

## QUALIFICATIONS BASED SELECTION THE SHORT STORY

ACEC California supports Qualifications Based Selection (QBS) as a policy and legal requirements for hiring professional engineering and land surveying services, consistent with federal and California law, as the best way to ensure that work is performed by qualified and competent professionals at a fair and reasonable price.

- Local agency procurement policies need to be cleaned up. There should be no exceptions for local agencies to consider cost when procuring professional services regardless of the type of contract, the schedule, or dollar amount of the contract.
- Two-envelope system complies with QBS if you do not open the second envelope until after #1 is selected based solely on qualifications and then only as a basis to begin contract and cost negotiations with the #1 ranked firm.
- Oppose qualifications-based bidding. Any inclusion of cost in the evaluation or selection of a professional destroys the intent and effectiveness of QBS.
- QBS includes all disciplines of ACEC member firms and any “certified” or “registered” professional.
- QBS applies to subcontractors at any level.
- Alternative delivery projects should comply with QBS to select all professional members of the teams that pursue a project.

**American Council of Engineering Companies (ACEC) California**  
**Policy Platform**  
**Qualification Based Selection for Professional Engineers and Surveyors**

Approved by the QBS-LAC Committee on December 5, 2013 (initial version) and (DATE)(updated version)

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### **Issue**

The procurement of qualified and trained professionals with the competence, resources and experience to perform professional services for public agencies is essential to minimizing capital and life-cycle costs to a project, having the work done correctly and on time, and that the professional was responsive to the needs and satisfaction of the agency and general public when designing or managing the construction of a project.

Definition of QBS: Qualifications Based Selection (QBS) is a tool used by public agencies to help ensure that qualified professionals are procured to assist them in the planning, design and construction of projects by first evaluating the qualifications of the professionals to perform the services, and then negotiating a fair and reasonable price for those services with the most qualified professional.

To select professional firms based upon qualifications, the public agency typically reviews the professional's reputation to perform the type of work being requested, experience with similar projects, local conditions and permit requirements, his or her current workload and ability to service the project in a timely and competent manner, and the qualifications for the key staff that will be assigned to the project. After the firms have been evaluated and ranked based upon these qualifications, the agency negotiates scope and fee with the top-ranked firm.

Legal Requirements: Federal and State Laws exist that require public agencies to first consider qualifications when hiring professionals such as engineers, architects, landscape architects and land surveyors for their projects and secondarily negotiate how the price paid for those services could potentially influence greater costs associated with the types of building materials used, construction, maintenance and sustainability of a project. ACEC routinely receives reports of public agencies that violate these laws.

Federal law was adopted in 1972, referred to as "The Brooks Act" under Public Law 92-582. The Brooks Act established a policy for the Federal Government that when negotiating contracts for architectural and engineering services that the professional would first be evaluated on the basis of demonstrated competence and qualifications for the type of professional services required, and secondly would negotiate a contract with the most qualified professional. The federal process for making a procurement for professional services includes the basic steps: of 1) preparing public solicitation for required professional services, 2) receiving a statements of qualifications from the professionals, 3) evaluating

*ACEC CA Policy Platform*  
*Qualifications Based Selection*  
*First Approved (Year)*

those qualifications and ranking at least 3 submitting firms in order of their qualifications, and 4) only then begin cost negotiations with the top ranked firm to obtain a fair and reasonable price for those services taking into account the scope, complexity and nature of those services. Pricing is not requested in the federal process until after the submittals have been ranked in order of their qualifications, and negotiations with the highest ranked firm begins.

State law was adopted in California effective January 1, 1990, referred to as the “Mini-Brooks Act” under California Government Code 4526-4529. The Mini-Brooks Act essentially adopts the federal law as applicable to the State of California by requiring State and Local agencies to select professionals for engineering, architecture, land survey, construction project management, and environmental services based on demonstrated competence and professional qualifications. Local agency includes those operating with public monies, such as a city, county, charter or special district.

