, often including advertising and other proposal solicitation steps, such as an evaluation of the responding firms' proposals in order to develop a "shortlist" of firms most qualified, (usually three to six firms—rarely more), followed by interviews with those shortlisted firms. In some cases, a combined process might be used for matching a group of consultants with an array of smaller, but similar, projects, resulting in multiple contracts. Selections should be kept in proper perspective between the probable cost of responding and the expected range of fees. This saves agency and consultant time and money but does not deprive the agency of an opportunity to select a qualified firm. In any event, the agency should announce a selection and contract timetable for the information of candidate consultants.

For especially significant projects, particularly architectural designs, a competition might be appropriate. Such competitions involve longer time frames, special judging arrangements, and may also include special compensation (a prize) for all or the best of the competitors. This is an elaborate and more costly process

but can result in a truly unique or outstanding project. The American Institute of Architects, the American Council of Engineering Companies, and the Association of Consulting Engineers of Canada can provide more information on this approach.

Policies on Consultant Selection

Consultant selection can be politically or ethically sensitive and is, thereby, open to controversy and misunderstanding. Adoption of a written agency consultant selection policy serves to protect both staff and agency from allegations of impropriety through inspiring confidence in staff recommendations within the governing body, the public, and the consulting community. Selection policies can include a wide variety of steps and criteria, but most good policies do the following:

- Establish qualifications as the basis for selection,
- Specify criteria by which qualifications will be judged,
- Provide for effectively publicizing the availability of the work,
- Correlate the number of consultants to be interviewed with the sizes and kinds of projects or other service needs anticipated by the agency,
- State the procedure(s) for screening proposals,
- Require that a comprehensive agreed-upon scope of services be the basis for consultant compensation and contract finalization,
- Identify departmental responsibility for administering the process,
- Specify who makes recommendation(s) and who makes (which) final decisions,
- Assign responsibility for contract negotiations with the selected consultant and state, whether the contract is 1) to be executed by a designated official, or 2) presented to the governing body for final decision. In the latter case, negotiation with another candidate firm should occur only in the event the first contract is disapproved.

Most federal, state, and provincial laws and policies are designed to control how and when consultant selection is undertaken at those levels, but local and regional agencies can also be impacted. Such agencies are urged to review appropriate national and state/provincial codes and regulations. (See appendices C and D for a summary of the Brooks Act and a summary of state QBS

laws.) These laws deal with matters such as applicability, advertising, and criteria for selection. Some local agencies endeavor to minimize delay and confusion by incorporating in their selection processes all relevant requirements potentially applicable to their capital and work programs.

The foregoing does not suggest that consultant selection policies are necessarily lengthy or complex. Policy details should relate well to variations in magnitude of projects and studies, and the policy should allow flexibility for unusual situations. Selection policies can support overall agency acquisition objectives if qualifications remain the determining factor. Designating an administrative lead department is essential, but detailing staff and organization is unnecessary. Many policies require maintenance of a list of potential consultants for mailing letter queries to solicit proposals for available work. Unique projects and studies, or those involving capabilities not found in the regular list, are often handled through targeted advertising in technical journals. Some policies tie the number of firms to be interviewed to estimated or budgeted construction costs. For studies, the interviewee minimum can be tied to the projected fee or left to administrative discretion. Again, prevailing laws and/or funding agency regulations may dictate different or more elaborate consultant recruitment procedures.

There are options for formulating selection criteria—use those of technical and professional associations or other agencies, or write your own. However they are derived, the agency's selection criteria should specify that qualifications are the final determinant. If desired, technical qualification criteria can be supplemented with—but not replaced by—considerations concerning local vs. non-local firms, fair sharing of opportunities to serve the agency, minority/disadvantaged enterprises, affirmative action, or other concerns. An agency clearly risks poor selection results if other criteria—especially price—are allowed to prevail over qualifications. A sample consultant selection criteria list is found in Appendix E. Also, if the project is funded in whole or in part with federal or state grants, there may be other selection criteria required as a condition of the grant.

Other Selection Concepts

The established criteria are used both for initial screening of responses by interested consultants (shortlisting) and

evaluating and ranking candidate firms, through interview and final selection. Shortlisting is essential when there are more responding firms than are reasonable or necessary to interview. In determining an optimum number, bear in mind that interviews are costly for participating firms and too many interviews can fatigue the selection panel. Spreading interviews over separate days might relieve panel fatigue or overload but would tend to dull memories of earlier interviews and lead to delay because of schedule conflicts. Objective ranking of candidate firm qualifications is facilitated by a reasonable and fair limit on the number of interviewees. Most needs are successfully met with no more than three to six participating firms.

For large, complex, or high-profile selections, an orientation (or pre-proposal) meeting can be helpful, to which known, potentially qualified consultants should be invited. Attendance is usually optional but must be clearly noted in the RFP if mandatory. At the meeting, project concepts and the selection process are discussed and questions answered. All information presented, together with questions and related answers should be put in writing and sent to all in attendance.

Reference-checking may be appropriate regarding candidate firms not known to the agency. Prequalification (if legally permissible) sometimes expedites consultant retention for routine types of work but may not be appropriate for projects where public scrutiny is anticipated to be intense. The adopted criteria should be the basis for any prequalification procedure.

When agencies have a large number of projects for which consultant services are required, agencies may group similar projects to produce a streamlined alternative to interviewing and selecting consultants for each individual project when permitted by local procurement regulations. Such groupings might cover street improvements, water or wastewater facilities, environmental, geotechnical, or other work where the project scopes and complexity are generally comparable. Other details of the process are handled similarly to selection for a single project. For each project group, an agency should interview two or three more consultants than the total number of projects in the group. Following the interviews, each project can be matched with a qualified firm. Project group interviews can simplify the agency's work while offering significant

participation cost savings for involved consultants (as compared to a series of interviews for individual projects). If a project group interview technique has not been used previously, it is good to explore the subject with representative consultants in the community to obtain comments and gain support.

Many public agencies select and use consultants on a frequent or regular basis. Most of these agencies have

created policies, procedures, forms, and other items for ease and uniformity of administration, and the *Red Book* guidelines recommend increased development and use of such documents. Newer or smaller agencies, or those using consultants infrequently, can often obtain advice and/or useful examples of administrative materials by contacting experienced agencies in their area.

Interview and Selection Process

Many agencies find that interview panels of three to five persons work best. More may be added in special cases, but panels exceeding seven are usually unworkable on a time and space basis. Interviews by only one or two people may not reflect adequate background for informed decisions. Staff participation in the selection process is frequently supplemented with representatives of client divisions or departments, affected or participating outside agencies, and interested citizens or businesses (an individual or representative of a group). Occasionally other interests are represented. It is essential to include at least one person with expertise directly related to the work. Department or agency heads and elected officials may also be present. Care is necessary to ensure that each panel is constituted appropriately for the particular project(s) involved. It should be noted that, regardless of each participant's background, the selection panel's consideration and decision must be based on the qualifications of the firms being interviewed and not on any special interest of individual panel members.

Pre-Interview Steps

The interview process will be most successful if the following steps are taken:

- Provide each firm to be interviewed with written briefing information including agency selection policy, any agency standard contract form including insurance requirements, project location and background, and schedule details such as date and

time and allotted length of each segment of the interview. If such information was not included in the RFQ or RFP, reasonable lead time must be allowed. As a courtesy, information can be included regarding audio-visual equipment available in the interview room for use in consultant presentations.

- Require that firms to be interviewed submit selected supplemental written information (with as many copies as the agency needs to supply the interviewers). These packages should focus on substance, not mere appearance. Each firm should name the persons who will represent it as managers and key technical experts, and all proposed subconsultants. They can be asked to provide more detailed information responsive to the agency's qualifications criteria, the specifics of the project, and how the consultants will approach the project. These materials are public documents and, therefore, consultants may wish to limit written information regarding proposed design or study approaches for the work at hand, reserving full discussion of this vital competitive information for the interview. Supplemental information may be submitted as desired by the consultant provided it is directly relevant to evaluation of qualifications. Panel members should not be overloaded with general brochures and similar items. If an agency desires that a particular individual, subconsultant, or activity be part of the project or study, it should publish that information to all candidate consultants well in advance of the interviews. This allows the firms to take the requirement(s) into proper account—including whether to submit a proposal. It is normally a poor idea to dictate who should comprise the consultant's team, particularly because

of risk factors. Each panel member should receive a packet at least several days in advance of the interviews.

Interviews can be facilitated by providing the consultants with important questions to be asked of all candidates, such as key technical points, availability of certain expertise, etc. This will save time and help to more easily compare responses.

Preceding the first interview, brief the panel. At this time interview techniques, procedures, ranking form(s), and other housekeeping matters are discussed and agreed upon. This is especially important for panelists who have not served previously in this role. Panelists must work together during each interview to bring out as much critical information as possible. Be especially alert for potential conflicts of interest, such as those arising from financial arrangements, investments, ownership of patents on construction processes or materials, personal associations, family matters, or relationships with other clients. Disclosure of potential conflicts is essential, but certain conflicts (such as ownership of patents which may relate to the project) are not necessarily insurmountable obstacles to selection.

Conducting the Interview

Each interview should generally be conducted as follows:

1. The panel chair makes brief remarks covering procedures, interview sequence, time allowance, and panel member introductions.
2. The firm introduces its representatives and presents its qualifications.
3. The panel asks questions.
4. The firm should be allowed to make a brief closing summary, limited to key points previously discussed (no new information).

Each candidate firm's presentation should be made by the prospective project manager and should cover:

- Understanding of the work at hand,
- Approach to the design or problem,
- Tentative work elements,
- Work sequence,
- Past experience on jobs bearing on the subject project or study,
- Identification of person in responsible charge of the work,
- Projected office workload and staff availability covering the expected period of work,
- Personnel and time schedules,
- Location of offices where the work will be done,
- Proposed subconsultants,
- Unique qualifications of work methodology,
- Experience in developing and working within an interactive project process,
- Track record of bringing in projects on time and within budget,
- Experience relating to public clients on similar work,
- Quality control.

