

# Qualifications-Based Selection of the Design Professional

*Providing Public Owners With the Best Value Through a Fair, Open, and Transparent Selection Process*

By Brian Gardiner, F-IIBEC, RRC, CCS

Over the past several years, the procurement of professional design services for construction projects in the United States and Canada has expanded to incorporate various methods. This paper will examine qualifications-based selection (QBS) as a basis for awarding professional services contracts on publicly funded construction projects.

## THE DESIGNER'S ROLE IN THE DESIGN-BID-BUILD PROCESS

The design-bid-build project delivery method is most often used for U.S. and Canadian publicly funded construction projects. The owner contracts directly with a designer of record (Figure 1)—typically an

architect, engineer, or consultant (AEC)—to provide project-specific bidding documents that are advertised and competitively bid by general contractors, subcontractors, manufacturers, and suppliers (Figure 2).

Depending on the specific scope, the AEC may have significant influence in determining what construction materials are specified. The AEC typically represents to the owner that his or her company has no financial interest in the products specified, being contractually obligated only to the owner to provide best-value design solutions, while holding paramount the health, safety, and well-

being of the public, without conflict of interest.

The AEC normally participates in assisting the owner in determining the bid award and provides construction administration services. It is important that the AEC does not have a conflict of interest in performing

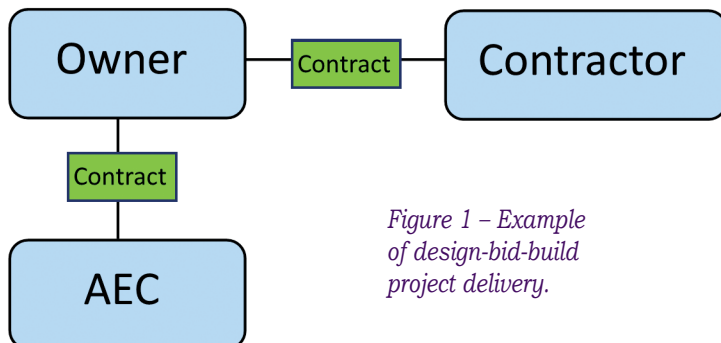


Figure 1 – Example of design-bid-build project delivery.

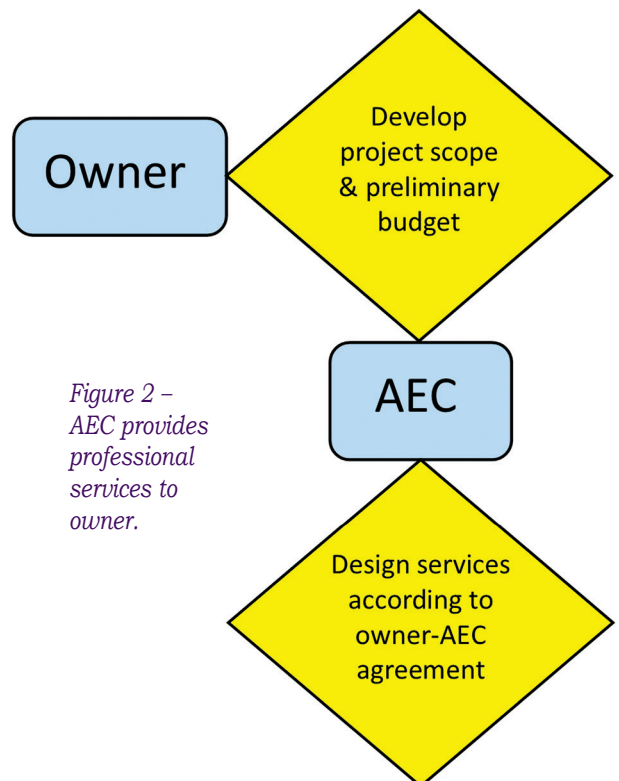


Figure 2 – AEC provides professional services to owner.