While the procurement practices and intent of complying with State Law should be similar if not the same as those used by the federal government, challenges to the process continue, particularly at the local agency level. Solicitations and procurements for professional services often place greater emphasis on the cost of design services as equal to or as an overriding factor to the qualifications and competence of a professional. Because the state law does not specifically identify the steps that an agency should follow to follow QBS, how an agency interprets or develops their policies for procuring professional services vary. Errors in the solicitation and procurement process for professional services arise from both ambiguous language and misinterpretation of the law and polices.

#### **Policy: Support QBS**

- ACEC California supports Qualifications Based Selection (QBS) as a policy for hiring professional engineering and land surveying services, consistent with federal and California law, as the best way to ensure that work is performed by qualified and competent professionals at a fair and reasonable price. Public agencies should follow these steps when hiring a design professional:
  - 1) Selecting the best qualified professional to provide the requested services :
    - a) Prepare a description of the project, types of services required, and criteria for evaluating professionals;
    - b) Solicit a statement of qualifications from interested firms;
    - c) Review the qualifications of the professionals, firm, and any key personnel relative to the evaluation criteria, develop a short list of the highest ranked responders (typically no more than 3) and invite them to interview if the agency feels an interview is necessary to complete the ranking; and
    - d) Rank the short-listed professionals in order of the highest to lowest ranking.

- 2) Negotiating a Contract
    - a) Only after ranking, begin cost negotiations with the highest rank professional by requesting a detailed scope of work, schedule and cost proposal that is responsive to the solicitation;
    - b) Review the scope of work and negotiate any additions or deletions that best serve the project needs;
    - c) Negotiate a fair and reasonable cost for the agreed to scope of services and schedule of work;
    - d) Reach agreement;
    - e) If unable to reach agreement, proceed through Step 2 with the next highest ranked firm until an agreement can be reached.
  - 3) Incorporate the fee and scope into a formal written agreement, negotiate fair and mutually agreeable terms of the contract, and retain the professional to perform the services.
- ACEC supports legislation that helps to clarify the steps in soliciting professional services, ensure fair competition for work based the qualifications and competency of a professional, and enforce compliance with QBS laws.
  - ACEC opposes any legislation, practices or solicitation for professional services that would undermine the intent of QBS by considering cost as a basis or element of hiring a professional. Impermissible considerations for cost may include:
    - Including cost, fee structure, rates, or unit prices as a basis, in whole or in part, for evaluating a responding professional.
    - Asking for cost information within the solicitation other than when submitted as a separate sealed envelope as described within this document.
    - Using an overhead rate, multiplier, fixed fee, the numbers of hours proposed, or any factor that can or would be tied to the cost of services prior to ranking the responding professionals based on their competence and qualifications.
  - After the responding professionals have been ranked, ACEC supports the efforts of public agencies to negotiate a fair and reasonable price for those services, to dismiss the highest ranked responder if a fair and reasonable price cannot be negotiated with the highest ranked responder, and to then commence with the next ranked responder.
  - ACEC supports sole-source contracting when an agency has a reasonable basis for understanding of a professional's qualifications, as a trusted-professional, in terms of QBS and when emergency situations (earthquake, flood, wild fire) demand a hasty procurement. The agency should document their reasoning and basis for sole-source contracting when appropriate to do so and why the process complies with QBS laws.

## **Rationale:**

Agencies that use QBS to procure professional services are better able to control the total project and life cycle cost and achieve a high degree of project satisfaction. QBS recognizes that the time and effort that a design professional dedicates to a project will reflect on the quality and value of the reports, plans, bid documents, and estimates they prepare for a project, and for a competent contractor to read and understand those documents easily, prepare a bid that is lowest reasonable to build a project, and to be able to do the work with minimal delays, changes, cost increases or maintenance problems after the project is complete. Any type of procurement that would compromise that goal violates QBS.

