APC / PennDOT Fall Seminar
Consultant Issues

Brooks Act /
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Selections
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The Brooks Act (Public Law 92-582, October 18, 1972)

• Also known as Qualifications Based Selection (QBS).

• Contracts for A/E are negotiated on the basis of demonstrated competence and qualification for the type of professional services required at a fair and reasonable price.

• Under QBS procurement procedures, price quotations are not a consideration in the selection process.
Why Qualifications Based Selection?

- Lowest cost is widely recognized as the poorest criterion for service selection when quality and professional creativity are sought.*

- Nobody willingly chooses a surgeon based upon a doctor's willingness to perform an operation most cheaply.

*Source: Wikipedia (so it must be true)
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The Brooks Act (Public Law 92-582, October 18, 1972)

Basic steps include:

• Evaluation of annual statements of qualifications and project-specific statements of ability.

• Ranking of at least three of the most qualified firms.

• Selection and negotiation with the top ranked firm.
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Pub 93, Section 2.4.1 – Disqualification Of A SOI

A SOI that includes or considers a firm’s costs as a factor must be disqualified. Examples of these costs include:

- a firm’s overhead rate
- no charge for direct or indirect costs
- an indication of money returned to PennDOT for work not performed
- employee hourly rates
General Requirements (attached to every advertisement):

The Department will not consider a Statement of Interest that includes a firm’s costs as a factor for consideration. Examples of a cost factor are: the inclusion by the consultant of a reference to the firm’s low overhead rates or no charge for use of other direct costs. A reference to any cost factors would disqualify the Statement of Interest for this assignment.
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**SOI Cost References**

- References to cost-effective solutions, reduced construction project costs, or minimizing future maintenance costs are permitted.

- References to not exceeding or maintaining budget are permitted.

- References to reducing or minimizing costs are grounds for SOI disqualification.
Advertisements that request information concerning a firm’s costs, cost-effectiveness, or cost-efficiency as part of the selection criteria are prohibited. Examples of these costs include:

- a firm’s overhead rate
- minimizing or not charging for direct or indirect costs
- an indication of money returned to PennDOT for work not performed
- employee hourly rates
Selection Criteria Cost References

• Criteria related to cost-effective solutions, reduced construction project costs, or minimizing future maintenance costs are permitted.

• Criteria related to not exceeding or maintaining budget are permitted.

• Criteria related to reducing or minimizing costs are grounds for SOI disqualification.
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Pub 93, Section 2.3.3 - Selection Criteria

- Advertisements that request information concerning a firm’s location or proximity to a PennDOT office or site are prohibited.

- If there is a justifiable requirement for a firm to respond to assignments in person, then the criteria must be defined in relation to the ability to provide prompt response, and not on its proximity.

- The firm has the burden of demonstrating how it will satisfy the need for prompt response.

- References in an SOI to a firm’s location are not grounds disqualification.
Examples
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SOI Examples:

“We will track costs and provide reports to indicate that budget will not be exceeded.”

Okay?

YES  NO

X
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SOI Examples:

“We have a track record of completing projects on time and on budget.”

Okay?

YES  NO
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SOI Examples:

“We have returned funds after completing projects ahead of time.”

Okay?

YES  NO
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**SOI Examples:**

“We are able to respond in person to all emergencies and critical issues because our offices are within walking distance to the District Office.”

Okay?

[ ] YES

X

[ ] NO
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SOI Examples:

“Staff are able to park at our offices and walk to the District Office, thus eliminating parking expenses.”

Okay?

[ ] YES

[ ] NO
“We propose to respond to emergencies and critical issues through the use of telephone and video conferencing.”

Okay?
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SOI Examples:

“Conference calls and/or teleconferencing are used to reduce travel needs, time, and costs.”

Okay?

YES

NO
SOI Examples:

“We will perform constructability reviews to assure a cost effective construction project that can be completed on schedule.”

Okay?

YES ☒ NO
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SOI Examples:

“We will perform constructability reviews to determine potential construction cost reductions.”

Okay?

YES  NO

X   

X   

X
SOI Examples:

“We will meet with County Maintenance staff to address concerns and develop a solution that results in minimized maintenance costs.”

Okay?
SOI Examples:

“Our management team and inspectors stay focused on minimizing oversight costs.”

Okay?

YES  NO
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SOI Examples:

“We will provide construction inspectors on staggered work schedules in order to reduce oversight costs.”

Okay?

YES

NO
Selection Criteria & Write-Ups – Other Guidance for PennDOT

- Don’t say that a firm can meet the DBE goal.

- Don’t mention that a consultant is a former PennDOT employee.

- Don’t make unsubstantiated referenced to a consultant’s ‘workload’, ‘staffing conflicts’, ‘schedule conflicts’, that they have too much work, etc. to justify rankings.

- Don’t use ‘District’ experience as a requirement in the advertisement. (Use ‘PennDOT’ experience.)

- Don’t reference rankings or comparisons in Published Reasons.
Questions