



Qualifications Based Selection of Contractors

AGC of America Project Delivery Committee
QBS Working Group

August 2009



Qualifications Based Selection of Contractors

Table of Contents

| | |
|--|-------------|
| QBS & The Industry: An Introduction | Pages 3-4 |
| Selection Criteria for QBS | Page 5 |
| Benefits of QBS for a Project | Page 6 |
| Expectations for a QBS Team | Page 7 |
| Potential Challenges of QBS | Page 7 |
| When is QBS Used? | Page 8 |
| Successful Implementation: Best Practices for QBS | Page 10 |
| QBS: The Way to Collaboration | Page 10 |
| Appendices | Pages 11-17 |
| <i>Appendix A: The Brooks Act</i> | |
| <i>Appendix B: Sample QBS Legislative Language – Arizona Statute</i> | |

Acknowledgements

The Associated General Contractors of America (AGC) wishes to express its appreciation to the authors, reviewers, editors, and everyone who supported the development of *Qualifications Based Selection of Contractors*. AGC wishes to particularly thank Dave Crawford of Sundt Construction, Inc. for his leadership and dedication to this project and Mike Kenig of Holder Construction Company for his commitment and enthusiasm. In addition, the following individuals have contributed numerous hours of effort toward the completion of this document: Thomas Burleson of Burleson Construction Company, Inc., Lisa Cooley of Centennial Contractors Enterprises, Inc., Cassia Griffin of AGC of America, and Mike Stark of AGC of America.

Nothing contained in this work shall be considered to be the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This work and any forms herein are intended solely for educational and informational purposes.

Qualifications Based Selection of Contractors © 2009 by The Associated General Contractors of America.

No Portions of this work may be reproduced or displayed without the express written permission of the copyright holders. All rights reserved.

Qualifications Based Selection of Contractors

The purpose of this paper is to present and explore Qualifications Based Selection (QBS) of contractors. This paper contains a discussion of QBS and the construction industry, an explanation of QBS benefits and challenges, consideration of how QBS works with various project delivery systems, and owner suggestions for QBS best practices. This document is limited to a discussion of QBS and is not intended to offer a comparison to other selection methodologies. Organizations must decide for themselves whether to utilize or participate in contractor selections using a QBS process.

QBS & The Industry: An Introduction

Qualifications Based Selection (QBS): A procurement method in which the final criteria for selection are qualifications and demonstrated competence. Price and cost are not selection criteria, but they may be considered during contract negotiation.

Qualifications Based Selection (QBS) of contractors represents a response to the ever-changing demands of owners and the marketplace.

More and more owners, public and private, are requesting and/or requiring additional services from their contractors. Owners want contractors to participate in a team environment, together with owners and their designers, to provide preconstruction services (in lieu of just estimating services), to prequalify subcontractors, to assist the governing agencies, and perform in other advisory capacities. In this new era of early and increased contractor involvement, many owners are willing to consider construction services as being in alignment with architectural and engineering services – all part of a professional team and all selected through a Qualifications Based Selection process.

QBS creates a focus on quality and value, not price. It rewards the organizations and the people who can anticipate success through teamwork and who can demonstrate proactive behavior. It elevates construction to a service profession. QBS of contractors recognizes that construction is not a commodity – it is knowledge and service. QBS reinforces the fact that construction teams bring a unique and valued service to the client. Furthermore, QBS facilitates workforce satisfaction of construction professionals, who can enjoy the practice of construction and avoid

their work being “commoditized.” The QBS method attracts high quality designers and contractors not only to the project but also the industry.

The selection of a team through a QBS process should create a “win-win-win” environment of collaborative success for all parties involved. QBS requires overcoming the *status quo* and embracing a different culture. With that shift, it will be necessary to utilize different processes, people, contracts, and procurement methods. It may also require new or alternative interpretations of existing procurement codes or passage of enabling statutes.

Presenting its own challenges, QBS will not be for everybody or every project. Reflective of the value being increasingly found in collaboration, QBS is, however, a method of selection that will be attractive to some members of our industry.