Ranking professional based solely on qualifications allows the agency to identify the professional or firm that is in their opinion the most qualified to perform the work to their satisfaction. Without ranking the professionals in contention for selection according to their qualifications, the agency accepts a greater potential to pay a higher cost for construction and maintenance of a project, for delays and claims during construction, dissatisfaction with the performance of the professional, and an increase in the overall risks associated with a project.

Engineering and land surveying are highly skilled professions, and the services that engineers provide directly affect public safety and welfare. Similar to medical and legal services, engineering and land surveying services seldom lend themselves to precise definition. Instead, reliance must be placed on the experience, expertise, creativity, overall intellectual capacity and the amount of time and effort the professionals involved are willing to commit to a project that ultimately determines the success of the project design, construction or study.

Compliance with the federal QBS law and procurements process for professional services is often necessary for a state or local public agency to qualify for federal funding such as from the Federal Highway Administration (FHWA) that awards funds for highways and bridges, the Federal Transit Authority (FTA) that awards funds for many bus and rail facilities, the Farmers Home Administration (FHA) that awards funds for various housing, utility, and community development programs; and for water and wastewater projects qualified under the Clean Water Act. Caltrans who administers funds in California from FHWA uses a federal compliant QBS process when hiring professionals involved with the state highway system. Not complying with QBS laws could jeopardize project funding and reimbursements

A failure by local agencies to establish clear policies for procurement of professionals that are consistent with State and Federal laws or a deliberate intent by individuals to ignore the law and intent of QBS to reduce short-term project costs associated with the professional services, are likely to result in higher life cycle or capital costs for construction and operation

This Policy Platform is supplemented by six Policy Sub-Platforms that provide establish ACEC California's position regarding specific QBS Issues.

**American Council of Engineering Companies (ACEC) California**  
**Qualification Based Selection for Professional Engineers and Surveyors**  
**Policy Sub-Platform 1: Lack of Local Agency Procurement Policy**

This Policy Sub-Platform supplements ACEC California’s QBS Policy Platform, approved by the ACEC California Board of Directors on \_\_\_\_\_(date).

**Issue: Lack of Local Agency Procurement Policy**

California law states:

*Notwithstanding any other provision of law, selection by a state or local agency head for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms **shall** be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. In order to implement this method of selection, state agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services shall adopt by regulation, and local agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services **may** adopt by ordinance, procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public agencies. Furthermore, these procedures shall assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Section 14837.” (bold added)*

Some agencies and individuals may be confused by the use of the words “shall” and “may”. Here is the clarification: The section first states that state AND local agencies SHALL select based on demonstrated competence. The section then states how to implement this law: State Agencies SHALL adopt by regulation and local agencies MAY adopt by ordinance. So with respect to local agencies, the law simply states that local agencies must follow QBS, and that local agencies may comply with QBS either by adopting a local ordinance or by directly following the state law.

**Policy: Lack of Local Agency Procurement Policy**

A major challenge is that public agencies do not have QBS procurement policies and standard operating procedures in place ensuring that the procurements are compliant with the law. Current state law includes mandatory procedures for state agencies, but those procedures are optional for local agencies and, although local agencies are required to use QBS, agencies may adopt their own procedures.

- ACEC California supports legislation to require all local and public agencies in California to comply with the mandated federal and state procedures in the current government code.
- ACEC California supports and will aid public agencies in developing and implementing procedures for QBS and compliance with State and Federal QBS laws.

ACEC California will lead and support efforts to educate public agencies on the need for QBS and QBS laws, respond to and report solicitations that do not comply with QBS. Additionally, ACEC California will assist its member firms in responding to solicitations by public agencies that violate QBS.

**Rationale:**

QBS is important to ACEC CA and its membership. Members commonly bring up challenges they face with local agencies avoiding proper QBS, and to be able to compete fairly for work that they are qualified and competent to do. ACEC's core values state a commitment to QBS and professional ethics and are an essential part of our mission to building a better California. It is ACEC's purpose to strengthen business and professional practices and facilitate public awareness such that professional engineers and land surveyors are provided the opportunity to compete fairly for work.

