March 27, 2017

Chairman Neil Combee  
House Oversight, Transparency & Administration Subcommittee  
209 House Office Building  
402 South Monroe Street  
Tallahassee, FL 32399

Vice Chair Blaise Ingoglia  
House Oversight, Transparency & Administration Subcommittee  
222 The Capitol  
402 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Combee and Vice Chair Ingoglia,

On behalf of the more than 31,000 members of the National Society of Professional Engineers, we urge the Florida House Oversight, Transparency & Administration Subcommittee to oppose H.B. 789 and keep the current requirements for qualifications-based selection.

Currently, Florida law provides for selection of professional engineering services based on qualifications first, with rankings from most to least qualified. Then, the most qualified firm begins negotiations with the agency until they mutually agree to a reasonable price for the engineering work. If enacted, H.B. 789 would eliminate QBS and replace it with a “best value selection process,” with price influencing as much as 50% of the selection process. This would create a procurement system in which price is given priority over the competence and qualifications of the provider in making procurement commitments.

NSPE believes QBS is the best method for procuring architectural and engineering services for the following reasons:

**QBS protects the public welfare.** Most individuals would not select medical or legal services based solely on cost; these highly skilled services are too important to leave to the lowest bid. Likewise, engineering is a highly skilled service that should not be selected based on the firm offering the cheapest price. Engineers design the highways and bridges we drive on, our water treatment systems, and all other infrastructure and systems on which we rely. The design services provided by engineering firms directly affect the health, safety, and welfare of the public, and it is important that only the most qualified and experienced firms be tasked with this critical function.
QBS protects the taxpayer. Over the life of a project, engineering services account for only a small percentage of total project costs. Yet these services play a profound role in determining overall project costs. A well-designed project by a highly qualified firm will stay on time and on budget, solve construction and operational challenges, experience fewer change orders during construction, enhance performance of the completed project, and lower long-term maintenance and repair costs.

QBS levels the playing field for small firms. QBS helps small firms compete by providing a forum to demonstrate their unique capabilities that often include greater niche market expertise, knowledge of local regulations and business practices, and greater involvement of senior-level management in project execution.

QBS promotes technical innovation. Using QBS, owners have the opportunity to fully define the project scope during the selection process. This process fosters innovative, cost-saving, and time-saving approaches to problems, ensuring that the final project meets or exceeds the owner’s functional and performance goals.

The Florida Department of Transportation strongly concurs with NSPE’s position on H.B. 789. Specifically, FDOT states in their February 14, 2017 legislative bill analysis:

“The proposed legislation would result in professional services procurements no longer complying with qualifications-based selection or competitive negotiation, which renders s. 287.055, F.S., no longer in conformance with federal law. As a result, all new Florida Department of Transportation (FDOT) professional services contracts would become ineligible for federal funding. Federal funding constitutes 26% of Florida’s total transportation funding for projects, and plays a critical role in the state’s ability to meet transportation needs. The bill would result in FDOT forfeiting the option of using federal funding for FDOT preliminary engineering and construction engineering inspection phase contracts. Projects could only move forward if state funds are available and the project is eligible to use state funds.

Additionally, FDOT has been able to annually capture and use additional federal funds that were not timely committed by other states. In FY 2015-16 the Department was able to capture $150 million in total from other states. To best position FDOT to leverage available federal funds, FDOT “federalizes” as many professional services contracts as possible (applies federal terms and conditions to all professional services contracts) in case federal funds become available. This
strengthens the Department’s financial position as these eligible projects can be reimbursed when the funds become available. This financial flexibility would also be forfeited as a consequence of the proposed change in law.”

The FDOT analysis further points out that “imposition of price would outweigh innovation as a selection factor, and encourage selection based on the cheapest proposal or design. This may result in higher transportation project life cycle costs, since the cheapest design is not always the most efficient or sustainable design.”

Therefore, H.B. 789, in making cost a factor, would cost the state of Florida hundreds of millions of federal dollars, financial flexibility, and innovation. NSPE believes professional engineers, on the basis of design ability, experience, and integrity, should perform all engineering services. NSPE has long supported procurement of design professional services based on qualifications, and NSPE was instrumental in the enactment of the federal Brooks Architect-Engineer (A/E) Act (PL 92-582) (the “Brooks Act”). The federal Brooks Act, enacted in 1972, requires federal agencies to use QBS procedures when procuring design services. We sincerely hope the House Oversight, Transparency & Administration Subcommittee will oppose H.B. 789 and retain the current requirements for QBS in Florida.

Thank you for the opportunity to address this important issue. Please contact Arielle Eiser, NSPE senior manager of government relations, at aeiser@nspe.org with any comments or questions.

Sincerely,

Kodi Jean Verhalen, P.E., Esq., F.NSPE
President, 2016–17