Strong emphasis should be devoted to the consultant's team; the presence of major subconsultants at the interview is very desirable. If time permits, the consultant may also introduce other relevant information. Many of these matters, including the names of subconsultants and the person in charge, are essential elements for later contract negotiation (be alert for possible bait and switch tactics; make sure that what you see is what you get). The limited interview time is best devoted to qualifications and approach to the work at hand. Therefore, any consultant concerns regarding compensation concepts and risk allocation may be identified but not discussed in detail. (See the section entitled Fees and Payments for more on fee discussion prior to contract negotiation).

The panel chair must effectively maintain the announced schedule. This might involve 50 minutes for each interview, broken down into segments of roughly 2 minutes for the chair's remarks, 25 for the firm's presentation, 20 minutes for questions, and 3 minutes to summarize. Panel members should be allowed reasonable time to ask important questions. Individual agencies may prefer a different time allocation, and the nature of the work often requires flexibility. Forty minutes may be sufficient for a small project, while an hour can be too little for the larger ones. It is especially important to expand the schedule when the complex nature of the subject requires more time for the panel to become adequately informed. If interviews exceed 60 minutes, the panel should take a break between each interview to reduce fatigue.

Evaluating the Candidate Firms and Making the Selection

Panel members should evaluate each consultant's qualifications and team as presented. The panel should avoid discussion of whether the consultant should be asked later to involve or change particular individuals or subconsultants or make other modifications of its proposals. Panels should strive to evaluate and select on a level playing field.

A form should be used to assist panel members in recording notes and ranking data. This will promote effective and efficient discussion and more objective comparison of firms following the final interview. Some agencies prefer straight numerical scoring of specified aspects of each interview as a factor in reaching the final decision. Others weight the numerical scoring to give more importance to selected aspects. The form should be based on the agency's adopted selection criteria, but scoring should always be set up to give maximum weight to qualifications factors. Some sample forms are included in Appendices G, H, and I.

Each panel member is present because of his or her value to the interview, and this should be reflected by fully considering everyone's opinion. Those with greater technical expertise will find that lesser-experienced and lay panel members usually reach conclusions similar to theirs in evaluating candidate firms, and that consensus building is seldom a problem.

Recognize that candidate consultants are entitled to certain confidentiality regarding project-related suggestions, information, and ideas which they have developed as part of competing for the work. An agency should not reveal this confidential information prior to final selection and contract negotiation without the consent of the consultant unless all candidate firms were notified in advance that everything offered in the interviews would be treated as public information.

Other Interview and Decision Considerations

Reaching a decision may require going beyond the interview. The top firm or firms may not be well known to the agency, and their track record as presented may require verification from past clients, regulatory authorities, or other contacts. This is especially important

where more than normal reliance must be placed on the consultant because the subject matter is unfamiliar to agency staff.

A single interview including staff and affected/involved/interested parties is the most workable arrangement. Additional direct pre-selection or post-selection interviews of candidate consultants by any group or individual should be strictly discouraged. They greatly increase selection time and costs—for both agency and consultants—and primacy of qualifications as the basis for selection is too often lost, making subsequent problems likely. In unique or sensitive situations where early governing body involvement is needed, it is best to include one or more members (fewer than a quorum) of that body on the selection interview panel.

In some cases, two or more consultants may be judged to possess equal professional qualifications. Other relevant factors might then be used to make the final determination, such as local vs. non-local or extent of recent work for the agency. Relative fees might also be a factor if valid information is available. Absent a fully negotiated scope of services, however, tie-breaker decisions based on fees alone tend to be purely speculative.

Once an agency has made its decision on the best qualified firm for a particular project, it is important to notify all of the interviewed firms of the agency's decision as soon as possible. The top-ranked firm should be invited to meet with the staff to begin negotiating the scope of work and fee. (Fee negotiations are outlined in the next section). Also, the agency should bear in mind that in the event that the scope and fee cannot be negotiated to the satisfaction of both parties, negotiations can be terminated with the top-ranked firm and the second-ranked firm can then be invited to meet with the agency representatives. However, it is highly unusual for the top-ranked firm and the agency not to be able to finally agree on scope and fee, even if these negotiations are sometimes protracted either due to the firm's reluctance to reduce scope/fees or unrealistic expectation by the agency.

Contact with the firms not selected should be by phone, followed up in writing with the name of the selected firm. This basic courtesy is one way to encourage competition

for future agency work. Some unsuccessful firms may request a debriefing regarding their presentation and why they were not selected. No legal obligations exist to accede to such requests, but it is good practice to respond if reasonable. Debriefings should be in sufficient depth to be helpful, but not so extensive as

to constitute a time burden on the agency. A written policy on debriefings may be of value. Debriefings require considerable sensitivity and discretion, and the conversation should focus on what the selected firm did right rather than what the non-selected firm did wrong.

Formulating Consultant Contracts

A public works agency and its attorney are jointly responsible for developing a clear and workable contract for use in engaging consultants. Approval of the form of contract and legal interpretation are within the attorney's expertise, but public works is the expert on business aspects—technical content and interpretation, and administration. The contract must not only protect agency interests, but it also must be jointly satisfactory and rewarding to the agency and the consultant in order to form a useful vehicle for reaching the mutual goal of a successful project.

One way to create effective, consistent contracts is to base negotiations and the final document on a standard format. Some consulting associations and individual firms offer model contract documents, which the selected firm may prefer. While successful use of such models is possible, public agencies must first review them with considerable caution to be sure the public interest is protected. Some of the issues to be reviewed are:

- Whether to delegate authority to the consultant to represent the agency, and the limits of any such delegated authority;
- Allocation of risks, including liability for results;
- Method(s) of dispute resolution

By such a review, the agency can avoid a contract with clauses which are not in the public interest. Because there is no single universal model form of contract in use throughout the consulting professions, agencies may find that their individual effort to develop desired modifications to a particular industry document

will create other unforeseen problems in contract interpretation. Part of APWA's work with other interested associations is to make model documents more widely appropriate for public agency use.

Many public agencies, especially those which frequently use consultants, find it better to develop their own standard form of consultant contract or to adapt other public agency standard agreements. Agencies tend to find that a certain group of consultants receives a majority of the available work. Therefore, a major advantage of an agency standard format lies in simplifying and expediting a very significant proportion of its contract negotiations and subsequent administrative activities. The argument that model contracts have been tested in court can also be said for standard agency contracts within a relatively short time. Required use of a particular contract form must be noted in RFQs and RFPs with copies being made readily available to interested firms. Experience shows that most consultants will accede to use of agency standard format albeit with some limited modifications during contract negotiations based on unique aspects of the project or study.

Certain provisions typically appear in contracts between public agencies and consultants. Agency needs may lead the particular department or the agency attorney to make selected changes, but effective consultant agreements will normally include all or most of the following:

- Recitals such as purpose, agency authority, statement of intent, and overall objectives;
- Scope of services, including phasing;
- Time of performance;
- Fees and payment schedules;
- What the consultant is to furnish (instruments of service), including meeting(s) attendance;
- What the agency is to furnish;

- Ownership of documents and innovative solutions;
- Authority (if any) to speak for the agency/owner in dealing with third parties;
- Names of key consultant personnel and the process for their possible substitution;
- Method of approval and payment for additional or "out of scope" work beyond the original scope of services;
- Insurance (performance, errors and omissions, liability, etc.);
- Indemnity clauses and method of dispute resolution;
- Responsibility and authority for approval of work on behalf of the client; and,
- Official addresses for the purpose of notices and other deliveries.

The Scope of Services

The scope of services, the very essence of the agreement, must be negotiated in each case to properly reflect the agency's particular needs regarding the project or study. Agency ability to rely on time schedules and maintain cost control depends heavily on a clear, comprehensive scope of services statement. The scope should be thoroughly discussed until both parties are mutually satisfied and clear as to the intent and meaning. For most contracts, the scope is broken down into phases, each with its time frame and fee. A provision should allow the agency to terminate the contract and the completion on any phase with payment for phases to that point constituting full compensation, giving the agency better management control. During negotiations the agency should not allow the consultant to "front load" the fees in the earlier phases. This would put the agency at a financial disadvantage if the contract is terminated prior to completion.

Establishing the Time for Performance

Time frames should be realistic for the work of each phase, and the agency should be firm in seeing they are met, but allowing for time extensions if conditions occur outside the consultant's reasonable control. While penalty/bonus clauses related to time of performance may be legal, such clauses could interfere with quality performance by the consultant and are generally not as useful as they are for construction contracts.

Fees and Payments

Fees are naturally of concern to selecting agencies, but

consulting costs related to projects should be viewed in the context of total project costs, usually referred to as life cycle costs. Focus should be directed to the overall cost of design, construction, operation and maintenance, of which the associated technical services are a small proportion. Beyond that, future operation, maintenance, and rehabilitation costs will run as much as seven times the total cost to construct, thus making the professional fees probably less than two percent of a project with a forty-year life cycle cost.

In any event, no reasonable basis exists for discussion of specific fee figures until the scope of services has been fully developed through contract negotiation with the selected consultant. This is not to say that fees need be ignored prior to selection. Interviews may include general discussion of cost vs. consultant level-of-effort even without having a detailed scope of services. Level-of-effort reflects the estimated amount of time needed for each anticipated task and the relative quality of that time, including staffing levels and/or use of subconsultants. Also, alternative methods of compensation may be discussed; for example, a particular method preferred by the agency might be unacceptable to a firm, or vice versa and thereby could become a tie-breaker factor in selection.

Agencies which feel the need to firm up some fee starting point before final selection decision often use what is known as a two envelope system. Each firm being interviewed submits separate envelopes, one, open for use in the interview, contains the qualifications information. The other, sealed, contains a fee basis and tentative dollar figure predicated on the as yet unconfirmed information regarding the scope of services. Once the qualification-based selection is made, that firm's second envelope is opened during contract negotiations, and the tentative range of fees and scope variations are adjusted as appropriate to reflect the final scope of services. It is vital that the agency have a range of fees in mind and not rely entirely on the information in the envelope. Second envelopes of other candidates must be returned unopened once a contract has been successfully negotiated with the selected firm and given final approvals. Any temptation to open all the envelopes during negotiations should be strictly resisted because it could create a lack of focus on details of the scope of services. The two-envelope system can be useful, but it

can also mislead or be ineffective. Consultants should be assured that fees are still flexible, so they need not overstate to protect themselves, thereby denying the agency of the consultant's best estimate of the cost for a particular scope of work.