**American Council of Engineering Companies (ACEC) California**  
**Qualification Based Selection for Professional Engineers and Surveyors**  
**Policy Sub-Platform 2: The 2-Envelope System**

This Policy Sub-Platform supplements ACEC California’s QBS Policy Platform, approved by the ACEC California Board of Directors on \_\_\_\_\_(date).

**Issue: The Two-Envelope System**

Cost cannot be a factor in selecting a design professional under State and Federal laws. A common practice by local agencies is to request a cost proposal as part of their QBS solicitation process. In this case, the scope of the services requested are defined in sufficient detail that the cost can be prepared, and the cost proposal is submitted inside a separate sealed envelope that is submitted with the professionals delivery of their qualifications. This is a procedure not precluded by the law, and commonly used by Caltrans in their procurements of professional services. The sealed envelope is only opened after the professionals have been ranked, and the envelope is then opened to begin the scope and cost negotiations for the project. In the case of Caltrans, the envelope is opened in the presence of the submitter at the first meeting of the cost negotiation. The sealed envelope for any of the submitters that do not enter into a negotiation should have their envelope returned to them unopened. However, it is common to have the envelope containing the cost returned opened, and with a letter stating the responding firm having submitted their qualifications was not selected or short-listed for the project. In these cases, the agency may be attempting to use the information in the sealed cost proposal as a basis for comparing costs or rates for services to the firm they are negotiating with, or they have opened the sealed cost proposals before properly ranking and determining who the best qualified professional for the project is and with whom they should begin cost negotiations. This process of opening sealed envelopes for reasons other than negotiating a price for services with a selected professional is inappropriate and violates the law.

**Policy: The Two-Envelope System**

State and federal laws do not preclude and ACEC does not oppose the “2-envelope” system used by some State and local agencies if the following criteria is met:

- The envelope containing the cost proposal is not opened until after the responding professionals have been ranked based on qualifications for the services solicited.
- The envelope containing the cost-proposal is only opened in the presence of the highest ranked firm to commence the negotiation of a fair and reasonable price and is not a factor in ranking the design professionals.
- All remaining envelopes are returned to the unsuccessful submitters unopened to assure that cost has not been used as a basis for comparing the submittals and the ranking of the professionals.

## **Rationale: The Two-Envelope System**

The two-envelope system, when used properly, meets the basic requirements of State and Federal law. If the envelope of the firm ranked highest on the basis of qualifications is opened after the ranking, it can speed up the negotiation process. However, for most projects this should only serve as the starting point for the agency and its most qualified consultant to begin negotiation of the detailed scope of services and appropriate compensation for the services. Until the consultant has an opportunity to discuss the agency's objectives, staffing and management structure, processing and submittal requirements and many other aspects of the approach to the project, the consultant and the client agency cannot have a comprehensive understanding of how their relationship will really work, and what it takes to make the project a success.

It should also be recognized that the two-envelope process has shortcomings, because all firms pursuing a project must develop a scope and fee. On large complex projects the effort of preparing scope and fee can double or triple the amount of time that each responding consultant must spend in proposing on the project. This extra effort will cause some qualified consultants to decide not to pursue the project and therefore will reduce competition that will benefit the agency. QBS selections that use a qualification-only submittal, with the selected consultant meeting with the agency to mutually develop the scope and compensation are preferred.

**American Council of Engineering Companies (ACEC) California  
Qualification Based Selection for Professional Engineers and Surveyors  
Policy Sub-Platform 3: Qualifications Based Bidding**

This Policy Sub-Platform supplements ACEC California’s QBS Policy Platform, approved by the ACEC California Board of Directors on \_\_\_\_\_(date).