**Affidavit of No Conflict of Interest**

On the Project entitled: \_\_\_\_\_

I, \_\_\_\_\_, authorized representative of \_\_\_\_\_, affirm and attest that I and others associated with my Firm:

- have no direct financial interest in the building materials specified;
- do not receive financial benefits from contractors that perform the work specified by us;
- will not accept compensation, financial or otherwise, from more than one party for services pertaining to this Project;
- will not permit the use of my name, or firms, nor associate in business ventures with any person or firm that they have reason to believe is engaged in fraudulent or dishonest business or professional practices;
- will exercise unprejudiced and unbiased judgment and conduct when performing all services;
- will not offer nor make any payment or gift to any public official, private client, or industry representative with the intent of influencing that person's judgment or decision in connection with this Project and
- will be scrupulously honest in control and spending of monies, and promote effective use of resources through open, honest, and impartial service with fidelity.

By submission of this Affidavit, I affirm the above are true and accurate statements.

\_\_\_\_\_  
Signature

Figure 3 – Sample no-conflict-of-interest affidavit.

these responsibilities. Construction project quality can suffer if the entity providing AEC professional services is conflicted.

Certain owners may require that conflict-of-interest disclosures be executed by the AEC prior to awarding a professional services contract, stating specifically that there is no financial or other conflict of interest in the materials specified. IIBEC has a sample “No-Conflict-of-Interest Affidavit” available at <http://rci-online.org/wp-content/uploads/2015/09/affadavit-no-conflict.pdf> (Figure 3).

**AEC SELECTION PROCESS**

An AEC is selected by the public owner to serve as designer of record, according to applicable government regulations. The AEC is usually selected using one of two methods:

1. Qualifications-based selection (QBS), typically accomplished through a request for qualifications (RFQ) (Figure 4)
2. Request for proposals (RFP) (Figure 5)

In the U.S., the QBS process is most often used. The federal government has used QBS (Brooks Act – Public Law 92-582) as incorporated into Federal Acquisition Regulation (FAR) Subpart 36.6 – Architect-Engineer Services ([www.acquisition.gov/content/subpart-366-architect-engineer-services](http://www.acquisition.gov/content/subpart-366-architect-engineer-services)) since 1972. Over 45 states have adopted some form of QBS.

U.S. that outline the benefits of QBS.

IIBEC has published a Position Statement on Procurement that states: “Qualifications-based selection is essential to fostering fair and impartial purchasing that serves public health and safety in the built environment.” (See sidebar next page.)

AEC bid prices are not taken in QBS; rather, the AEC is selected based on experience and quality of services. The owner and the awarded AEC negotiate professional fees prior to agreement execution.

An RFP is a selection process in which the primary determining factor can be the bid price of the AEC services, by bidders who are AECs or other entities that submit a proposal. Unsafe and unfair conditions can arise when AEC ser-

Use of QBS in Canada is not as widespread as in the U.S., but certain provinces and other Canadian public owners do use QBS. There are Canadian studies and pilot projects underway to evaluate QBS. Canadian white papers<sup>1</sup> and guides<sup>2</sup> for best practices have been written. There have also been studies<sup>3</sup> and white papers<sup>4</sup> published in the

- vices are solicited through an RFP:
1. When professional design services are awarded based on cost as opposed to qualifications, competing firms may seek ways to reduce internal costs to gain a competitive edge. These reductions often result in less oversight on design or construction administration services, which may compromise the integrity of the work and, thereby, the health, safety, and well-being of the public.
  2. Entities who have other sources of income other than professional service fees can submit substantially lower bids to win the contract in the RFP response than AECs who have only one source of income. As an example, a professional services bid in Ontario was recently awarded on a bid of zero dollars. Bids for professional services on this same RFP varied from that bid to over \$1 million Canadian.
  3. Quality of professional services can vary among competing firms, and is difficult to quantify against an RFP bid price. An experienced, highly qualified firm will typically bid higher than firms with little experience.
  4. In states that have adopted versions of the Brooks Act, AEC firms are

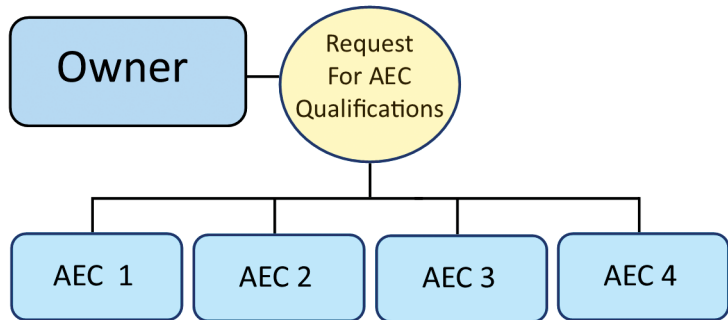


Figure 4 – Example of RFQ for AEC services.

