



November 12, 2019

The American Council of Engineering Companies of New York (ACEC New York) represents the interests of nearly 220 engineering companies, many of which provide services to the City of New York. Twenty-five percent of our member firms are certified MWBEs. We appreciate the opportunity to share this testimony regarding the Procurement Policy Board's (PPB) Proposed Rule amendment in relation to construction-related services, which includes engineering.

The rule amendment would change the evaluation process in the following way:
"In ranking proposers for construction-related consultant services by technical merit, agencies must, except with the approval of the CCPO, provide a point preference of five percent (5%) of the total technical points earned in the evaluation of its proposal to all vendors that are M/WBEs or State-certified M/WBEs before ranking proposers by technical merit. The point preference percentage, if any, shall be included in the RFP."

On behalf of our members, we oppose this amendment. In our view, this rule change is not in the best interest of the City. It is not an appropriate method of increasing MWBE participation in City contracting, and it is not based on any findings of the recent City diversity study. In addition, there has been no opportunity for discussion of the unintended consequences this rule change could have.

This change would provide a 5%-point preference to the technical rankings of one segment of proposers within the construction-related services industry, which includes professional design services. This change to the rules would undermine the city's current procurement policy for professional design services, which is called Qualifications-Based Selection (QBS).

With QBS, the procuring agency selects the number one technically ranked firm, the firm then submits the cost proposal and the agency evaluates and negotiates the cost with the selected design professional based on knowledge of the anticipated cost of such services. Under QBS, agencies select firms from which to procure engineering and architectural services based upon firm qualifications, capacity and skill.

The proposed PPB rule change would establish new, non-technical factors (gender and race) as part of the basis for the technical assessment of design firms going forward. City policy would no longer be to select the firm with the best credentials and design approach, the very reason QBS was adopted in the first place - to encourage competition based on talent and ideas.

No provision of state or local law requires such an undercutting of best practices and there has not been, to our knowledge, any study of what this change would actually accomplish.

The outcome could result, particularly for the largest contracts, with only a small number of certified firms advantaged. In this case, this limited number of firms could then have to perform multiple contracts simultaneously, creating the very questions about capacity that QBS was intended to avoid. This amendment creates the very real prospect of a firm whose proposal was not ranked first, because it was scored to have limited managerial or professional capacity, to now be ranked first on numerous projects at once.

In 2005, a MOCS report summarized the City's findings with respect to QBS. The City found using QBS successfully expanded competition and attracted firms who had no prior contracts with the City. The City found with "the presence of such a large pool of consultants from which to select, the likelihood of design excellence increased." Subsequently, in 2006, the PPB adopted QBS as the method for selecting design professionals for City capital projects. QBS is also used by the federal government and 44 states.

It bears noting, this proposal was not included in the PPB's regulatory agenda for this fiscal year, and the recently concluded Disparity Study did not make any findings that race or gender played a role in the technical evaluation of proposals on engineering contracts.

Furthermore, we have been unable to confirm whether the bonus will be available to a newly formed joint venture with a 51% certified MWBE ownership, where the newly formed JV itself has not yet been certified, nor do we know how this rule change would apply to federally funded projects that are required to use QBS. Additionally, we do not know how the newly amended local law's provisions will impact certified firm participation and capacity growth.

ACEC New York supports a robust MWBE program. Many of our member firms are MWBEs. On behalf of our entire membership, we urge you to recognize that QBS is a fundamental principle of the professional design industry, to achieve design excellence. This has been the City's principle as well, and this well-meaning proposal is inconsistent with this as it pertains to construction-related services.

We request that the PPB withdraw the proposed amendment until you have had the opportunity to evaluate the effects of Local Law 174 of 2019, which updated MWBE goals after the latest Disparity Study was completed.

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The American Council of Engineering Companies of New York (ACEC New York) is the voice of the professional engineering community, representing 300 member firms throughout New York State that collectively employ close to 30,000 people statewide, with a concentrated presence of firms located in New York City. Our members plan and design the structural, mechanical, electrical, civil, environmental, plumbing, fire protection and technology systems for the city's buildings and infrastructure.