**Issue: Qualifications Based Bidding**

State and federal laws require public agencies to rank professionals responding to their solicitations for services based on qualifications and demonstrated competence to perform the work, and to then begin negotiations with the highest ranked responder. If negotiations with the highest ranked responder are unsuccessful, then the agency - according to state and federal laws -shall terminate the negotiation and move on to negotiate with the next highest rank responder. This process is to continue until the public agency successfully negotiates a fair and reasonable price for the contracted work.

Some agencies deliberately use bidding under the cover of a perceived QBS process. Two examples; 1) An agency solicits bids for professional services alleging that they only sent to the solicitation to “qualified firms,” and 2) An agency sends out an annual or project specific solicitation but prepares a list of “pre-qualified” professionals. The agency then solicits bids from these professionals without considering their individual qualifications to provide services on the project. Both of these methods violate QBS laws.

**Policy: Qualifications-Based Bidding**

Bidding from a pre-qualified list of professionals violates QBS law. QBS laws require that the agency first rank the responders for a proposed project based solely on qualifications. It is unrealistic to believe that a list of firms responding to a project would respond with professionals having the exact same qualifications, background, experience, technical competency, approach and available resources to provide the professional services in the exact same way, in the same amount of time, and with the same degree of care and responsibility.

ACEC opposes all forms of bidding for professional services. Responding professionals must be ranked and evaluated based on their qualifications and competency to do the work. Only after the ranking can the agency begin negotiation with the highest rank firm and therefore comply with State and Federal QBS law.

**Rationale: Qualifications-Based Bidding**

Selecting all professionals based solely on qualifications is good public policy to ensure that the most qualified professionals are to performing work on public projects. Selecting all professionals according to their qualifications will reduce the potential for higher construction and maintenance costs, minimize delays and claims during construction and control the risks associated with a project.

**American Council of Engineering Companies (ACEC) California**  
**Qualification Based Selection for Professional Engineers and Surveyors**  
**Policy Sub-Platform 4: Professional Disciplines under QBS**

This Policy Sub-Platform supplements ACEC California's QBS Policy Platform, approved by the ACEC California Board of Directors on \_\_\_\_\_(date).

**Issue: Professional Disciplines under QBS**

Every branch or discipline of engineering is subject to QBS. To avoid confusion locally, defining the broad spectrum of engineering disciplines is needed to clarify the types of professional services that are subject to QBS.

**Policy: Professional Disciplines under QBS**

QBS laws defines professional services as the disciplines of architectural or engineering (A-E) services that are performed by persons licensed, registered or certified to provide such services in research, planning, development, design, construction, alteration or repair of real property, such as may include studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services.

By these definitions provided in State and Federal law, QBS must apply to the following services that are typically provided by or under the auspices of a registered professional engineer or other register professional (such as, an architect, planner, or geologist):

- Construction materials testing, inspection, and laboratory testing;
- Geology and engineering geologic, seismic hazard evaluation, and geologic hazard studies;
- Environmental planning, impact studies and assessments;
- Testing, sampling, monitoring or reporting performed under the auspices of a registered or certified professional;
- Construction staking and grade control; and
- Storm water pollution control plans and monitoring.

**Rationale: Professional Disciplines under QBS**

Selecting all professionals based solely on qualifications will enable public agencies to be confident that the professionals that are most qualified to perform the work are working on their projects. The reasons that QBS is important in selecting certain consultants are equally valid in selecting the other professionals on the project. Selecting all professionals according to their qualifications will reduce the potential for higher construction and maintenance costs, minimize delays and claims during construction and control the risks associated with a project.

**American Council of Engineering Companies (ACEC) California**  
**Qualification Based Selection for Professional Engineers and Surveyors**  
**Policy Sub-Platform 5: Subcontracting**

This Policy Sub-Platform supplements ACEC California’s QBS Policy Platform, approved by the ACEC California Board of Directors on \_\_\_\_\_(date).