Fees and payments schedules must be clear and complete. The challenge with all fee arrangements involves properly relating payments to work performance and quality and keeping control of costs as the work progresses. It appears that particular fee methodologies tend to be more popular in some regions than in others. Some fee bases which have been used are described below.

Percentage of Construction Cost

Use of this fee basis has declined because of an inherent paradox: really economical design reduces the fee, while poor design tends to produce a higher fee. Also, it is difficult to properly link work complexity, construction cost, and a reasonable percentage fee. For example, it is apparent that design effort for a street resurfacing is considerably less than for new wastewater plants costing the same to build. Lack of sufficient incentive to optimize project costs can lead to "cook book" approaches and minimum creativity. *Manual 45* of the American Society of Civil Engineers has stated that "the present relationship between engineering costs and construction costs...is no longer valuable as a guide for determining engineering costs for a given project."

Actual Cost Plus Fixed Fee

The actual cost plus fixed fee basis is frequently used but requires closer monitoring than many local agencies find practical or reasonable. However, it can be a sound compensation basis for projects ranging from small jobs or minor additions to major contracts, and it is useful for compensating management consultants. Documentation and review of costs involves considerable detail and administrative time. Some costs are easier to identify and control than others; for example, telephone and travel may seem easily identifiable and, therefore, controllable, but there can be disputes about the justification for and extent of such costs. Personnel cost administration is also difficult because of overhead items and questions on how many people were used and in what classifications. In computing allowable personnel costs, compensation for firm principals should be limited to direct project participation. The agreement should provide specific

"upset maximum" figures to allow greater client control. The fixed fee should include the entire profit for the job.

Salary Cost x a Multiplier + Incidental Costs

One method for establishing fees uses the actual direct cost of salaries as a basis for compensation. In order to also recognize overhead costs, the direct salary amount is adjusted (multiplied) by an overhead factor. The multiplier might typically range from 2.2 to 3.3 and is designed to cover personnel benefits and overheads, general office costs, profit, and general overhead expenses. Incidental costs such as travel, telephone toll charges, printing, and other such incidentals are paid separately at actual cost. The client should insist on details of the basis for overheads and other items which make up the multiplier and documentation of the types and numbers of personnel included in the charges. Again, this method should include upset maximums, and the significant administrative costs to the agency for review of consultant billing should not be overlooked. While this approach is in use, particularly among the smallest agencies, other methods are generally preferred today.

Lump Sum

This method usually works best with phased contracts, and its use has become widely accepted by both agencies and consultants in many areas. This basis (sometimes called a fixed fee) usually provides the greatest comfort for the agency, but it requires the greatest advance effort in negotiation and defining the contract scope of service. Other fee bases can be used as a general guide for establishing lump sums, as can some of the published fee cost information which is available. The lump sum method clearly mandates a definable scope of services and fee renegotiation if major additional work is required or approved or if a significant part of the work is deleted. If the scope cannot be well-defined, the agency should use an alternate method.

For any method where the agency pays based on detailed costs, the contract should include breakdowns of direct salary costs (by both name and classification) as well as overheads, fringe benefits, and payroll taxes. A common item of dispute relates to meal costs. This can be partially avoided by specifying per-diem rates for food and lodging, but travel cost questions may remain. Some public agencies conduct periodic audits of overhead and

fringe cost experience and issue approved audited rates to apply to any contract entered into within a particular time period; this permits negotiations to focus on person-hours, salaries, and direct costs.

Further experience shows that auditing of consultant charges is greatly complicated when time spent for the agency is interwoven with work for other clients (this is not infrequent). Questions then arise concerning who pays what part of travel costs, which costs are contract fulfillment and which are "marketing" for future work. Note that some grant programs mandate a multiplier or cost-plus-fixed fee basis; the latter may be preferred because it clarifies negotiations for extra work.

Fees should be fully payable when the related work has been completed and accepted by the agency. Progress payments are appropriate for all but minor phases, based on a mutually agreed state of completion. It is often helpful to stay in contact with other area agencies to review their project experiences in terms of actual final design costs and actual construction overhead costs in comparison to those experienced in your own agency. This information can be useful both for negotiating contracts and for evaluating in-house project costs.

The contract with the consultant can include everything in the way of personnel and support required to complete the subject work, or the agency may be more selective by furnishing part of the staff and support itself or through employing separate consultants to do particular work. The key here is to recognize that:

- Compensation must be paid for all items done by the consultant;
- Other than with fixed, lump sum, or percentage fees, the agency must monitor the consultant's use of resources and control expenditures when appropriate;
- Payments should be withheld if there are shortfalls in consultant activity or delivery, or should be adjusted pending full and satisfactory completion of the scope of services.

Other Aspects of Performance

A critical aspect of negotiation is reaching clear, mutual understanding regarding related items and services which will be reflected in the fee. Always define what the

consultant is to furnish, often referred to as deliverables. A common example involves printing of a large quantity of documents such as drawings, specifications, or reports. Normally a stated quantity is paid for within the fee, with the agency retaining the right to obtain additional copies through the consultant at cost or to use consultant-prepared originals to arrange for separate printing.

Contracts must also state what the agency is to furnish and on what basis. Assuming that projects and studies involve definable commitments of personnel, investigations, tests, and other resources and activities, it follows that what the consultant does not provide must be provided by or through the agency client. These must be identified, discussed, and documented as part of contract negotiations. Agency obligations must be fulfilled in a timely manner, coordinated with the consultant's work, or there may be agency liability. The agency must always be reasonably certain of its ability to meet commitments which contribute to the overall work and may have to adjust other priorities accordingly. If the agency uses separate consultants, those consultants, those contracts must provide suitable assurances regarding deliverables and meeting schedules. Perhaps most difficult is where reliance is made on another public agency which might have its own performance problems. Because of potential claims and controversy, agencies must be prudently cautious in contractually committing to furnish resources or support.

Contracts normally provide for consultant appearances at a designated number of meetings or hearings within the fee. If additional meetings are required, payment should be made for related travel, meal, and lodging costs (and a supplemental fee as appropriate). Many agencies include consultant preparation of the record (as-built) drawings upon project completion. When contracts call for consultant use of some unique type of equipment or technique, it may be desirable to include a related means of separate compensation. Contract administration is always facilitated when consultants are required to include a statement, by task, of services completed as part of each invoice submitted for payment. Such a statement should justify the invoice, based on the method of compensation. For example, for "lump sum" compensation, the requirement might include the percentage of task(s) completed to date. For a cost-based contract, the requirement might include an accounting for staff hours or days of services included in the invoice.

Consultant Project Staff

It is standard practice during selection for consultants to name key individuals, such as managers, firm principals, and technical experts responsible for fulfilling the contract. The project manager-designate is of special importance. One or more subconsultants may be named as well. Because these individuals and subconsultants are normally a critical element in agency selection decisions, the contract should include their names. The client particularly needs documentation of the person in responsible charge, who will normally place his or her license number and signature on key documents. It should further provide that agency approval is required for proposed consultant personnel replacement or exclusion from the work. There can be legitimate reasons for personnel or subconsultant changes, such as resignation or business termination. The agency's interest is in ensuring that consultant personnel replacements possess acceptable qualifications.

Ownership of Documents and Innovative Solutions

Ownership of documents is a critical and sensitive item. Most projects and many studies involve consultant preparation of various materials which then form part of the permanent record. Best practice requires consultant delivery of selected original materials on or before conclusion of the work and before final payment. Examples are drawings, field books, computer disks, testing reports, and other documents, some of which constitute legal records. From the agency's standpoint, these documents are important for support of future maintenance, operations, and rehabilitation or remodeling. Consultants are concerned with the possible client reuse of materials on another project or modification of facilities in a manner which jeopardizes the consultant's reputation or might impose a legal responsibility or liability. Each party's concerns are legitimate, but experience demonstrates there are definite agency risks if records aren't properly protected and preserved. At best, document unavailability is a source of higher future costs, while, at worst, there can be serious, unwarranted agency expense or liability exposure. This dilemma is resolved by agreeing that the agency will not modify documents without consultant consent, in keeping with professional license laws, and that reuse will be subject to further fee negotiations as circumstances warrant.

Projects and studies can also result in development of innovative solutions, such as concepts, methods, or products. To the degree that public funds supported these innovations, the agency is usually entitled to their ownership upon full payment to the consultant (as defined by the contract). There can be substantial monetary and other benefits at stake, especially for the long run, which might include patent rights. The agency may also wish to restrict the use of these innovations in some manner. The agency should ensure that appropriate language is placed in the contract to reflect its position on innovative outputs.

Confidentiality

Provisions covering confidentiality of information must be included in the contract. Consultant freedom to release information to others should be appropriately restricted, except for information which is otherwise rightfully in the public domain. Agencies must often control timing, content, and coordination of information release in consideration of other agency activities, fulfillment of current or later responsibilities, and/or avoidance of possible favoritism or conflicts of interest. This clause should call for client approval of timing and content of information released by the consultant. The contract should also cover future consultant publication of project information, such as in papers, articles, or advertising.

Representational Authority

Consultant and agency representational authority is important. Only in exceptional circumstances should a consultant have authority to commit the agency or make significant decisions on the agency's behalf. This especially includes right-of-way acquisitions, sole source specifications, award of contracts, approval of construction payments and change orders, and other important matters. At stake are public funds and the agency's public, legal, and liability position. Small client agencies lacking qualified staff to oversee and give such approvals should consider retaining a separate, qualified individual or consulting firm to act in its behalf, thus providing checks and balances. It is also important to ensure the consultant's ability to rely on decisions and approvals relayed to it by the designated department and official(s).