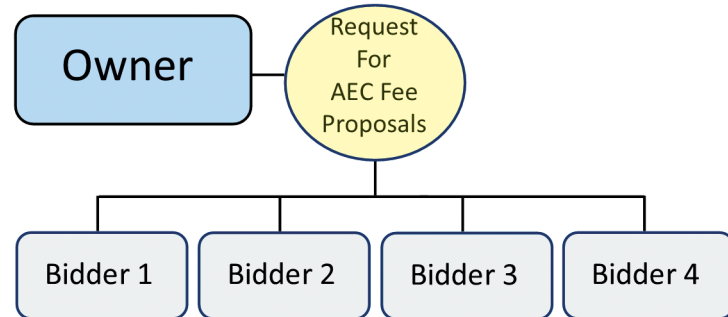


Figure 5 – Example of RFP for AEC services.

# IIBEC Position Statement on Procurement

February 5, 2016

**IIBEC supports public policies, requirements, and administrative procedures in public procurement processes that mandate the open selection of goods, services, and construction contracts on the basis of qualifications; and it opposes such procurement on the sole basis of fees, costs, and/or proprietary specifications. Competitive, qualifications-based selection is essential to fostering fair and impartial purchasing that serves public health and safety in the built environment. Preserving the health, safety, and welfare of the public is a moral, ethical, and legal requirement for a procurement agency as well as [for] the provider. IIBEC maintains that the public is best served by a procurement process that meets the unique and specific requirements inherent in each individual project and contract.**

expressly not allowed to submit fee-based proposals for publicly funded projects. Doing so constitutes a violation of the specific state law and limits the potential pool of designers to those who aren't licensed as architects or engineers, and those who do not comply with the applicable law.

## ALTERNATIVE DELIVERY METHODS

Much like the RFP process for procuring construction projects, alternative methods are utilized in the U.S. to procure professional services, such as job order contracting (JOC), cooperative purchasing,<sup>5</sup> and multiple award schedules (MAS). Each of these alternative methods typically use unit prices as a basis for cost.

There may not be a set of bidding documents produced by a design professional, as the public owner often relies on the vendor's selection of unit prices as a basis for price. The lack of a professional-sealed set of construction documents may be a violation of the public entity's regulations.

Audits and studies have reported potential problems with the alternative delivery methods to procure AEC and construction

services. These reports are on the U.S. federal,<sup>6</sup> state,<sup>7</sup> and local levels.

One U.S. city audit's<sup>8</sup> executive summary included the following:

When operations, such as the JOC program, have a significant systemic lack of controls, an audit will assess the risk of fraud, waste, or abuse occurring and whether the behavior can be detected. The Fraud Triangle is a model used in the audit industry to gauge the risk based on whether three primary components exist—financial pressure, opportunity, and justification of the act. With the JOC program, the City has created an environment with all three of the components present, creating the perfect environment for fraud or waste to occur.

The above-referenced audit also discovered a lack of an independent design professional:

Per project files, one JOC contractor was used as a way to provide

architectural services for the project by allowing an architectural firm to work as a subcontractor to a JOC contractor. JOC contracts are solely for construction services and should not encompass architectural or design services, as these types of services have different procurement procedures.

## SINGLE-SOURCE SPECIFICATIONS

An RFP selection process for AEC services, or the use of alternative delivery methods, may result in proprietary (single- or sole-source) specifications. Entities that bid extremely low to obtain an AEC contract may compensate by either severely reducing services, or through obtaining other sources of income such as sales commissions or other income on construction materials specified.

Technical specifications written by the manufacturer providing AEC services are often proprietary to their products. Proprietary specifications often result in reduced competition and higher costs. Publicly funded construction usually cannot be awarded under a "non-competitive procurement," except under very special circumstances.

The contractors, suppliers, and manufacturers that would typically be eligible to compete in a fair and open set of construction specifications are often not able to do so on a single-source specification. This lack of competition is not only harmful to the public owner, but also is not fair to those who pay taxes on the very same construction projects that they are not able to bid.