**Issue: Subcontracting**

Subcontracting can be used to hide violations of QBS. Subcontracting can include many professional services that fall under QBS laws, such as Land Surveying, construction testing and inspection, quality control, structural engineering for the design of temporary shoring or falsework, shop drawings, design of construction dewatering, and environmental permits and stormwater control. When these services are part of a contractor’s means and methods to construct a public works, it makes sense that the contractor’s control of quality on the project would require the contractor to procure and contract from a subcontractor directly. In this situation, a public agency will typically review the materials submitted by the contractor, which include work plans and the qualifications of the professional prior to their being used during construction to have reasonable assurance that the contractor and their subconsultants are competent and qualified to perform the work. However, it is a violation of QBS law for a public agency to allow professional design services to be included within a contractor’s competitive bid without having professionals selected through the QBS process.

Another way that subcontracting can violate the law is when an agency hires a prime professional, who is ultimately responsible for assembling and contracting with other professionals needed to complete the services for the project. For example, an agency may hire an architect to design a school and then require that the architect be responsible for hiring and subcontracting with the engineers, land surveyors, and environmental professionals necessary to complete the design of the proposed project. As the project progresses, the prime professional (the architect in this case) then solicits bids from professionals they will subcontract with, and submits to the agency the proposal for the lowest price. And the prime never considered the qualifications or competency of the subcontractor, even though the fees are paid for or reimbursed by the public agency.

**Policy: Subcontracting**

Often, subcontractors are not afforded an opportunity to compete for professional services based on qualifications and competency.

- ACEC California believes that QBS laws apply whenever a public agency is to procure and pay for design services professional services that qualify under the law (architecture, landscape architecture, engineering, environmental, land surveying, and construction management). An agency cannot neglect their legal obligation to hire professional services by first ranking the responders based on qualifications, even when those professionals are procured through a prime consultant.

- ACEC California supports legislation to clarify the responsibility of public agencies have toward procuring professionals services through subcontracts with prime professionals or contractors.
- ACEC California believes that when a prime contractor subcontracts for professional services on a public project, the prime acts as the agent for the public agency and must fully comply with QBS laws.

**Rationale: Subcontracting**

Selecting professionals based solely on qualifications will enable public agencies to be confident that the professionals that are most qualified to perform the work are working on their projects. The reasons that QBS is important in selecting prime consultants are equally valid in selecting the other professional team members on the project. Selecting all professional members of the team according to their qualifications will reduce the potential for higher construction and maintenance costs, minimize delays and claims during construction and control the risks associated with a project.

**American Council of Engineering Companies (ACEC) California**  
**Qualification Based Selection for Professional Engineers and Surveyors**  
**Policy Sub-Platform 6: Policy: Alternative Delivery Projects**

This Policy Sub-Platform supplements ACEC California’s QBS Policy Platform, approved by the ACEC California Board of Directors on \_\_\_\_\_(date).

**Issue: Alternative Delivery Projects**

Alternative delivery methods, such as design-build, are an increasingly common way of contracting for services on public projects. In a design-build project, a general contractor typically oversees both the design and construction of a project for a public agency. The agency defines the concept for the project, the scope of services to be included on the team, and core team members that must be included on that team, such as the prime contractor, key design professionals within a particular discipline, and specialty subcontractors if appropriate. The solicitation is typically a two-step process, where the responders are first ranked solely on their qualifications. A short list of the most qualified teams is then prepared by the agency, and the short-listed responders are asked to prepare a bid for the design and construction of the project. The concept reflects that the most qualified and innovative team will find a way to deliver the project at the lowest cost to the client while meeting the objectives, schedule and any conditions the agency has defined for the project.