Selection Criteria for QBS

Qualifications Based Selection (QBS) of architects and engineers is developed in the Brooks Act (Public Law 92-582 – See Appendix A). Even though contractor selection is not contained in the Brooks Act, if QBS of contractors is undertaken, contracting services should be competitively procured through a QBS process modeled after the approach developed in the Brooks Act. Doing this would enable an owner to utilize identical criteria to select the most qualified architectural, engineering and contracting firms based on:

- Demonstrated competence
- Qualifications

QBS may include other selection criteria such as:

- Experience and past performance of the firm
- Experience and past performance of assigned individuals
- Experience and past performance with desired delivery system
- Capacity to perform the work
- Financial strength and bonding capability
- Management plan, subcontractor relationships and technical capabilities
- Safety plan and safety record
- Quality assurance plan

Similar to many common interpretations of the Brooks Act, QBS of contractors cannot include items such as:

- Fees, price, work-hours or other cost information. These and other price-related terms are negotiated after selection.

Because absolutely no consideration of cost is allowed, including fee or general conditions, this selection method is referred to as “pure QBS” in the 2004 edition of *AGC’s Project Delivery Systems for Construction*.

Benefits of QBS for a Project

Using Qualifications Based Selection to assemble the project team simultaneously with the selection of the design team has numerous positive effects on the project and the parties involved. Interviews with owners, designers, and contractors have determined characteristics associated with a team selected by QBS and identified associated benefits and advantages:

The best team for the project is selected. QBS allows owners to define their goals and selection criteria so they can select the most qualified team for the project in an open, fair, objective and honest procurement process – creating transparency in decision-making. Owners state that the absence of price considerations assists them in keeping control of the selection process and maintaining focus on qualifications. Thus, QBS affords owners the utmost flexibility in selecting the firms best able to execute their project requirements while appealing to high-quality designers and contractors. The added benefit of owner and designer involvement in the prequalification of subcontractors further enhances the team.

Cooperation and collaboration replace adversarial relations. QBS provides professional, defined, results-focused options for owners, designers and contractors – shifting the mindset from self-interest to collaboration toward a common goal in the best interest of all parties and the project. Transparency eliminates hidden agendas, and the alignment with professional services creates emphasis on service and relationship.

Lower design and construction costs and higher quality work result. Early, simultaneous team creation offers better predictability of price, schedule, and quality and requires no design or bridging documents. This continuity through design/preconstruction and construction/post construction without “handoffs” during various phases provides a better ability to sequence construction accurately and quickly. With the budget known to team members from the beginning of the project, the team can develop a cost model prior to starting design and then design to the cost model. Transitioning the owner away from a mentality focused only on price, QBS facilitates optimal design and value maximization within a defined budget – resulting in the owner getting “the best bang for the buck.” This “designing to budget” also allows the team to evaluate design alternatives and/or the owner’s “wish list” while keeping the budget on track.

For contractors and designers, repeat work is a strong, motivating force that drives the quality of services provided under a QBS competition. Good work is rewarded with additional work opportunities and builds long-term relationships reinforced by trust.

Expectations for a QBS Team

Qualifications Based Selection is the impetus for and demands much on-going collaboration. What can all parties hold each other accountable for in this team environment? What are reasonable expectations of an owner from a team procured through a QBS competition? What are reasonable expectations of the designer and contractor?

- Alignment of common goals and objectives
- Permeation of trust throughout the entire team relationship
- Transparency in decision-making and documentation
- Open, candid, timely communications
- Increased cooperation, flexibility and service to owner
- Faster resolution of challenges and problems
- Increased value for each dollar spent
- Shorter design and construction schedules
- Improved construction quality
- Fewer warranty problems
- Fewer legal entanglements; therefore, lower costs

Potential Challenges of QBS

Owner, designer and contractor discussions have revealed the following potential challenges of Qualifications Based Selection from their perspectives:

- QBS requires all team members to adopt a true “win-win-win” collaborative culture. This team culture should extend to senior management, design and construction supervision, staff and field management, and inspectors.
- QBS requires different procurement methods, different processes, and different contracts for team success. The implementation of old methods may yield predictable, adversarial results.
- QBS requires a timely, proactive escalated dispute resolution process. If team members embrace the collaborative approach, this process will probably never be used, but it should be established at the first team meeting.
- QBS requires involved, empowered leadership from all key members of senior management.

When Is QBS Used?

Qualifications Based Selection is applicable for all types and sizes of construction projects, including vertical, horizontal and industrial applications for private and public owners. They may include individual projects, multiple phases of a project or a construction program consisting of multiple projects. They may include K-12 schools, community colleges, universities, institutional work, athletic facilities, health care facilities, hotels, detention facilities, roads, streets, highways, bridges, rail projects, water and wastewater plants, renewable energy projects, power plants, and more.