The Ontario government's Broader Public Sector (BPS) Procurement Directive states: "Organizations may conduct non-competitive procurement in the circumstances listed below (also known as single-source situations), provided that they do not do so for the purposes of avoiding competition between suppliers or to discriminate against suppliers."

The Canadian National Master Construction Specification (NMS) User's Guide states:

As with the federal government, maintaining a performance-based approach to preparing project specifications is deemed important to the formation of contracts when expenditures are made against the public purse—and where any perception of favoritism within the documents through naming or single-sourcing

without extensive research is discouraged.<sup>9</sup>

Single-source specifications are sometimes difficult to detect. What may look to be an “open” performance specification can be written in a way that only one product can meet the specification.

Another single-source specification method is to list only one manufacturer but include the phrase “or equal” or “or equivalent.” To an outside entity or procurement official, this may appear to be a non-proprietary specification, but the specification typically includes language to ensure that there are no equals to what is specified. This approach makes it difficult for the owner to evaluate proposed alternatives.

An alternative specification section is typically bid as a separate price on the bid form. The owner has the option of selecting the base bid, or one or more additive or deductive alternative bid(s). A single-source alternative specification section is more difficult to detect, especially when the base bid specification lists more than one material brand.


**SUMMARY**

AEC fees are typically less than 2 percent of a building’s total lifecycle costs, yet they can have a profound effect on the other 98 percent (construction ~12% / operations and maintenance ~86%) of a building’s overall cost.<sup>10</sup>

Choosing the most qualified AEC is a

## Choosing the most qualified AEC is a key component in the ultimate success of a publicly funded construction project.

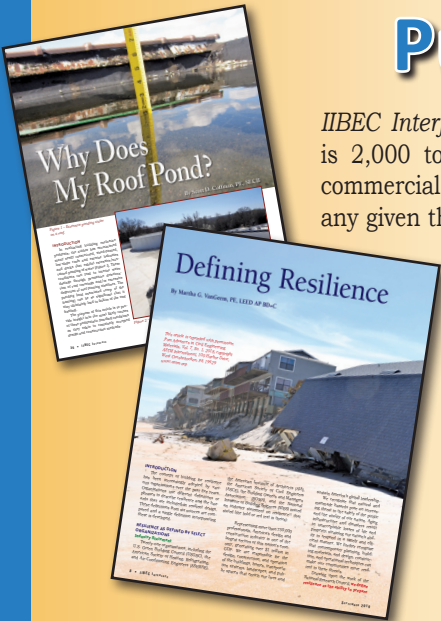
key component in the ultimate success of a publicly funded construction project. A well-qualified AEC, selected through the QBS process, is more prone to create high-quality, best-value construction project documents that encourage fair and open bidding amongst contractors, subcontractors, suppliers, and manufacturers.

It is key for any government procurement system to be fair, transparent, and open to competition by qualified companies. A trustworthy system is of paramount importance. If trust erodes between the government and those who are best suited to provide goods and services, qualified participants abandon it as a waste of time and effort. 

**REFERENCES**

1. “Selecting a Professional Consultant.” *National Research Council of Canada. InfraGuide 11.* June 2006. <https://data.fcm.ca/documents/>

- reports/Infraguide/Selecting\_a\_Professional\_Consultant\_EN.pdf.
2. *User Guide to Implementing Qualifications-Based Selection.* Association of Consulting Engineering Companies–BC, June 2016. <https://www.acec-bc.ca/media/43176/acec-bc-user-guide-to-implementing-qbs.pdf>.
3. Paul S. Chinowsky and Gordon A. Kingsley. “An Analysis of Issues Pertaining to Qualifications-Based Selection.” 2009. Association of Consulting Engineering Companies. [https://www.acec.ca/assets/pdf/advocacy\\_pdf/QBS\\_Study\\_APWA\\_Final.pdf](https://www.acec.ca/assets/pdf/advocacy_pdf/QBS_Study_APWA_Final.pdf).
4. “Qualifications-Based Architectural Selection – A Comparison With Fee-Based Methodology,” Dodge Data & Analytics, February 2019. [http://content.aia.org/sites/default/files/2019-03/QBS\\_SMB\\_1Feb19.pdf](http://content.aia.org/sites/default/files/2019-03/QBS_SMB_1Feb19.pdf).



