



November 3, 2022

William F. Patty
Chief Counsel
Alabama Department of Transportation
1409 Coliseum Boulevard
Montgomery, Alabama 36110

VIA Email to: pattyw@dot.state.al.us

Re: 450-12-1 Transportation Procurement Procedures

On behalf of the over 3500 members of the International Institute of Building Enclosure Consultants (IIBEC), located in the United States and Canada, and specifically the dozens of members located across the state of Alabama, please accept these comments regarding the 450-12-1 Transportation Procurement Procedures.

IIBEC is an association of design professionals who specialize in building enclosure projects. IIBEC members design, investigate, and manage roofing, exterior wall, and waterproofing systems and projects. IIBEC members act as advocates for the building on behalf of the owner or manager and ensure the building enclosure or roofing projects meet standards, codes, warranty requirements, and performance requirements. As such, IIBEC is well positioned to comment on the proposed rule.

IIBEC credentials represent the pinnacle of roofing, waterproofing, exterior wall, and building enclosure commissioning professionalism. The Registered Building Enclosure Consultant (RBEC®), Registered Roof Consultant (RRC®), Registered Waterproofing Consultant (RWC®), Registered Exterior Wall Consultant (REWOC®), and Certified Building Enclosure Commissioning Provider (CBECxP®) programs distinguish professionals with proven standards of education, experience, and ethics. The requirements for attaining these designations are stringent and take considerable time and effort to fulfill. The Registered Roof Observer (RRO®) and Registered Exterior Wall Observer (REWO®) programs qualify individuals to monitor the construction process and ensure that roof and exterior wall projects stay in compliance with approved construction drawings, specifications, and best-practice or warranty-stipulated installation procedures. These programs have proven beneficial to society by distinguishing between those who have attained a qualifying level of competence from those who have not and by providing credibility, recognition, continuing education, job satisfaction, and often increased earning power and/or enhanced prospects for employment to the credential holder.

On October 27, 2022, the United States celebrated the 50th anniversary of the Brooks Act, which codified into law the principles of qualifications-based selection (QBS) of architects, engineers, and design professionals. It is concerning that at the same time the nation is recognizing the benefits that QBS has provided to the nation and its infrastructure, the AL DOT is considering regulations that sidestep this important law for projects paid for with state funds while retaining

the procedure for those that access federal funds. It should also be noted that the Brooks Act QBS process is also in the American Bar Association *Model Procurement Code for State and Local Government*. IIBEC is concerned that this bifurcated process will lead to sub optimal outcomes for the taxpaying public, the ultimate owners of the public works projects.

Specifically, 450-12-1-.04 (1) (b) For Contracting for Architect or Engineering Service, where state funds will be exclusively used to make payments under the contract award, the department may use the procedures as prescribed in the “Procedure for Selection of Architect and/or Engineering Service” or, alternatively, the procedures for procuring other professional services in accordance with the rules in this chapter.

The rule is outlined in section 3(a-h) and states, “Unless determined otherwise by the Director, professional services will be procured by competitive sealed proposals through the Department. This process is referred to as Transportation Request for Proposals. (g) Contracts will be awarded to the responsible offeror whose proposal conforms to the solicitation and is determined in writing to be the most advantageous to the state, *taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria will be used in the evaluation* (emphasis added).”

The principles of QBS specifically prohibit price from being used as a primary factor in the selection of the designer. During consideration of the original Brooks Act in 1972, Senator Edward Gurney (R-FL) explained that “any Federal procurement officer . . . will tell you that competition based on professional-technical qualifications is every bit as hot and demanding as competition based on price, perhaps more so.” This remains true today.

A 2007 study conducted jointly by the University of Colorado and Georgia Institute of Technology¹ drew from a database of approximately 200 public and private construction projects in 23 states, including transportation, water, commercial, and industrial projects, ranging in size from relatively small projects to those costing hundreds of millions of dollars. Its authors compared various procurement methods, including QBS, Best Value, and Low-Bid, with such factors as total project cost, projected life-cycle cost, construction schedule, and project quality outcome. Results showed that using QBS to procure the design component of a construction project “consistently meant lower overall construction costs, reduced change orders, better project results and more highly satisfied owners than in other procurement methods”.

QBS is not a partisan issue. After incidents such as the collapse of the Hyatt Regency walkway in Kansas City, Missouri, in 1981 and the collapse of the roof of the Hartford Civic Center in Connecticut in 1978, Congress investigated these incidents and issued a report, “Structural Failures in Public Facilities,” in 1984. It found that “procurement practices that lead to or promote the selection of architects and engineers on a low bid basis should be changed to require prequalification of bidders with greater consideration given to prior related experience and past performance.” The chairman of the subcommittee conducting the study and publishing the report was then Representative Al Gore Jr. (D-TN). As President, Ronald Reagan said at a ceremony recognizing design excellence in federal buildings, “Good design doesn’t cost money. Good design saves money, and you know how that warms my heart.”

¹ www.Chinowsky and Kingsleyacec.org/default/assets/File/Maine/qbs/QBS-study.pdf

Sadly, the siren song of “faster and cheaper” often leads people to think that starting with price will result in a better product. Former US Senate Public Works Committee Chairman Jennings Randolph of West Virginia said it best on the floor of the Senate when the federal architect-engineer services selection law was passed:

“Ask 10 firms to bid . . . and many agencies will take the easy way out and select the low bidder. Under such circumstances, we may end up with a technically capable architect or engineer, but one who, for lack of experience or because of a desire to stay within his bid reduces the time spent on field surveys or in the preparation of detailed drawings, or in providing inspection services. As a result, the government may have saved itself a half of one percent on the design fee while adding 5 to 10 percent to the cost of construction, operation, or maintenance.”²

For example, professional design fees are typically less than 2% of a building’s total life-cycle cost, yet they can have a profound effect on the other 98% (construction, ~12% / operations and maintenance, ~86%) of a building’s overall cost. Choosing the most-qualified building enclosure consultant (BEC) is a key component in the success of a publicly funded construction project. A well-qualified BEC, selected through the QBS process, is more likely to create independent high-quality, best-value construction project documents that encourage fair and open bidding amongst contractors, subcontractors, suppliers, and manufacturers.

While the underlying law may require state funded projects to be procured by competitive sealed bids, in the interest of the taxpayers and the public, we urge the director to issue a blanket determination that it is in the best interest of the state of Alabama that all contracts will follow QBS for the selection of architect, engineering, and design services of state infrastructure projects.

Thank you for the opportunity to comment on the proposed regulation.

Respectfully,



Brian Pallasch, CAE
CEO/EVP

² Does QBS Save Money? page 2. John M. Palatiello, COFPAES Administrator and NSPS Government Affairs Consultant. <https://www.multibriefs.com/briefs/nsps/doesqbsavemoney.pdf>