The market for use of QBS has not been limited to only large projects. Although smaller contractors may be wary of competing in a QBS process, experience has proven that physical size and dollar amount become inconsequential to success. Commitment to the characteristics, culture, means and methods, and procedures required to be an effective alternate procurement delivery methods contractor will determine success. In locations where owners have adopted a QBS approach, there have been numerous opportunities under \$5 million available for those willing to change to meet the needs of performing in a team environment.

QBS may be used for many forms of project delivery, primarily Construction Manager At-Risk (CMAR), Design-Build (DB), and Integrated Project Delivery (IPD). QBS will greatly enhance the opportunity for success in all delivery methods because the early involvement of all team members at the earliest, critical meetings embraces and promotes teamwork, collaboration, innovation, sustainability, and utilization of technology such as Building Information Modeling (BIM).

QBS may be used effectively in the following delivery methods, as shown in Figure 1, *QBS as Compared with Other Selection Methods*, on page 9:

Multi-Party (Relational) Contracting

- Integrated Project Delivery (IPD – Alliancing or Relational Contracting), in which the owner, primary design consultants and contractor execute a single contract. There is generally a simultaneous selection of the entire team to enhance and promote an integrated, collaborative culture and approach to the project.

Non-Multi Party (Transactional) Contracting

- Construction Manager At-Risk (CMAR – CM/GC, CMc, ECI), in which the owner contracts directly with the designer and builder. There is generally a simultaneous selection of

the designer and builder to allow a full array of preconstruction services to be provided from the initiation of design.

- Design-Build (DB), in which the owner contracts directly with one entity for design and construction. Under a QBS approach, there is a one-step selection process to enable the owner to participate in all design-phase meetings without spending the funds and time to prepare a two-step competition, bridging documents, etc.
- Job Order Contracting (JOC), in which the owner may contract with a designer and a Job Order Contractor or just a Job Order Contractor (similar to DB) to execute small projects on an as-needed basis.

Figure 1. QBS as Compared with Other Selection Methods

| Selection Method | Basis of Final Selection | Delivery Method |
|--------------------------------------|---|--|
| Competitive Sealed Bid – Low Bid | Low Bid of Total Construction Cost | Design-Bid-Build (DBB) |
| Best Value (Qualifications/Price) | Technical Score & Total Construction Cost | Design-Bid-Build (DBB) OR Design Build (DB) |
| A) Best Value Bid | | |
| B) Best Value (JOC) | Technical Score & Coefficient Applied to Unit Price Book | Job Order Contracting (JOC) |
| C) Best Value Proposal | Technical Score / Sum of Fees, General Conditions, etc. | Construction Manager At-Risk (CMAR) OR Design-Build (DB) OR Non-Multi Party IPD |
| Qualifications Based Selection (QBS) | Demonstrated Competence and Qualifications, Excludes Fees, Price, Work-Hours, etc. | Construction Manager At-Risk (CMAR) OR Design Build (DB) OR Integrated Project Delivery (IPD) OR Job Order Contracting (JOC) |

Successful Implementation: Best Practices for QBS

Owners who have successfully procured teams through a Qualifications Based Selection process have the following suggestions for best practices regarding the Issuance/Response and Evaluation/Scoring to a Request for Qualifications:

- Recognize and plan for the extensive amount of owner participation required during design/preconstruction and construction.
- Limit selection committee size (recommend a maximum of 7 – maintain odd number).
- Provide education and training to selection committee members.
- List selection criteria and weight according to importance before issuing the solicitation. Make the weighting structure known to those participating in the procurement process.
- Provide clear directions to firms participating and provide answers to questions in a responsive manner.
- Ensure that the selection committee scores in accordance with selection criteria.
- If an interview is required, publish the desired topics and their associated weighting to the firms being interviewed.
- Be prepared to publish results – transparency is critical to avoid protests. All of the names of the selection committee and the competitors can be removed, but the scoring should be revealed in accordance with the criteria after execution of a contract. Feedback should be available and provided to those requesting it who participated in the procurement process.
- In all cases, contract terms and conditions, fees, price, etc. are negotiated subsequent to selection. If a mutually-acceptable agreement cannot be executed with the top-ranked firm, the owner may terminate discussions and initiate discussions with the next-ranked firm. Negotiations cannot be held with more than one firm at a time and cannot be reopened with a firm once they have been terminated.