Approvals

The contract must define the approval process and designate approval authority. Each work phase and selected sub-phases, especially including project

cost estimates, should be subject to agency approval and/or acceptance before the work proceeds further. This is critical not only to validate fee payments, but also to minimize problems of staying on schedule. The agency is responsible to arrange timely response related to approvals, disapprovals, and/or demand for corrections. It is common to specify client response time regarding consultant submittals for acceptance of a phase or sub-phase. Wherever possible, the lead department in the agency should have adequate control of reasonable turnaround time by others on the agency team whose comment and/or consent is needed. Other than acceptances and approvals made directly by the governing body, the contract should state who is authorized to act for the agency for the entire project or particular aspects of it.

Insurance and Liability Issues

Insurance and professional liability coverage is a vital, and potentially controversial, aspect of the contract. It is normal that both consultant and agency protect and hold harmless the other party for matters not under their control or outside the direct scope of the contract. Insurance costs are a normal part of consultant overhead and, as such, are indirectly compensated through the fees paid. Agencies should require that consultants place on file an acceptable policy or certificate of coverage for general liability and other important risks. In addition to such basic coverage, it is normal for the consultant to furnish evidence of a suitable professional liability policy to protect the agency from the consultant's negligent acts, errors, or omissions. (Such insurance is often, but incorrectly, referred to as errors and omissions insurance. The professional liability policies are typically limited to coverage for claims related to the legally-defined term of negligence.) Under professional liability policies, the firm protects its clients from claims, actions, and suits arising from any consultant negligence such as structural or operational failure stemming from inadequate or improper design or related professional services. Because professional liability coverage has become quite expensive, most consultants have a single policy which may have a limit as low as \$1,000,000. All clients and work are ordinarily covered by the one policy. An agency may be faced with paying a separate fee if it desires exclusive coverage or coverage higher than is customary for that particular profession. Bear in mind that with all clients covered under a single policy, earlier claim

settlements may reduce the amounts actually available to compensate the agency under its own claim.

Most consultant contract disputes revolve around risk allocation—indemnity, insurance, control of third parties, and performance outcomes. Risk allocation has a direct relationship to the insurance provisions and the agency's comfort with the policy limit. Attorneys for the respective sides should consult on risk provisions prior to arriving at a final contract.

Some consultants request that agency clients protect themselves through regular agency insurance programs rather than coverage by the firm; however, this generally fits poorly with public agency self-insurance programs now prevalent in local government. For example, the existence of compensating fee savings may be hard to document, and problems can occur in fair apportionment of costs among agency activities. Another problem can be the availability at a reasonable price of consultant insurance for certain types of activities, especially those dealing with environmental cleanup.

Conflict Resolution

Most contracts also deal in some fashion with handling and resolving claims and disputes. Modern dispute resolution techniques should be used, such as the American Arbitration Association's procedures. Careful consideration should be given to whether binding or non-binding arbitration shall apply. Many consultant agreements include provisions for cooperative defense of third party suits (especially involving contractors) where outrageous claims and/or efforts to drive "wedges" between agency and consultant are common. Contract language usually defers resolution of issues related to the consultant agreement itself until any third party matters are out of the way.

Notices

The contract should identify the consultant's point of contact with the agency (department and/or official). It should also state the mailing address and telephone numbers—including facsimile and e-mail information—of each party, and that mailing to the stated address constitutes legal notice.

Managing the Contract— Working with Consultants

Agency and consultant share a vital goal of successful completion of the work on schedule and within the budget. This bears repeating because it is only through strong cooperation, communication, mutual support, and a genuine sense of trust and confidence that the parties can achieve that goal. Important responsibilities of agency staff during performance of the consultant contract include:

- To meet with the consultant before the work commences to set a proper tone for working together and to resolve any initial concerns or questions;
- To monitor performance and move promptly to correct problems of both substance and timing, which is best done through frequent communication, summarized in periodic, written, consultant status reports;
- To be reasonably available for consultant contacts, including backup staff arrangements to minimize delay;
- To make all reasonable efforts in timely support and facilitation of the consultant's performance, such as information flow, reviews and approvals, problem solving, etc.;
- To ensure that agency deliverables are provided fully and on schedule;
- To link the consultant's work with involved and affected parties, client's departments, regulatory authorities, and the public, especially regarding reviews and approvals;
- To be fair-but-firm regarding rights and responsibilities of both the agency and the consultant;
- To assist in providing formal notices and/or publicity related to progress of the work;
- To encourage use of an interactive process;
- To work closely with the consultant in arranging and conducting meetings; these may be public participation sessions, formal presentations, or technical liaison. Staff should directly participate as appropriate, including moderator functions;
- To coordinate as necessary with related work of others including consultants, agencies, staff, departments, etc.;
- To arrange timely payment for work properly completed;

- To keep top officials and the governing body adequately informed on the progress of the work; and
- To arrange suitable recognition for contributions to success of the completed work.

The agency client has a critical responsibility to provide trained, competent personnel to work with the consultant and oversee performance. Most top agency administrators lack sufficient free time to work directly with consultants. Staff liaison people must be assigned for the day-to-day coordination and monitoring, and they must be properly briefed and trained on what is needed and expected. They should possess positive personality traits, particularly common sense, inquisitiveness, communication ability, people orientation, and initiative. Liaison staff will benefit greatly from the guidance and assistance of written policies and/or procedures. Top administrative officials must receive regular status reporting, give overall supervision, and personally participate as needed.

Monitoring is greatly facilitated when the consultant provides the agency with pertinent performance graphs, computerized project control printouts, lists of milestones completed, annotated schedules, or other items developed and used by the firm in its management of the contract.

At the conclusion of the contract, many agencies take steps to document the project experience and consultant performance. This is best done in writing and may include comments from the agency's clients and consultant. This information is valuable in improvement of consultant selection processes, staff roles in both selection and performance of the contract, and improvement of related policies and procedures.

Additional Considerations

Project Delivery Systems for Public Projects

There are a number of ways in which design and contracting services are utilized in constructing public and private buildings and other facilities. The most common one is known as design/bid/build, the traditional method in which a design is completed by either staff or a consultant and placed out for bids by qualified contractors. When consultants are used, two main contracts are involved, one with the designer and the other with the constructor. There is no contractual relationship between the consultant and the contractor and the QBS principles are not jeopardized.

Additionally, the private sector has long used an alternative technique known as design/build, in which a single contract is let to a firm or joint venture which takes full responsibility for the entire process from design through construction. The design/build team can be led by either a design professional or a construction contractor, or they may be equal partners. The contractor may also have designers as regular employees. Design/build has seen expanded use in the public sector, particularly at the federal level but also by state and local governments. Design/build presents many major differences from design/bid/build for all concerned, in relative responsibilities, liability, risk allocation, competitive pricing, and quality assurance. A major concern is the greater difficulty of ensuring objective use of QBS in the selection of the designer. The time frame may be longer or shorter, depending on the particular situation. In design/build's simplest form, the designer's professional obligations are to the construction team, not the owner, with a resultant lack of basic protection which would normally occur with an independent professional providing oversight on the owner's behalf.

In more recent years, at least three additional delivery systems have become more prevalent: construction management-at-risk, design-build-operate, and design/contract-build. Collectively, the approach to choosing which method to use for a specific project has come to be referred to as Value Based Delivery (VBD), a system that emphasizes qualifications in determining how to best meet a project's objectives.

The American Council of Engineering Companies (ACEC) has given considerable study to VBD systems' implications for owners and the qualifications, rights, and responsibilities of consultant designers. It has published a very informative book entitled *Project Delivery Systems Owner's Manual*, which is available from either the ACEC or APWA Bookstores. Some major points of interest and concern for public agencies are briefly summarized, with additional comment, in Appendix J.

The QBS Grant Program

It is the goal of the American Council of Engineering Companies (ACEC), the American Institute of Architects (AIA), the National Society of Professional Engineers (NSPE), the American Society of Civil Engineers (ASCE), and the American Public Works Association (APWA) to have an active, custom-tailored QBS program functioning in every state. The five participating groups aspire to make available to any public owner the complimentary services of an individual, or group of individuals, that can educate owners, step by step, about the QBS process. The services of a QBS program can be instrumental in familiarizing public owners with the QBS process and broadening the use of QBS among state and local agencies. The participating groups' intention is to provide funding and program support for states seeking to promote the use of QBS by state and local agencies.

In 1984, the Wisconsin Society of Architects initiated a grant-funded program for working one-on-one with local public agencies to educate them about, and help them implement, selection of professional consultants based on qualifications (QBS). The program was directed toward less sophisticated and infrequent users of architectural and engineering services. Within a few years, the program came to the attention of the AIA, ACEC, and NSPE through its Professional Engineers in Private Practice division.

Beginning in 1989, AIA, ACEC, and NSPE started funding and conducting a QBS Grant Program through which grants have been made each year to groups in various states. By 2005, approximately \$410,000 had been allocated to thirty states through the QBS Grant Program.

In 1999, APWA joined in this cooperative effort, and in 2006 ASCE joined the coalition. The five organizations are committed to the concept of QBS, regardless of the

project delivery system selected and, in particular, to expanding the use of QBS programs.

At the heart of this program, many states have implemented the services of QBS facilitators, who are available to local agencies on a complimentary basis. Trained generalists are preferred as facilitators (to maximize independence and objectivity in agency orientation and assistance), but participation by practicing or retired engineers and architects does occur, with clear rules to avoid conflicts of interest. For

example, when an active practitioner acts as facilitator, his or her firm may not compete for work from the particular agency. It has been found that full- or part-time employed facilitators are more effective than volunteers, so volunteer-based programs receive lower priority for grants.

Agencies desiring more information or hands-on assistance with QBS procedures may contact their state or local chapters of the sponsoring organizations.