## Publish in IIBEC Interface

IIBEC Interface journal is seeking submissions for the following issues. Optimum article size is 2,000 to 3,000 words, containing five to ten high-resolution graphics. Articles may serve commercial interests but should not promote specific products. Articles on subjects that do not fit any given theme may be submitted at any time.

ISSUE	SUBJECT	SUBMISSION DEADLINE
March 2020	Flashings/interfaces	December 13, 2019
April 2020	Legal issues	January 15, 2020
May/June 2020	Convention review	February 14, 2020
July 2020	The building enclosure	April 15, 2020
August 2020	Technology	May 15, 2020
September 2020	Trends	June 15, 2020

Submit articles or questions to Executive Editor Kristen Ammerman at 800-828-1902 or [kammerman@iibec.org](mailto:kammerman@iibec.org).

5. Brian Gardiner. "Publicly Funded Construction Procurement." *Interface*. IIBEC, Inc. December 2017. <https://rci-online.org/publicly-funded-construction-procurement/>.
6. *Ineffective Management of GSA's Multiple Award Schedule Program—A Costly, Serious, and Longstanding Problem*. United States Comptroller General Report to Congress. May 2, 1979. <https://www.gao.gov/assets/130/126632.pdf>.
7. *Financial Management Practices Audit Report – Baltimore County Public Schools*. Maryland Office of Legislative Audits. July 2, 2015. <https://www.ola.state.md.us/Reports/Schools/BCPS15.pdf>.
8. *Job Order Contract Audit Report*. City of Long Beach, CA. May 25, 2016. <http://www.cityauditor-lauradoud.com/wp-content/uploads/2016/05/Job-Order-Contract-Audit.pdf>.
9. Canadian National Master Specification (NMS) - user's guide, 2019, National Research Council of Canada online content-Use in Provincial or Municipal Public Sector.
10. *InfraGuide 11- NRC-CNRC*, June 2006, *Selecting a Professional Consultant*.



Brian Gardiner,  
F-IIBEC, RRC, CCS

*Brian Gardiner has practiced consulting for over 35 years. He is a past director of both IIBEC Region IV (1995-1998) and the Building Envelope Institute, Inc. (2005-2006). Gardiner has been awarded the William C. Correll Sr. Award (2019) and IIBEC's Outstanding Educator Award (2017) for presenting numerous seminars. He is IIBEC's Director of Industry Affairs.*

## RCI Foundation Changes Name to RCI-IIBEC Foundation

The Board of Directors of the RCI Foundation, Inc. has voted to update their name to RCI-IIBEC Foundation, Inc. The decision was unanimously adopted and follows the transition of RCI, Inc. to the International Institute of Building Enclosure Consultants (IIBEC). The name change becomes official on January 1, 2020.

"The Foundation has been making an impact through supporting students who are studying architecture, engineering, and the building sciences; providing research grants; and cultivating the future of our industry. We hope that with this updated name, more individuals and the industry will step up their support for the Foundation's scholarships, research grants, and

publications through their gifts and assistance," said Mike Blanchette, treasurer for the Foundation board.

Plans include a new and updated website, as well as a new logo. The Foundation's mission will continue to support research and advance education and the dissemination of information on issues important to the building enclosure industry.

The RCI Foundation was established in 2001. Since then, the Foundation has received more than \$2 million in donations and pledges. The Board has committed itself to using those donations for the benefit of the building enclosure industry. Through investments in grant recipients, the Foundation seeks to increase the scope and type of research conducted, as well as to create opportunities for education.

Because of the Foundation's focus and restrictions on its activities, it is recognized by the IRS as a tax-exempt 501 (c)(3) organization committed to education and research. For more information about supporting the RCI-IIBEC Foundation, contact Development Officer Rick Gardner at [rgardner@iibec.org](mailto:rgardner@iibec.org) or call 919-859-0742 or 800-828-1902.



*The RCI-IIBEC Foundation Board of Directors and IIBEC staff liaisons. Front row, left to right: Joe Hale, Bob Elsdon, Marc Allaire. Second row, same order: Helene Hardy Pierce, Albert Duwyn, and Mike Blanchette. Third row: Melany Elwell, Sid Hankins, and André Desjarlais. Fourth row: Rick Gardner, Lionel van der Walt, and Dave Hawn. Back row: Ralph Paroli and Mike DuCharme. Not present: Brian Pallasch, Walt Rossiter, and Brian Whelan.*