QBS: The Way to Collaboration

Now is the time to consider the use of Qualifications Based Selection of contractors. Particularly in this era of Integrated Project Delivery (IPD) and increasing appreciation of collaboration, the industry recognizes the benefits of early involvement of the key members of project teams. While QBS will not be for everyone or every project, owners should certainly have QBS available to them as an option for the selection of contractors. Qualifications Based Selection of contractors is a practice worthy of consideration.

Appendices

- A. The Brooks Act: Federal Government Selection of Architects and Engineers
- B. Sample QBS Legislative Language – Arizona Statute

Appendix A

The Brooks Act: Federal Government Selection of Architects and Engineers

Public Law 92-582

92nd Congress, H.R. 12807

October 27, 1972

An Act

To amend the Federal Property and Administrative Services Act of 1949 in order to establish Federal policy concerning the selection of firms and individuals to perform architectural, engineering, and related services for the Federal Government.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) is amended by adding at the end thereof the following new title:

"TITLE IX – SELECTION OF ARCHITECTS AND ENGINEERS

"DEFINITIONS

"Sec.901. As used in this title

"(1) The term 'firm' means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

"(2) The term 'agency head' means the Secretary, Administrator, or head of a department, agency, or bureau of the Federal Government.

"(3) The term "architectural and engineering services" means –

1. professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;

2. professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

"POLICY

"Sec.902. The Congress hereby declares it to be the policy of the Federal Government to publicly announce all requirements for architectural and engineering services, and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

"REQUESTS FOR DATA ON ARCHITECTURAL AND ENGINEERING SERVICES

"Sec.903. In the procurement of architectural and engineering services, the agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him, no less than three of the firms deemed to be the most highly qualified to provide the services required.

"NEGOTIATIONS OF CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES

"Sec.904. (a) The agency head shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the agency head determines is fair and reasonable to the Government. In making such determination, the agency head shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof.

"(b) Should the agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price he determines to be fair and reasonable to the

Government, negotiations with that firm should be formally terminated. The agency head should then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency head should terminate negotiations. The agency head should then undertake negotiations with the third most qualified firm.

"(c) Should the agency head be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached."

Appendix B – Sample QBS Legislative Language – Arizona Statute

(Text highlighted for emphasis.)