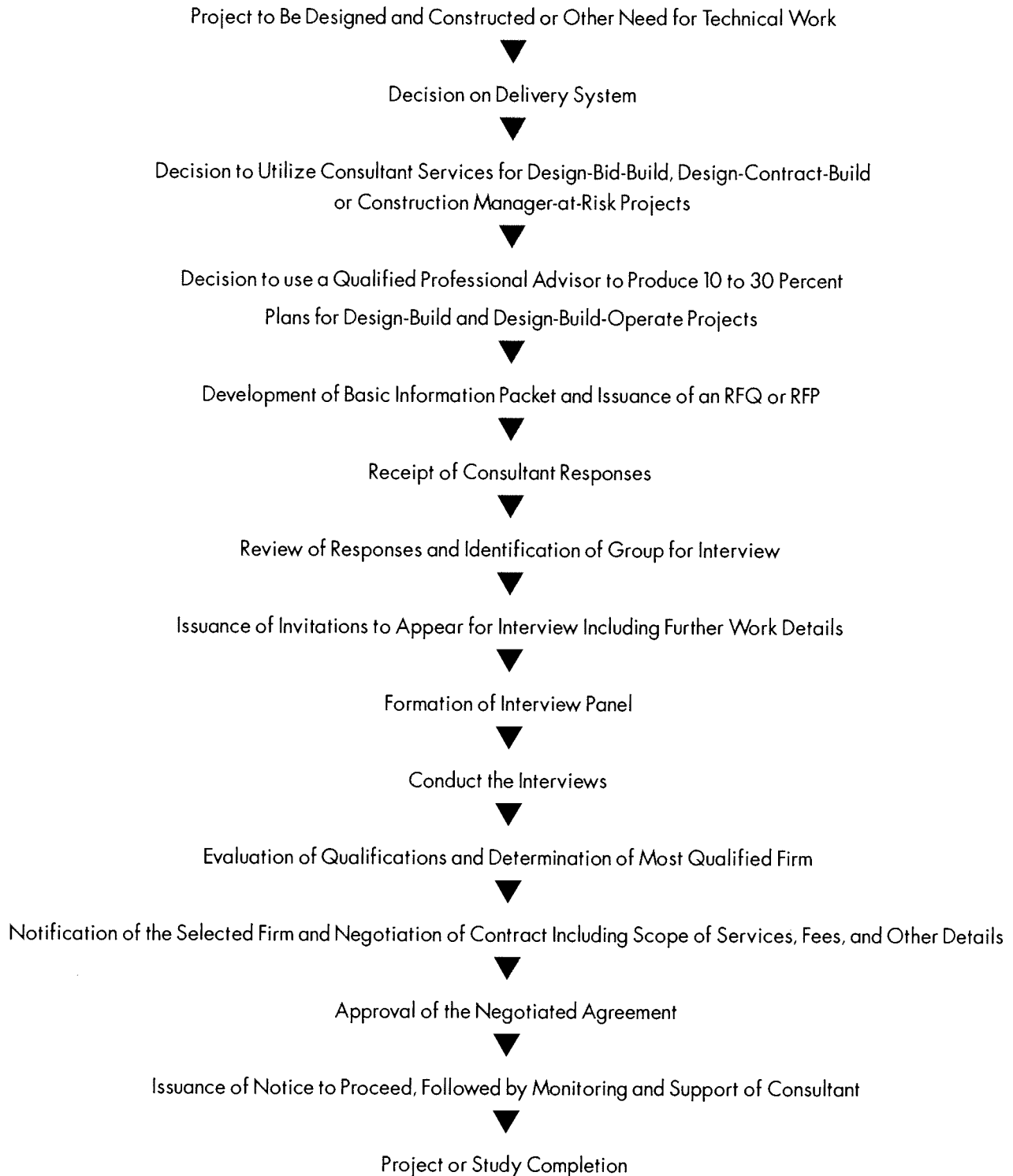
Summary

Thoughtful, careful, consultant selection and contract negotiation, and objective, supportive contract administration greatly enhance the prospects for reaching the common goal, a very successful project or study. Further, consultant services are an essential element of modern public works program delivery and deserve the best administrative management which a public works department can provide. The critical aspects of an effective program are:

- To set goals for the agency use of consultants,
- To establish clear, consistent criteria applying to selection,
- To use good management techniques throughout the selection process,
- To be open and fair in providing consultant opportunities to participate,

- To be thorough and objective in selection screening and evaluation,
- To be especially alert for completeness and clarity in the scope of services,
- To negotiate a fair and reasonable method of compensation,
- To ensure that the entire consultant contract is drafted with thought and care,
- To work with every consultant in a supportive, team atmosphere,
- ABOVE ALL ELSE, to select consultants on the basis of qualifications.

If your agency desires information or assistance regarding QBS or consultant selection processes, you may contact one or more of the organizations listed in Appendix L.

APPENDIX A**Typical Flowchart
Use of Consultant Services**

Appendix B

APWA Advocacy Position Statement (Full Text) on Qualifications-Based Selection of Professional Services Consultants

Statement of Purpose

The American Public Works Association (APWA) seeks to inform elected officials, regulators, policy makers and decision makers and the public at-large of its stated position on Qualifications-Based Selection (QBS) of professional services consultants.

Statement of Position

APWA believes that the public interest is best served when governmental agencies select architects, engineers, and related professional services and technical consultants for projects and studies through Qualifications-Based Selection (QBS) procedures as opposed to price. Basing selections on qualifications and competence, rather than price, fosters greater creativity and flexibility, and minimizes the potential for disputes and litigation. APWA has developed and published a document which better defines our position entitled, *Selection and Use of Engineers, Architects and Professional Consultants – Guidelines for Public Agencies*, also known as the "Red Book." Reference this publication for further information on this topic.

Background and Rationale

Since enactment of the Public Law 92-582 (the Brooks A/E Act, a summary of which can be found in Appendix C of the Red Book) in 1972, forty-four states currently use QBS procedures. They involve public announcement of technical contract opportunities, use of a formal selection and ranking process designed to identify the most qualified firm, and contract negotiation (including fees) with that firm. Over time, inattention to the QBS concept has led to a shift to cost-based selection by certain states and localities. However, some agencies that have abandoned QBS are returning to it after experiencing problems with projects designed by firms that were selected primarily on price.

Vital differences exist between cost-based and qualifications-based acquisitions by public agencies. Cost-based acquisitions for materials, supplies,

equipment, certain services (such as custodial) and construction are adaptable to a system that can reasonably provide an exact description of the service and expected outcomes, which permits vendors to offer firm prices with confidence. Cost-based acquisitions are best suited where the service can be definitively described and the outcome can be described in terms that are not open to wide interpretation.

In contrast, creative services, such as consultant technical services, seldom lend themselves to advance precise definition. Instead, reliance must be placed on the experience, expertise, creativity and overall intellectual capacity of the people involved who will ultimately determine the success of the project design or technical study. A detailed interview is the only effective way to evaluate a technical consultant's qualifications related to the work at hand. After selection, the consultant's scope of services, contract and compensation can be tailored specifically to the agency's requirements. When consultant selection is based solely or primarily on price, appropriate comparison of qualifications with the scope of work needed and the fee paid rarely occurs.

Further, design fees are generally a very small part of overall project costs, regardless of the method of consultant selection. Construction and life-cycle operation, maintenance, and liability exposure-costs are far larger. While some fee savings may be identifiable in cost-based selection processes, it is not possible to predict potential adverse construction or long-term cost impacts that might result from poor quality architectural, engineering or other professional services. Only through the QBS process can agencies be confident of consistently achieving the best value for studies, planning, design, construction, operation and maintenance of publicly funded projects.

Public agencies commonly seek to obtain the best value from public infrastructure investments, especially where true value results from creative endeavor. Bidding or other cost-based selection is unlikely to produce the best creative outcomes. When bidding, any prudent consultant must often include significant contingencies because of uncertainties about the true extent of effort required, and misjudgment frequently leads to reduction in the quality or scope of the design effort. Negotiating a detailed scope of work with the highest ranked firm under QBS provides

a basis for realistic fees and promotes full cooperation of the selected consultant in fulfilling the contract.

APWA has long supported quality in all public agency activities, focusing on economy, safety, efficiency, sound construction, serviceability, maintenance, and operations. QBS can reach satisfactory goals in all those areas, but price-based selection for consultant services cannot. The goal of highest quality results and lowest fees are in conflict, and history provides little basis to believe that bidding can or will actually produce lower fees than will QBS.

Mechanics of QBS Selection

QBS means that the qualifications of architect/engineer consultants are the primary determining factors in consultant selection. Agencies are normally required to give notice to potential consultants and other professional service providers regarding the available work and invite interested firms to respond. The responses are screened to determine the firms most qualified to meet the agency's needs. The screening results in a short-list, because it is seldom practical or productive to interview all who respond. This best-qualified group is invited to appear for interview.

Interviewers may include technically qualified persons, citizens, or elected officials having a special interest on behalf of the public agency-owner. The direct presentations, questions/answers, and supporting materials of each firm become the basis for ranking the firms in order of relative qualification to successfully accomplish the desired task.

The top-rated firm is then invited for contract negotiations. Price is not ignored, but a fair and reasonable price is mutually agreed upon once details on the kinds and extent of work required of the consultant have been established through the negotiations. If agreement cannot be reached with the top firm, negotiations are terminated with that firm and the negotiations are commenced with the firm judged next-best qualified. Finally, a contract which includes a detailed scope of services, expected outcomes, price, schedule and other details is approved by the elected body authorized to execute contracts.

Sponsor

Engineering and Technology Committee

Appendix C

Summary of the Brooks Act— Federal Consultant Section

The Brooks Act, Public Law 92-582, was adopted in October 1972, as an amendment to the Federal Property and Administrative Services Act of 1949. It establishes the following policy on selection of architectural and engineering services for the United States Government:

The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the

type of professional services required at a fair and reasonable price.

Of greatest importance, it requires use of the Qualifications-Based Selection (QBS) approach for such selections, under which consultant contracts are negotiated on the basis of demonstrated competence and qualifications for the particular professional services to be obtained at a price which is fair and reasonable for both parties. Specific price quotations are excluded from the selection process.

The Brooks Act was and is supported by all affected professional societies. An important result of the Act was adoption by many states of similar legislation governing state, regional, and local entities.