Because alternative delivery projects involve design professionals ultimately working for a public agency, the solicitation and procurement of the alternative delivery team must be compliant with the state and federal QBS laws. What commonly occurs is that the solicitation may not identify that the qualifications of participating professionals need to be included in the submittal, or various disciplines that are identified as practitioners that should be selected based on their qualifications and competency according to the law are not identified as such in the solicitation. Disciplines that are commonly not identified as core team members, are disciplines that provide services that may be subcontracted under another design-professional. These services while not under direct contract with the agency or prime contractor, may be essential to the success of the project. Land surveying, geotechnical engineering, hydraulic studies, and construction inspection and testing services are examples of services that are provided under the auspices of a registered professional and can have a big impact on the success of a project, but are not necessarily performed by the lead contractor or engineer.

If any discipline is not specifically identified as a core member of the design-build team by the agency preparing the solicitation then a contractor will exclude that type of professional from the qualifications submittal. The professional services that are not included in the qualifications package are then bid-out solely based on cost, and the agency will never have the opportunity to evaluate the competence and qualifications of those professionals responding to the contractor’s bid. A similar situation can occur when a solicitation or procurement considers only the qualifications of the prime member leading a team of design professionals, such as when an architect is hired to design a building for public agency. The architect can then decide, or be asked by his or her client, to obtain cost proposals from any other professional services that may be needed for the project without considering the qualifications and

competence of those professionals. While the professionals being asked to submit a proposal then contract with the prime for their services and not the public agency, the cost for those services are ultimately paid for by the public agency and the importance and benefit of QBS is the same.

Because an alternative delivery includes both the design and construction of the project, a typically competitive sealed bid that considers only the capital cost of the construction is not appropriate. Low-priced methods or materials that can help to lower the cost of construction may increase the cost of operation, maintenance, energy, risk, or personnel that are needed after the project has been constructed. Life cycle costs need special consideration and must be considered when reviewing the responsiveness of a bid for an alternative delivery project.

### **Policy: Alternative Delivery Projects**

Alternative delivery projects include Design-Build, Public-Private Partnerships and any competitive procurement process that includes a team to design, construct, plan and permit a project for a public agency. These types of procurements must fully comply with QBS laws. The ranking of responders is typically a 2-step process, an initial ranking of the responders and creation of a short list, of typically 3 firms, and then a competitive bid for the design and construction of the project by the short-listed firms. The idea is that the best qualified firm will produce the most cost competitive price. ACEC California believes that current State and Federal law are ambiguous and silent on how QBS shall be incorporated into a procurement for an alternative delivery project. ACEC adopts the following policies regarding alternative delivery projects.

- The responders to an alternative delivery project must first be ranked based on their qualifications and competency to design and build the project. Cost cannot be a factor in the initial ranking.
- All services that will be provided by disciplines that include in QBS laws (architecture, landscape architecture, engineering, environmental, land surveying, and construction management) shall be included in ranking by the public agency when making the initial selection/short list. The weight or how the various disciplines are considered by the agency is at their discretion based on the type of work and nuances of the project provided the ranking for the overall team is based on the competency and qualification to design, build, plan or permit the project.
- Once the firms are ranked for an alternative delivery project, a short list of no more than 3 firms can be requested and a competitive bid for the project that may include the planning, permitting, design, and construction of the project can be requested by the agency. The agency shall consider all costs associated with the project including acceptable risk, quality and reliability of proposed materials, capital costs of materials and construction, life cycle and maintenance costs, energy consumption, and personnel and operation.
- ACEC supports legislation that would clarify the procurement of professional services associated with alternative delivery, as long as that legislation is consistent with or strengthens current legislation regarding QBS so that the public remains adequately protected from incompetence and poor quality professional work.

### **Rationale: Alternative Delivery Projects**

Selecting professionals based solely on qualifications will enable public agencies to be confident that the professionals that are most qualified to perform the work are working on their alternative delivery projects. The reasons that QBS is important in selecting prime contractors and key consultants are equally valid in selecting the other professional team members on the project. Selecting all professional members of the team according to their qualifications will reduce the potential for higher construction and maintenance costs, minimize delays and claims during construction and control the risks associated with an alternative delivery project.