H.B. 2340

1 RELATING TO THE JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES PROJECTS UNDER
2 THE CONTRACT PURSUANT TO SECTION 34-102, 34-103 OR 34-603, AS APPLICABLE.
3 F. ON OR BEFORE JANUARY 15 OF EACH YEAR, ANY AGENT THAT USES
4 CONSTRUCTION-MANAGER-AT RISK, DESIGN-BUILD OR JOB-ORDER-CONTRACTING TO
5 CONSTRUCTION SERVICES SHALL SUBMIT A REPORT TO THE GOVERNOR, THE PRESIDENT OF
6 THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE SECRETARY OF
7 STATE AND THE DIRECTOR OF THE DEPARTMENT OF LIBRARY, ARCHIVES ON THE TOTAL
8 BENEFITS ASSOCIATED WITH THE USE OF THE PROCUREMENT METHODS. THE REPORT
9 SHALL INCLUDE A STATEMENT OF COSTS INCURRED BY THE AGENT IN SECURING THE
10 SERVICES, ANY OVERALL ADMINISTRATIVE BENEFITS REALIZED THROUGH THE USE OF THE
11 PROCUREMENT METHODS, THE NUMBER OF PROJECTS BEGUN IN THE PRECEDING CALENDAR
12 YEAR USING THE PROCUREMENT METHODS AND THE COST AND DESCRIPTION OF EACH
13 PROJECT, ANY ANTICIPATED COST SAVINGS RESULTING FROM THE USE OF THAT
14 PROCUREMENT METHOD AND ANY ACTUAL COST SAVINGS REALIZED THROUGH THE USE OF
15 THAT PROCUREMENT METHOD. THE REPORT IS A REQUIREMENT FOR PARTICIPATION IN
16 CONSTRUCTION-MANAGER-AT-RISK, DESIGN-BUILD OR JOB-ORDER-CONTRACTING
17 PROCUREMENT AGREEMENTS.
18 34-603. Procurement of professional services and
19 construction-manager-at-risk, design-build and
20 job-order-contracting construction services;
21 definition
22 A. EXCEPT FOR ENGINEER SERVICES AN AGENT PROCURES BY DIRECT SELECTION
23 OR PURSUANT TO SECTION 34-102, SUBSECTIONS C AND D, EXCEPT FOR ARCHITECT
24 SERVICES, LANDSCAPE ARCHITECT SERVICES, ASSAYER SERVICES, GEOLOGIST SERVICES
25 AND LAND SURVEYING SERVICES AN AGENT PROCURES BY DIRECT SELECTION OR PURSUANT
26 TO SECTION 34-103, SUBSECTIONS C AND D AND EXCEPT FOR SERVICES AN AGENT
27 PROCURES PURSUANT TO SECTION 34-604, AN AGENT SHALL PROCURE THE FOLLOWING
28 SERVICES PURSUANT TO THIS SECTION:
29 1. ARCHITECT SERVICES.
30 2. CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES.
31 3. DESIGN-BUILD CONSTRUCTION SERVICES.
32 4. ENGINEER SERVICES.
33 5. JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES.
34 6. LANDSCAPE ARCHITECT SERVICES.
35 7. ASSAYER SERVICES.
36 8. GEOLOGIST SERVICES.
37 9. LAND SURVEYING SERVICES.
38 B. AN AGENT SHALL PROVIDE NOTICE OF EACH PROCUREMENT OF PROFESSIONAL
39 SERVICES OR CONSTRUCTION SERVICES SPECIFIED IN THIS SECTION AND SHALL AWARD
40 CONTRACTS ON THE BASIS OF DEMONSTRATED COMPETENCE AND QUALIFICATIONS FOR THE
41 TYPE OF PROFESSIONAL SERVICES OR CONSTRUCTION SERVICES PURSUANT TO THE
42 PROCEDURES PRESCRIBED IN THIS SECTION.
43 C. IN THE PROCUREMENT OF PROFESSIONAL SERVICES OR CONSTRUCTION
44 SERVICES PURSUANT TO THIS SECTION, AN AGENT SHALL:
45 1. ISSUE A REQUEST FOR QUALIFICATIONS FOR EACH CONTRACT AND PUBLISH
46 NOTICE OF THE REQUEST FOR QUALIFICATIONS IN THE SAME MANNER AS PROVIDED IN

- 19 -

1 SECTION 28-6713, SUBSECTION A. THE REQUEST FOR QUALIFICATIONS SHALL INCLUDE
2 THE NUMBER OF PERSONS OR FIRMS TO BE INCLUDED ON THE SHORT LIST. IN A
3 REQUEST FOR QUALIFICATIONS FOR A HORIZONTAL CONSTRUCTION PROJECT, AT LEAST
4 THREE BUT NOT MORE THAN FIVE PERSONS OR FIRMS SHALL BE ON THE SHORT LIST. IN
5 ALL OTHER REQUESTS FOR QUALIFICATIONS, THREE PERSONS OR FIRMS SHALL BE ON THE
6 SHORT LIST.