The federal selection process is similar to that recommended in this booklet and the processes followed by many local agencies. There are seven basic steps to the federal process:

1. Public solicitation for required professional services;
2. Submission of an annual statement of qualifications and supplemental statements of ability to design specific projects for which public announcements were made;
3. Provisions for firms to submit annual qualifications statements covering their capabilities;
4. Evaluation of firms based on both annual and work-specific needs;
5. Interviews based on short lists of at least three submitting firms;
6. Ranking of not less than three top qualified firms; and,
7. Negotiation of a service contract with the top ranked firm.

Other federal regulations do permit agencies certain flexibility in application of the Act. "Firm" means individuals, partnerships, corporations, associations, or any other entity legally entitled to practice in the professional area involved. Professional services include those requiring registration, work associated with research, planning, development, design, construction, alteration, or repair of facilities, and related work normally performed by engineers or architects.

Availability of work is made through the Department of Commerce's *Commerce Business Daily*, published Monday through Friday, although some services are not noticed in the CBD. These include needs such as quick turnaround, those involving national security, and those to be secured by amendment of current contracts. Firms must express interest by submitting federal standard form SF 330. Evaluation boards perform the reviews, establish the "short lists," and conduct the interviews, with QBS as the basis. Board members possess expertise appropriate to the subject matter involved. While most are federal employees, outside persons participate in some cases (if from the private sector, their firms become ineligible for the work in question). Short lists often contain only three

names but may be longer. Interviews are brief, from 30 to 60 minutes.

Following the interviews, the evaluation board files a report with the federal agency head or designated alternate, ranking the three firms judged to be most qualified, from which the final selection is made. No additional names may be added by the agency. If the agency head (or alternate) prefers other than the firm recommended as best qualified by the Board, a written explanation for that choice must be prepared.

After final selection, a Contracting Officer undertakes negotiations with that firm, following applicable Federal regulations. The selected firm is requested to submit a fee proposal involving both direct and indirect costs for consideration during the negotiations. Fees of more than \$100,000 are subject to audit. Should a mutually acceptable fee not be arrived at, the Contracting Officer may terminate the negotiations, turning to the next ranked firms. This happens rarely, however. Under other federal law, design fees are limited to 6 percent of estimated construction cost. Federal agencies commonly interpret this limitation to exclude field investigations, surveys, geotechnical work, master planning, and construction services.

Appendix D

Summary of State QBS Laws

Reflecting the Federal Brooks Act, QBS legislation has been enacted in 46 states as of 2006. While the legislation varies from state to state in terms of statutory limitations on contract amounts, whether the statute applies to local as well as state contracts, and certain other specific limitations, the use of QBS for procurement of professional services has become a common practice throughout the country. Specific state laws should be consulted for further information regarding QBS legislation in individual states.

The following table consists of information provided to the American Council of Engineering Companies (ACEC) by the Member Organizations regarding QBS laws in the states. This information is provided for educational purposes only and is not intended to constitute legal advice. ACEC provides no warranties as to the accuracy of this information, especially as it is by its nature subject to change at any time. ACEC disclaims any and all liability for damages or losses of any kind, including direct, indirect, incidental, consequential or punitive damages, and attorneys' fees or costs, arising out of or relating to any use of this information.

State	QBS Law	Statute #	QBS Law: Applies to State Contracts	QBS Law: Applies to Local Units	Registration Board: Prohibits response to price proposal	Registration Board: Enforced?	Comments
AL	Y*	AL-ST 41-16-21	Y	N	Y	N	*Not true QBS, prohibits low-bid
AK	Y	AK ST § 36.30.270					Certain Exemptions
AZ	Y	AZ ST § 34-603	Y	N	N		
AR	Y	AR ST § 19-11-802	Y	Y	N		
CA	Y	GOV. CODE § 4525	Y	Y	N		
CO	Y	CO ST § 24-30 Sec. 1401-1408	Y	N	N		
CT	Y	CGS § 4B-58 and 13B-20	Y	N	N		Applies only to Dept. of Public Works and Dept. of Transportation.
DE	Y	DEST 29 § 6962	Y	Y			
FL	Y	FL ST § 287.055	Y	Y	N	N	
GA	Y	OCGA 50-22	Y	N	N		As of 2005
HI	Y	HRS § 103D-304	Y		N		As of 2003
ID	Y	ID Code § 67-2320	Y	Y	N		
IL	Y	30 ILCS 535	Y	Y*	N		*Local law is cited as: 50 ILCS 510
IN	Y*	IN ST 5-16-11.1			N		Price may be considered
IA	N						Agencies generally follow QBS
KS	Y	KSA 75-5801	Y	N	N		
KY	Y	KRS § 45A	Y	N*	N		*Local units "may" use QBS.
LA	Y	LA R.S. 38:2181-2316	Y	Y	N		Strengthened in 2006
ME	Y	ME ST T. 5 § 1742	Y	N	N		
MD	Y	§ 13-308	Y	N	N		Under \$100,000 price is 40% of selection criteria

State	QBS Law	Statute #	QBS Law: Applies to State Contracts	QBS Law: Applies to Local Units	Registration Board: Prohibits response to price proposal	Registration Board: Enforced?	Comments
MA	Y		Y	N	N		QBS applies to vertical construction, not horizontal
MI	Y	PA 504			N		
MN	Y*	§16C	Y	N	N		QBS applies only to state vertical construction. *Allows some price consideration.
MS	Y	No. 17.056 registration law					Administrative Rule
MO	Y	RS Mo. § 8.285	Y	N	N		
MT	Y	18-8-201, MCA	Y	Y	N		
NE	Y	81-1701 thru 81-1721	Y	Y	Y		Projects over \$40K
NV	Y	NV ST 625.530	Y	Y	Y	Y	Projects over \$35K
NH	Y	NH ST § 21-I:1	Y	N			
NJ	Y	P.L. 1997, CH. 399			N		Local governments strongly encouraged to use QBS.
NM	Y	NM ST § 13-1-117.2 thru 13-1-124	Y	Y	N		Universities exempt. QBS for contracts over \$25K.
NY	Y	§ 136A	Y				
NC	Y	G.S. 143-64.31	Y	Y	Y		
ND	Y	54-45.7	Y	N			
OH	Y	153.65.71	Y	Y*	N		*Except home rule municipalities
OK	Y	O.S. 61, 60-65	Y	Y	Y	N	Updated in 2000 to include all political subdivisions.
OR	Y	Ch. 948	Y	Y	N		Applies to local units when state funds are involved.
PA	Y	PA ST 62 PA C.S.A. § 905	Y		N		
RI	Y	RI ST § 45-55-8.1	Y	Y			
SC	Y	SC ST 11-35-3220	Y	Y	N		
SD	N		N	N	N		
TN	Y*	TCA § 12-4-106	N	Y	N		*Requires qualifications, allows price
TX	Y	TX GOVT § 2254.004	Y	Y	Y	Y	
UT	Y	UT ST § 63-56-42	Y	N	N	N	
VT	N						Requires qualifications plus price
VA	Y	VA ST § 2.2-4301	Y	Y	N		
WA	Y	RCW 39.80	Y	Y	Y	N	
WV	Y	WV ST § 5G-1-1	Y	Y			
WI	N				N		Not required, but most state agencies use QBS.
WY	Y	WY ST § 9-2-1031	Y				Allows discussion of fee after qualified firms are selected

Appendix E

Sample Local Agency QBS Criteria for Use in Consultant Selection

The following list is generally based on one which has been used successfully over 25 years (without significant change or controversy) by a medium-size city which engages consultants for the bulk of its design work.

- Educational background of key consultant personnel;
- Experience record of the consultant team;
- Record of success by the consultant, demonstrated by work previously performed for the agency or similar work performed for others;
- Individual within the consultant's organization who will have direct charge of the work;
- Whether the consultant has adequate staff or other resources such as subconsultants to perform the work within the time allowance;
- The approach the consultant proposes to use for the work;
- The ability of the consultant to make effective public presentations of the report and/or design as may be required;
- The ability of the consultant to work effectively with agency staff, other public agencies, and related parties as may be required during the course of the design, study, or other technical services;
- Pertinent new ideas which may be presented by the consultant during the course of the selection process;
- Where appropriate, whether the consultant has adequate knowledge of local conditions;
- Whether the consultant has supplementary technical certifications appropriate to the work involved;
- Whether the consultant has available experienced, capable, and acceptable resources and design professional personnel or consultants as may be pertinent to the particular project;
- Whether the consultant has demonstrated an appropriate level of effort as reflected by person-hours and classification of personnel allocated to the various tasks;
- Demonstrated continuing interest by the consultant in the success, efficiency, and workability of facilities the consultant has designed, both during construction and after they are placed in operation;
- Whether the consultant is already engaged in another project which has direct and substantial physical relationship to the proposed project;
- When an existing facility is being modified or added to, whether the original designer of the facility should be retained for the new work on grounds of economy, detailed knowledge of the existing facility, or aesthetic or technical necessity of involving the same design philosophy;
- Whether the consultant has an effective quality control program, such as independent design review;
- The consultant's record of keeping construction costs within project budget and design estimates;
- The consultant's ability to furnish adequate and effective construction supervision services, where such services are an inherent part of a "package" of services for which the consultant is employed;
- Financial stability and capability of the consultant to carry out the kinds of extent of work needed;
- Availability to the consultant of adequate amounts and forms of liability and professional responsibility insurance;
- Whether the consultant has offered an appropriate response to relevant policy regarding involvement of minorities, women, disadvantaged business, affirmative action, etc., and,
- Other factors or special characteristics of the firm, its team, or its outlook which provide a unique match with the agency's needs and/or objectives.

This agency is the commercial center of a large region and has many consultant firms with home or major branch offices within its boundaries. Accordingly, it also uses several "tie-break" criteria:

- All other things being equal, local consultants are preferred to non-local consultants;
- All other things being equal, non-local consultant firms which include local consultants on their team are preferred to non-local firms which do not; and
- All things being equal, consultants who have not worked for the agency recently are preferred to those which have.

