



SUPPORT: S.4577 (Comrie)/A.5520 (Hyndman)

Qualifications-Based Selection (QBS)

The American Council of Engineering Companies of New York (ACEC New York), an organization representing nearly 300 engineering and related firms totaling more than 33,000 employees in New York State, **supports S.4577 (Comrie)/A.5520 (Hyndman)**.

The use of a qualifications-based approach for the procurement of architectural and engineering services on publicly funded projects was codified into law (P.L. 92-582) by the U.S. Congress in 1972. Also known as the "Brooks Act," this law requires engineers and architects to be selected for all federal government projects on the basis of qualifications, subject to negotiation of fair and reasonable compensation. Today, most states follow QBS procedures for procuring architectural and engineering services, including the state of New York.

In 1980 the New York State Legislature passed, and the governor signed into law, Chapter 562, requiring all State agencies to use QBS when procuring architectural and engineering services in excess of \$25,000. Since that time, §136-a of the State Finance Law has been expanded to include geological, landscape architecture, and land surveying services. QBS is endorsed by the American Bar Association as part of its "Model Procurement Code for State and Local Governments," and is a recommended best practice in the New York State Education Department's "Manual of Planning Standards for School Buildings."

The above-referenced legislation would amend Section 2879 of the Public Authorities Law to authorize public authorities and public benefit corporations to use qualifications-based selection (QBS) as the preferred procurement method in architectural, land surveying, and engineering contracts. This would allow for a greater opportunity for public owners to negotiate with the most-qualified architectural and engineering professional firms by allowing public owners to compare firms' annual statements of qualifications and performance data. QBS is considered the most appropriate procurement model for professional services because it ensures the best alignment between the procurer's needs and the professionals' ability to satisfy the project's demands. QBS separates professional service procurements into two steps: the first step where the most qualified entities are determined, and then a second step where an appropriate price is negotiated. By engaging in this procurement model, the public owner can rest assured that the project is starting off on a path that leads to higher-quality outcomes at a lower total cost.

By ensuring that the critical design elements of a project are in the right hands at the outset, the public owner, and by extension the taxpayer, is *far* less likely to suffer expensive construction delays, change orders, premature degradation and failure of the project. Better-designed projects lead to long-term

savings and greater public safety through the creation of roads, buildings and systems that last longer with lower maintenance costs.

QBS provides enhanced opportunities for all professional design service firms. A firm's qualifications are not directly related to its size and prominence, but more so are related to the relevant experience of the key personnel who would work on a project. In many cases, this focus on the professional skill of smaller tightly-focused firms, including MWBE firms, allows them to compete with the larger players.

We strongly believe that the public is best served when public contracts involving professional services, such as engineering, architecture, and land surveying, utilize the preferred QBS procurement method. For these reasons, we **support S.4577 (Comrie)/A.5520 (Hyndman)**.