7 2. INITIATE AN APPROPRIATELY QUALIFIED SELECTION COMMITTEE FOR EACH
8 CONTRACT. IF THE AGENT IS PROCURING PROFESSIONAL SERVICES, THE AGENT SHALL
9 DETERMINE THE NUMBER AND QUALIFICATIONS OF THE SELECTION COMMITTEE MEMBERS. A
10 SELECTION COMMITTEE FOR THE PROCUREMENT OF CONSTRUCTION SERVICES SHALL NOT
11 HAVE MORE THAN SEVEN MEMBERS, EXCEPT THAT, IF THE CONTRACT INVOLVES THE AGENT
12 AND ADDITIONAL GOVERNMENTAL OR PRIVATE PARTICIPANTS, THE NUMBER OF MEMBERS OF
13 THE SELECTION COMMITTEE SHALL BE INCREASED BY ONE FOR EACH ADDITIONAL
14 PARTICIPANT, EXCEPT THAT THE MAXIMUM NUMBER OF MEMBERS OF THE SELECTION
15 COMMITTEE IS NINE. THE SELECTION COMMITTEE FOR CONSTRUCTION SERVICES SHALL
16 INCLUDE AT LEAST ONE PERSON WHO IS A LICENSED CONTRACTOR AND ONE PERSON WHO
17 IS AN ARCHITECT OR AN ENGINEER WHO IS REGISTERED PURSUANT TO SECTION 32-121.
18 A CONTRACTOR IS NOT REQUIRED TO SERVE ON THE SELECTION COMMITTEE IF THE
19 CONTRACT DOES NOT INCLUDE CONSTRUCTION AND IF THE CONTRACT DOES NOT REQUIRE
20 DELIVERY OF A DESIGN OR A SET OF CONSTRUCTION DOCUMENTS. THESE MEMBERS MAY
21 BE EMPLOYEES OF THE AGENT OR OUTSIDE CONSULTANT. OUTSIDE CONTRACTORS,
22 ARCHITECTS AND ENGINEERS SERVING ON A SELECTION COMMITTEE SHALL NOT RECEIVE
23 COMPENSATION FROM THE AGENT FOR PERFORMING THIS SERVICE, BUT THE AGENT MAY
24 ELECT TO REIMBURSE OUTSIDE CONTRACTORS, ARCHITECTS AND ENGINEERS FOR TRAVEL,
25 LODGING AND OTHER EXPENSES INCURRED IN CONNECTION WITH SERVICE ON A SELECTION
26 COMMITTEE. A PERSON WHO IS A MEMBER OF A SELECTION COMMITTEE SHALL NOT BE A
27 CONTRACTOR UNDER THE CONTRACT OR PROVIDE CONSTRUCTION, MATERIALS OR SERVICES
28 UNDER THE CONTRACT. THE SELECTION COMMITTEE SHALL:

29 (a) EVALUATE THE STATEMENTS OF QUALIFICATIONS AND PERFORMANCE DATA
30 THAT ARE SUBMITTED IN RESPONSE TO THE AGENT'S REQUEST FOR QUALIFICATIONS FOR
31 THE PROPOSED CONTRACT.

32 (b) IF DETERMINED BY THE AGENT AND INCLUDED BY THE AGENT IN THE
33 REQUEST FOR QUALIFICATIONS, CONDUCT DISCUSSIONS WITH AT LEAST THE NUMBER OF
34 PERSONS OR FIRMS TO BE INCLUDED ON THE SHORT LIST AS STATED IN THE REQUEST
35 FOR QUALIFICATIONS BUT NOT MORE THAN THE NUMBER OF PERSONS OR FIRMS TO BE
36 INCLUDED ON THE SHORT LIST PLUS TWO AS SPECIFIED IN THE REQUEST FOR
37 QUALIFICATIONS REGARDING THE CONTRACT AND THE RELATIVE METHODS OF APPROACH
38 FOR FURNISHING THE REQUIRED PROFESSIONAL SERVICES OR CONSTRUCTION SERVICES.

39 (c) IN ORDER OF PREFERENCE, BASED ON CRITERIA ESTABLISHED AND
40 PUBLISHED BY THE SELECTION COMMITTEE AND INCLUDED IN THE REQUEST FOR
41 QUALIFICATIONS, SELECT A SHORT LIST OF PERSONS OR FIRMS THE SELECTION
42 COMMITTEE DEEMS TO BE THE MOST QUALIFIED TO PROVIDE THE PROFESSIONAL SERVICES
43 OR CONSTRUCTION SERVICES. THE NUMBER OF PERSONS OR FIRMS ON THE SHORT LIST
44 SHALL BE THE NUMBER OF PERSONS OR FIRMS SPECIFIED IN THE REQUEST FOR
45 QUALIFICATIONS, EXCEPT THAT:

1 (i) IF A SMALLER NUMBER OF RESPONSIVE AND RESPONSIBLE PERSONS OR FIRMS
2 RESPOND TO THE SOLICITATION, THE SELECTION COMMITTEE MAY PROCEED WITH THE
3 SELECTION PROCESS WITH THE REMAINING PERSONS OR FIRMS IF AT LEAST TWO PERSONS
4 OR FIRMS REMAIN OR THE SELECTION COMMITTEE MAY READVERTISE PURSUANT TO THIS
5 SUBSECTION AS THE SELECTION COMMITTEE DEEMS NECESSARY OR APPROPRIATE.
6 (ii) AS TO PROFESSIONAL SERVICES ONLY, IF ONLY ONE RESPONSIVE AND
7 RESPONSIBLE PERSON OR FIRM RESPONDS TO THE SOLICITATION, THE AGENT MAY
8 PROCEED WITH ONLY ONE PERSON OR FIRM ON THE SHORT LIST AND MAY AWARD THE
9 CONTRACT TO A SINGLE PERSON OR FIRM IF THE AGENT DETERMINES IN WRITING THAT
10 THE FEE NEGOTIATED PURSUANT TO SUBSECTION E OF THIS SECTION IS FAIR AND
11 REASONABLE AND THAT EITHER OTHER PROSPECTIVE PERSONS OR FIRMS HAD REASONABLE
12 OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE TIME FOR A RESOLICITATION.
13 (d) BASE THE SELECTION AND ORDER OF PREFERENCE ON DEMONSTRATED
14 COMPETENCE AND QUALIFICATIONS ONLY.
15 (e) NOT REQUEST OR CONSIDER FEES, PRICE, MAN-HOURS OR ANY OTHER COST
16 INFORMATION IN THE SELECTION OR ORDER OF PREFERENCE.
17 (f) FOR A REQUEST FOR QUALIFICATIONS FOR CONSTRUCTION SERVICES ONLY,
18 NOT INCLUDE ON THE SHORT LIST ANY PERSON OR FIRM THAT INCLUDES OR EMPLOYS ANY
19 PERSON OR FIRM THAT HAS PROVIDED FOR COMPENSATION ANY SERVICES RELATING TO
20 THE PROJECT COVERED BY THE REQUEST FOR QUALIFICATIONS.
21 D. AN AGENT SHALL AWARD A CONTRACT FOR PROFESSIONAL SERVICES OR FOR
22 CONSTRUCTION SERVICES TO ONE OF THE PERSONS OR FIRMS ON THE SHORT LIST
23 PREPARED PURSUANT TO SUBSECTION C OF THIS SECTION AS PROVIDED IN SUBSECTION E
24 OR F OF THIS SECTION, EXCEPT THAT, IF FEWER THAN THE NUMBER OF PERSONS OR
25 FIRMS ON THE SHORT LIST RESPOND TO THE REQUEST FOR PROPOSALS PURSUANT TO
26 SUBSECTION F OF THIS SECTION BUT AT LEAST TWO PERSONS OR FIRMS ON THE SHORT
27 LIST SUBMIT RESPONSIVE PROPOSALS OR IF ONE OR MORE OF THE PERSONS OR FIRMS ON
28 THE SHORT LIST DROP OUT OF THE SELECTION PROCESS PURSUANT TO SUBSECTION E OR
29 F OF THIS SECTION:
30 1. IF THERE ARE THREE OR MORE REMAINING PERSONS OR FIRMS, THE AGENT
31 SHALL PROCEED WITH THE SELECTION PROCESS.
32 2. IF THERE ARE ONLY TWO REMAINING PERSONS OR FIRMS, AS THE AGENT
33 DEEMS NECESSARY AND APPROPRIATE, THE AGENT MAY ELECT TO PROCEED WITH THE
34 SELECTION PROCESS WITH THE TWO PERSONS OR FIRMS OR MAY ELECT TO TERMINATE THE
35 SELECTION PROCESS AND MAY ELECT TO READVERTISE PURSUANT TO SUBSECTION C OF
36 THIS SECTION.
37 3. IF THERE IS ONLY ONE REMAINING PERSON OR FIRM, THE AGENT SHALL
38 TERMINATE THE SELECTION PROCESS AND MAY ELECT TO READVERTISE PURSUANT TO
39 SUBSECTION C OF THIS SECTION, EXCEPT THAT AS TO PROFESSIONAL SERVICES ONLY,
40 THE AGENT MAY AWARD THE CONTRACT TO A SINGLE PERSON OR FIRM IF THE AGENT
41 DETERMINES IN WRITING THAT THE FEE NEGOTIATED PURSUANT TO SUBSECTION E OF
42 THIS SECTION IS FAIR AND REASONABLE AND THAT EITHER OTHER PROSPECTIVE PERSONS
43 OR FIRMS HAD REASONABLE OPPORTUNITY TO RESPOND OR THERE IS NOT ADEQUATE TIME
44 FOR A RESOLICITATION.
45 E. AN AGENT SHALL ENTER INTO NEGOTIATIONS FOR A CONTRACT WITH THE
46 HIGHEST QUALIFIED PERSON OR FIRM FOR THE PROFESSIONAL SERVICES OR FOR THE