The above criteria reflect important qualifications-based considerations in both technical and policy areas. Agencies may find that one or more are not applicable to their needs or that additional criteria should be included

(examples might be minority and disadvantaged business provisions or ensuring fair distribution of work over time including to local firms). Such policies may also include the assignments of weights to the selected criteria for

guidance or assistance to members of interview panels. It is vital, however, that no criteria be included that interfere with or eliminate the underlying principle of Qualifications-Based Selection.

Appendix F

Some Consultant Information Helpful in Evaluating Professional Qualifications

General qualifications information:

1. Name(s) of firm(s)-if joint venture, whether special or on-going relationship;
2. Mailing address, phone, fax, e-mail;
3. Location of principal office(s);
4. Name(s) of firm principal(s);
5. Educational background of firm principal(s);
6. Professional licensing of principal(s)-kind, where issued;
7. General practice, or specialization in certain subject area(s);
8. Major experience of firm-clients, type of work, locations;
9. Major experience of firm principal(s)-type of work, locations, how long;
10. Range of cost for representative projects and/or studies;
11. Special capabilities such as environmental, community outreach, innovation, etc.;
12. Summary of past work for (your public agency);
13. Summary of past work for other clients in (your community);
14. Availability of special professional or ancillary resources if needed (legal, financial, etc); and,
15. Other relevant information, as desired by the firm (hold a reasonable amount).

Qualifications information related to a particular project or study:

1. Name of proposed project or study manager— with licensing and professional experience;
2. Extent of participation by (named) firm principal(s) phases, amount of time, duties;
3. Location of offices(s) where the bulk of the work will be carried out;
4. If the above-designated office is not local, what will be done locally and by whom;
5. How work team will be organized - staff types and numbers, responsibilities, etc.;
6. Approach to the work – concepts, methodology, priorities, sequence of work, time lines;
7. Extent of work to be done directly by firm vs. portion(s) to be “farmed out”;
8. Name(s) of associated firm(s), if any, and their role(s);
9. Name(s) of proposed sub consultants-with licensing and experience, and their role(s);
10. Similar projects or studies – Experience: clients, cost, dates, other details;
11. Similar projects or studies – Track record: cost control, completion on time, acceptance;
12. Special capabilities related to subject project or study;
13. General statement regarding extent of proposed client and public meetings;
14. Special and/or innovative concepts proposed for use in work (potentially confidential);
15. General fee information, if requested of all candidate firms, such as “two envelopes”;
16. Such special information as requested assistance with grants, affirmative action, other.

Appendix C

Sample Interview Rating Form—Not Weighted

Interview for (subject, project, or study) _____ Date 20 _____

Name of Firm or Joint Venture _____

Place of Business _____ Years in business _____

Intends to do work only "in-house" Y N

Or proposes to use subconsultant(s)? Y N

Worked for (this agency) before? Y N

Worked in (this community) before? Y N

Lead presenter for firm _____

Is proposed project manager? Y N

QUALIFICATION FACTORS

SCORE (1 – 10)

- General professional experience

- Specific professional experience for this work:

Environmental aspects

Technical aspects

Operational aspects

Maintenance aspects

Public and community aspects

Track record on performance time aspects

Track record on cost control aspects

Litigation/Arbitration/Disputes (Last 3 years)

OVERALL RATING

- Proposed used of subconsultants:

Qualifications

Proposed areas of responsibility (appropriate or not)

Extent of participation (satisfactory, too little, too much)

OVERALL RATING

- Approach to the work to be done:

Overall understanding of the project

Presentation of alternatives

Logical sequence and organization

Innovative methods or concepts proposed

Proposed deliverables

OVERALL RATING

- Qualifications of proposed project manager:

Pertinent personal professional experience _____

Ability to express ideas _____

Ability to manage the working team _____

Ability to work with (this agency) _____

OVERALL RATING _____

- Adequacy of proposed staff resources:

- Numbers/workload _____

- Types and quality of staff _____

- Quality of presentation:

Clarity of presentation _____

Completeness of presentation _____

Quality of audio-visuals (if used) _____

Response to questions _____

OVERALL RATING _____

TOTAL SCORE _____

Comments (Use additional sheet if necessary) _____

Signature of Rater (optional) _____

Appendix H

Sample Interview Rating Form—Weighted

Interview for (subject, project, or study) _____ Date _____ 20____

Name of Firm or Joint Venture _____

Place of Business _____ Years in business _____

Intends to do work only "in-house" Y N

Or proposes to use subconsultant(s)? Y N

Worked for (this agency) before? Y N

Worked in (this community) before? Y N

Lead presenter for firm _____

Is proposed project manager? Y N

QUALIFICATION FACTORS

SCORE (Max Points)

- General professional experience (10)

- Specific professional experience for this work:

Environmental aspects _____

Technical aspects _____

Operational aspects _____

Maintenance aspects _____

Public and community aspects _____

Track record on performance time aspects _____

Track record on cost control aspects _____

Litigation/Arbitration/Disputes (Last 3 years) _____

OVERALL RATING (20)

- Proposed used of subconsultants:

Qualifications _____

Proposed areas of responsibility (appropriate or not) _____

Extent of participation (satisfactory, too little, too much) _____

OVERALL RATING (15)

- Approach to the work to be done:

Overall understanding of the project _____

Presentation of alternatives _____

Logical sequence and organization _____

Innovative methods or concepts proposed _____

Proposed deliverables _____

OVERALL RATING (15)

- Qualifications of proposed project manager:

- Pertinent personal professional experience _____
- Ability to express ideas _____
- Ability to manage the working team _____
- Ability to work with (this agency) _____

OVERALL RATING _____ (15)

- Adequacy of proposed staff resources:

- Numbers/workload _____ (10)

- Types and quality of staff _____ (10)

- Quality of presentation:

- Clarity of presentation _____
- Completeness of presentation _____
- Quality of audio-visuals (if used) _____
- Response to questions _____

OVERALL RATING _____ (5)

TOTAL SCORE _____ (100)

Comments (Use additional sheet if necessary) _____

Signature of Rater (optional) _____

Appendix I

For Use with Appendices G and H

Summary of interview for (subject, project, or study) _____

Date _____

Candidate Firms	Rater #1	Rater #2	Rater #3	Rater #4	Rater #5	Rater #6	Rater #7	All Raters
	SCORE	SCORE	SCORE	SCORE	SCORE	SCORE	SCORE	TOTALS
#1 _____	_____	_____	_____	_____	_____	_____	_____	_____
#2 _____	_____	_____	_____	_____	_____	_____	_____	_____
#3 _____	_____	_____	_____	_____	_____	_____	_____	_____
#4 _____	_____	_____	_____	_____	_____	_____	_____	_____
#5 _____	_____	_____	_____	_____	_____	_____	_____	_____
#6 _____	_____	_____	_____	_____	_____	_____	_____	_____
#7 _____	_____	_____	_____	_____	_____	_____	_____	_____
Totals (for info only)	_____	_____	_____	_____	_____	_____	_____	_____
Averages (for info only)	_____	_____	_____	_____	_____	_____	_____	_____

Comments and Conclusions _____

Most Qualified Firm _____

Note: In order to assure the results of the numeric total and that average scores are not unduly influenced by the ranking of an individual rater, raters should also perform a secondary check by simply ranking the firms in order of individual rater preference and calculating the average. For example, each rater would rank his/her top five firms by assigning five points for the top selection, four points for their second choice, and so on, followed by calculating the average group ranking. This exercise will allow for a crosscheck of which firm is ranked highest overall by the group and avoid a result that could be skewed by a single high (or low) numeric score.

Appendix J

Qualifications-Based Selection in Design/Build Project Situations

Both public and private organizations make frequent use of the design/build project concept. Under this concept, a contract is awarded to a single firm or joint venture which both plans and designs the project and constructs it. The sponsor or primary partner is usually a construction company, which either has engineers and architects on staff or arranges for such technical assistance through its own consulting contract(s). Advantages of this process can be expedited completion, better coordination and, as many owners believe, lower costs. There are some potential risks, however, including how to pinpoint professional and legal responsibility for the design. There are also uncertainties about the esthetic, maintenance, and operational results, the latter because the owner is one step removed from the planner/designer whose actual client is the contractor. Design/build requires the greatest possible harmony between the professional and the constructor if costs and schedules are managed and the customer satisfied. In most complex project situations, final pricing of the project cannot occur until late into the design stages. Private organizations, not being subject to competitive bidding, can accommodate this with more flexibility than public agencies.

The design/build method is not entirely new to public agencies. However, there is increased interest by governments at all levels. The fundamental question for interested agencies is whether they, too, may do this through negotiations or must they comply with competitive bidding requirements. The latter obviously complicates the situation.

It is critical for a public agency to be able to ensure its satisfaction regarding the designer's professional qualifications and other factors ordinarily deemed vital in separate consultant selection. Here is where compatibility with competitive bidding requirements requires most thought before proceeding. For example, most construction specifications refuse to recognize subcontractors, the intent of which is to make the contractor solely responsible for all aspects of the job. For design/build most contractors are licensed in fields unrelated to professional licensing and, thus, are legally unable to interfere with the designer's decisions or actions. The contractor's only

recourse is to sue the subcontracting designer in case of problems or disputes. And to whom does the public agency turn if the subcontracted engineering or architecture turns out to be faulty but the construction itself is not? Another concern is whether the sponsoring contractor is capable of effectively managing non-construction disciplines. Many likely can, but experience shows that some cannot, so how do you tell the difference beforehand?

In design/build, the public agency must develop a clear and strong specification which permits contractor bidding as much as possible on an apples-to-apples basis, if the price is the sole criteria. This must include project goals, operation, and content, and some guidance regarding expectations on appearance. Also, there must be provisions on materials and other quality aspects. These specs are not easily prepared, because the agency will have to live with the results once it awards a contract. Increased project size or complexity only adds to the difficulty.

- Experiences of other agencies may provide useful guidance. Interested agencies are urged to make contacts within their area or state to learn of applicable legal or regulatory restrictions and to obtain the thoughts of area professional and contracting organizations. A good source of information is provided by the Design-Build Institute of America (DBIA), at their website, www.dbia.org, including competitive selection and negotiated selection of design-build teams.

At the bottom line, under no circumstances should a public agency accept an inadequately qualified project planner or designer in a design/build situation. Public agencies and all responsible consultants share a concern that qualifications govern selection in design/build and that consultant professional responsibility not be diminished or eliminated. For this reason, it is unwise to merely accept a construction contractor's judgment that any particular consultant is well suited for the work in question. What backgrounds and interests they share do not necessarily nor adequately represent factors and concerns most important to a public agency responsible for long-term operation and maintenance of the facilities once built. Agencies must also have a clear ability to ensure proper designer performance without going through a construction contractor. Use of public funds always carries a special burden for integrity and value.

Appendix K

Getting Assistance For, or More Information About Qualifications-Based Selection

To many lay people, especially those who serve on local governing bodies and taxpayer associations, there is an inherent conflict between QBS and the “sacred” principle of getting the lowest cost through competitive bidding. While most people would not pick a doctor or attorney based solely on cost, some don’t view architects and engineers in the same professional light. They neither have a “feel” for the creative aspects of design, for which clear, detailed specifications are impractical to write, nor do they recognize the “life cycle” cost aspects of projects. There are also many local agency purchasing managers who either don’t see the difference between acquiring engineering services and purchasing pencils, or they may resent public works having responsibility and control over the process.

The Brooks Act of 1949 mandates that QBS must be used on all federally funded projects. The act states in part: “The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.”

In many states, QBS is a matter of law. But, that doesn’t necessarily make compliance an easy matter, nor is QBS within the capability of every agency’s staff. The staff may be too small or too inexperienced or lack sufficient technical training. Further, often today’s public works top managers do not rise through the organization or from within the profession but are selected from other disciplines or from the private sector. The managers’ past experience frequently lacks involvement in consultant selection, or they have not had much contact with consultants or other designers. Top managers educated in non-technical curricula, such as business or public administration, may have little or no feeling for the technical aspects of public works.

Minnesota courts have twice stated that price bidding of professional services is not in the public’s best interest.

Fortunately, in most areas there are ways in which the QBS message can be provided for the enlightenment and orientation of local officials, elected or appointed. Many times this information is sought out by the agency, but in other cases it is up to interested professional organizations (such as APWA, ACEC, NSPE, and AIA) to take the initiative.

Another growing opportunity is offered through QBS facilitators, often provided through the QBS Facilitator Program described earlier in this manual. These people are very knowledgeable regarding the QBS process and underlying principles. In some cases, they are grant-funded through professional organizations or other groups. Their role is partly to “sell” the QBS concept and partly to offer assistance in its implementation. They introduce the QBS concept to local agencies where appropriate, discuss desirable methods of managing the process, and provide relevant printed materials. Annual conferences are conducted to train and orient facilitators; these are especially important in sharing recent developments (both positive and negative) around the country which affect the QBS process and facilitator activities.

Appendix L contains contact information for a number of professional organizations which may be of assistance in organizing and carrying out a consultant services program.

Appendix L

Where to Obtain Additional Information or Assistance

American Council of Engineering Companies (ACEC)
1015 15th Street, NW #802
Washington, DC 20005-2605
Phone: 202-347-7474 Fax: 202-898-0068
E-mail: acec@acec.org

The American Institute of Architects (AIA)
1735 New York Avenue, NW
Washington, DC 20006-5292
Phone: 202-626-7300 or 800-AIA-3837
Fax: 202-626-7421
Website: infocentral@aia.org

American Public Works Association (APWA)
2345 Grand Boulevard, Suite 700
Kansas City, MO 64108-2625
Phone: 816-472-6100 or 800-848-APWA
Fax: 816-472-1610
Website: www.apwa.net

American Society of Landscape Architects (ASLA)
636 Eye Street, NW
Washington, DC 20001-3736
Phone: 202-898-2444 Fax: 202-898-1185
Website: www.asla.org

Association of Consulting Engineers of Canada (ACEC)
130 Albert Street, Suite 616
Ottawa, ON, Canada, K1P 5G4
Phone: 613-236-0569 or 800-565-0569
Fax: 613-236-6193
E-mail: info@acec.ca

National Society of Professional Engineers (NSPE)
1420 King Street
Alexandria, VA 22314-2794
Phone: 703-684-2800 Fax: 703-836-4875
Website: www.nspe.org

Appendix M

Sample Notification of Shortlist Selection

TO: (Name of firm not selected for further consideration)

FROM: (Representative of Owner/Agency)

RE: (Project Name)

Thank you for your interest in the above-referenced project. The **(agency)** staff has reviewed the proposals submitted for this project and, after careful consideration of all interested firms, has shortlisted the firms of _____, _____ for further consideration. Although your firm was not shortlisted for this project, we appreciate your interest in working with **(agency)**, and we look forward to perhaps working with you on a future project.

XXX.xxx

Appendix N

Sample Invitation to Interview

TO: (Name of firm not selected for further consideration)

FROM: (Representative of Owner/Agency)

RE: (Project Name)

The **(agency name)** staff has completed its review of the consultant proposals for providing design services on the above-referenced project. Based on your firm's response to the **(agency's solicitation)**, staff would like to meet with representatives from your project team on **(date)** to discuss your firm's proposal and qualifications for this project.

Consultant interviews will be held at the following times:

(Time) (Firm Name)

(Time) (Firm Name)

(Time) (Firm Name)

(Time) (Firm Name)

The interviews will be conducted at **(location)**. The interview panel will include representatives from **(list departments)**. A maximum of 45 minutes will be allowed for each interview, including 15 minutes for set up/removal of presentation materials. Each consulting firm will be allowed up to 20 minutes for their presentation, followed by up to 25 minutes for questions from the interview panel.

In the interest of time, firms do not need to provide lengthy information on their size, background or availability. (These conditions are generally presumed to have been met.) Rather, each firm should specifically address the following topics in their presentation:

- Demonstrate a clear understanding of the agency's purpose and need for this project.
- Discuss the recent, relevant experience of the project team members on projects of a similar nature.
- Demonstrate the expertise/experience of the project team members in addressing the **(key issues)** that are relevant to this project.

Following the interviews, the **(agency)** panel will decide which firm is best qualified for this project. That firm will then be notified and asked to prepare a preliminary scope of work and fee proposal for review by the agency, the terms of which will be negotiated at follow-up meetings with the firm. Upon the successful completion of the scope and fee negotiations, and execution of **(agency)** consultant contract, a purchase order and notice to proceed will be issued by **(the agency)**.

If you have any questions regarding the interview, process, or logistics, feel free to contact me.

XXX.xxx

Appendix ①

Sample Notification of Selection Results (Firm Not Selected)

TO: (Name of firm not selected for further consideration)

FROM: (Representative of Owner/Agency)

RE: (Project Name)

On behalf of **(the agency)**, this is to express our appreciation for your project team's time and effort in responding to **(the agency's)** solicitation for professional services on the above-referenced project. Your team did an outstanding job in the interview, and the selection decision by **(the agency)** for this project was a difficult one. However, after careful consideration, **(the agency)** staff feels that the firm of _____ is the "best fit" for this particular project.

Although your firm was not selected for this project, we look forward to the opportunity of working with you on a future project for **(the agency)**. Again, thank you for your interest in this project.

XXX.xxx

Appendix P

Sample Notification of Selection Results (Selected Firm)

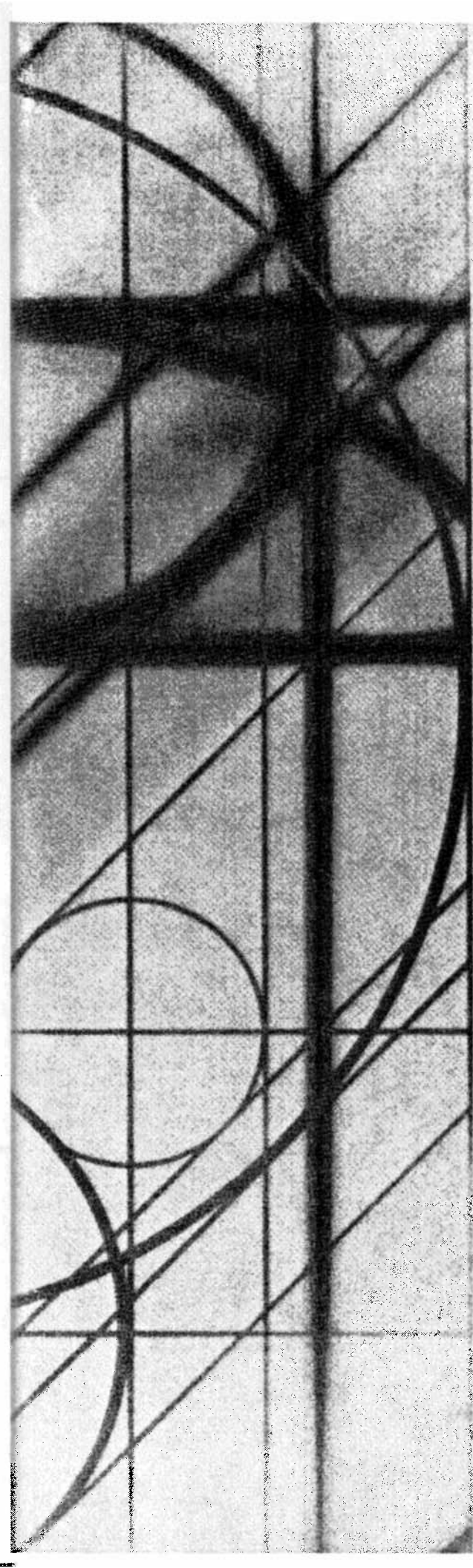
TO: (Name of firm not selected for further consideration)

FROM: (Representative of Owner/Agency)

RE: (Project Name)

Congratulations! Based on your firm's qualifications and experience, **(the agency's)** consultant selection committee feels that your firm is best qualified to provide professional services to **(the agency)** for the above-referenced project. An agency representative will be contacting you soon about meeting to discuss a draft scope of work for this project. This will be followed by fee negotiations based upon the agreed upon scope of work. We look forward to working with your firm on this project.

XXX.xxx



ADWA
ADWA